Argentina

Natalia Denegri v. Google Inc. (Supreme Court) (2022)

Case Summary and Outcome

Natalia Denegri petitioned for Google to de-index embarrassing videos of her participation in a TV talk show. She argued that she was embarrassed by those events and that it infringed her rights to privacy, intimacy, honor and reputation. The Supreme Court of Argentina unanimously rejected a "right to be forgotten" petition by Denegri arguing that de-indexation was an "extreme measure" as it restricts the flow of public interest information.

By rejecting the right to be forgotten on issues of public interest or involving public figures, the decision expands freedom of expression.

The decision by the Supreme Court of Argentina refuses to recognize a "right to be forgotten".

Facts

Natalia Denegri is a famous TV presenter. She attended a TV talk show in which she at times verbally abused and was physically aggressive toward some of the participants.

In 2016, years after the events, Ms. Denegri sued Google to remove content relating to those broadcasts invoking the right to be forgotten (Google Spain v Agencia Espanola de Proteccion de Datos set this precedent).

A trial judge partially accepted her request which was later ratified by the Appellate Civil Court in the city of Buenos Aires.

The Court considered that the right to be forgotten should be recognized when dealing with information that has no "public, historic, or scientific" interest whatsoever.

Decision Overview

The Supreme Court revoked the appellate decision. The Court highlighted its traditional case-law on freedom of expression.

The *Rodriguez* decision of 2014 set a principle that search engines should not be held liable for illicit content posted on platforms by third parties unless they had been notified of such illegality by a judge.

In *Denegri* the Court recalled that all restrictions or limitations on the free flow of information should be narrowly construed.The found that "de-indexing" and total censorship may very well be the same.

The Court also considered that if memories or past acts on the public record could simply be restricted, a dangerous precedent would be set, that would threaten to distort public debate which the right of expression guarantees.

Ms. Denegri is a public figure who willingly took part in a public debate.

The Court also considered the actual images. For the Court, the fact that those images are unpleasant or excessive does not deprive them of constitutional protection, for that would stand on the "subjective tastes or sensibilities" of the court of law in charge of judging them.

The Court mentioned the issue in *obiter dicta* and considered that there were many questions regarding the impact of these systems on human rights that remain unanswered.

Documents

Decision (in Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/12/FALLO-CIV-050016_2016_CS001.pdf

Cristina Fernandez v Eduardo Feinmann (2022)

Case Summary and Outcome

The Civil Court of Appeals of Argentina safeguarded a journalist's expressions aired on state television against former president Cristina Fernandez. The Court applied the malice doctrine and concluded that the journalist's words were protected under the right to freedom of expression because they were related to a public interest investigation against the politician. The Court found that the journalist did not intentionally harm the president.

Facts

During a national TV show, the journalist Eduardo Feinmann argued that Cristina Fernandez, former president, was a "bribery, looter, criminal and cretin."

Fernandez filed an action for compensation for the damages that the defendant caused with his assertions and that his insults violated her honor and reputation.

First instance judge rejected the claim and ordered the payment of compensatory damages. The plaintiff appealed the decision.

The Civil Court of Appeals of Argentina heard the case and confirmed the first instance judgment on the grounds that actual malice doctrine was applicable and concluded that the defendant did not intentionally opine with the intent of harming the plaintiff.

Decision Overview

Central issue for the Court was whether the actual malice doctrine established by the US Supreme Court applied to this case.

New York Times v. Sullivan case standard was used to argue that officials cannot recover damages for libel without proving that a statement was made with actual malice.

The Court found that freedom of expression should prevail over the plaintiff's alleged rights. The plaintiff was one of the most prominent figures in the country, so the comments related to her investigation were a matter of public interest.

Mexico

Petitioner v. National Autonomous University of Mexico (2022)

Case Summary and Outcome

The National Institute for Transparency, Access to Information and Personal Data Protection of Mexico (INAI) held that the National Autonomous University of Mexico (UNAM) should provide information regarding complaints of sexual harassment filed against professor Pedro Agustín Salmerón Sanginés. The petitioner submitted an access to information request which was rejected by the UNAM because it would violate Mr. Sanginés' right to privacy. Thus, the UNAM argued that data should be classified as confidential. The INAI acknowledged that, in principle, information related to the existence or inexistence of complaints of sexual harassment filed against an identifiable person could be classified as confidential, because it could violate the person's right to privacy and honor. However, considering the context of the present case, the INAI considered that the right of access to information should prevail over the right to privacy because it involved gender-based violence by a public officer in an educational environment, which is a matter of public interest, and because the existence of such complaints was already public. The INAI ordered the UNAM to provide the requested information within 10 days.

In its ruling, the INAI asserted the importance of analyzing the context when addressing the tension between the right to privacy and the right of access to information. In this sense, it considered that data related to complaints of gender-based violence filed against a public servant in an educational

environment could not be classified as confidential, even more, when the existence of such complaints was already public. The decision also held that although government officials enjoy their right to privacy, they have voluntarily submitted themselves to a different threshold when it comes to this right and that they are subjected to greater scrutiny and criticism by the public, as set by international human rights standards on the matter.

Documents

National Institute for Transparency, Access to Information and Personal Data Protection of Mexico (Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/01/RRA-4790-22-AAM.pdf

Sergio Aguayo v Humberto Moreira (2022)

Case Summary and Outcome

In March 2022, the First Chamber of the Supreme Court of Justice from Mexico held that the opinions on facts of public interest that involved a politician were protected by freedom of expression. Mr. Humberto Moreira, a former governor of the State of Coahuila, filed a damages action against Mr. Sergio Aguayo for the publication of a column in the press and tweets in his personal account related to his arrest in Spain in January 2016. The Court analyzed the content of the expressions, the subject matter involved in the case, the quality of the person who made the expression, and the quality of the person who claims to have suffered damage. The Court concluded that the column included a mix of facts and opinions about a public figure of a relevant politician. Mr. Aguayo's opinions were based on diligent research on facts of public interest, so his speech satisfactorily exceeded the standard of veracity being constitutionally protected.

In its ruling, the First Chamber of the Supreme Court of Justice from Mexico provides a deep analysis of the right of freedom of expression and its limits when confronted with the right to honor public figures. The Court outlined the relevancy of journalism for a democratic society and protected its practices. In this sense, the Court confirmed the protection of offensive expressions when based on minimum diligence research of public interest facts, and the use of judicial documents as sources, even when the judiciary did not reach a final decision yet.

Documents

Judgment (in Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/09/MexicoAD-30-2020-02032022.pdf

Petitioner v. Secretary of Health (2022)

Case Summary and Outcome

The National Institute for Transparency, Access to Information and Personal Data Protection of Mexico (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, or INAI) held that the Secretary of Health (Secretaría de Salud) should provide information regarding the reception and donation of vaccines against Covid-19. The Secretary of Health partially denied an access to information request; it specifically denied granting information regarding the amount of vaccines Mexico donated to other countries and the countries Mexico asked for vaccine donations from. The Secretary of Health argued that the information was classified as confidential since it could compromise the national response to the pandemic and Mexico's national security. The INAI held that the data requested by the petitioner, some of which had already been disclosed publicly "by the government and

foreign authorities," did not have the potential to destabilize the national response against Covid-19 nor damage the public health system. It ordered the Secretary of Health to conduct an exhaustive search and to provide the requested information, in the format demanded by the petitioner, within 10 days.
In its ruling, the INAI held that the information regarding statistics about the donation and reception of Covid-19 vaccines did not compromise national security nor the public health system, since the required information had already been divulged, and thus could not be classified as confidential. Furthermore, it reaffirmed that government offices should provide the information in the format requested by the petitioner, whenever it is possible. Through this, the INAI fosters an environment of government transparency and citizen oversight in public health-related matters.
Documents
National Institute for Transparency, Access to Information and Personal Data Protection of Mexico (Spanish)
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/01/RRA-359-22-AAM.pdf

Petitioner v. Ministry of Defense

Case Summary and Outcome

On November 10, 2021, Mexico's National Institute of Transparency, Access to Information, and Personal Data Protection (INAI) ordered the Ministry of Defense to provide an individual with information regarding counter-migration operations on the southern border of the country carried out between 2018 and 2021. The case arose after the Ministry of Defense responded to the plaintiff's access to information request by stating that after conducting an exhaustive search, it was unable to locate documentary evidence to address the required information. In its decision, the INAI held that the Ministry of Defense had failed to communicate the plaintiff's request to all the competent administrative units and thus could not allege the non-existence of the information.
This decision expands the right to access information by holding that the Ministry of Defense couldn't allege the non-existence of the requested information when it had failed to exhaust the inquiry procedure established by law. Thus, the INAI fostered transparency within the state's administration and citizen oversight.

Documents

Decision (in Spanish)
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/01/RRA-11825.pdf

Petitioner v. Attorney General's Office (2021)

Case Summary and Outcome

The National Institute for Transparency, Access to Information and Personal Data Protection of Mexico (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, or INAI) held that the Attorney General's Office (*Fiscalía General de la República*) should provide information regarding criminal investigations against public officers for acts of corruption. The petitioner submitted an access to information request seeking documents and information about the judicial proceedings concerning an accident on Mexico City's underground (Line 12) that happened on May 3, 2021, where 26 people died and 98 were injured. The Attorney General's Office denied the requested information because it was classified as confidential, as it could compromise the success of the prosecution and would affect the right to privacy and the presumption of innocence of the aforementioned persons. The INAI held, firstly, that information related to acts of corruption could not be regarded as

confidential. Secondly, after applying a test based on suitability, necessity, and proportionality criteria, it claimed that providing information related to the criminal investigation, including the names of the accused civil servants, would foster social scrutiny, transparency, and accountability. Thus, the positive effects of providing the data surpassed the consequences of the restriction on the right to privacy and the presumption of innocence of those persons. The INAI ordered the Attorney General's Office to provide the public version of the case file within 10 days, including the names of the accused public officers that were being investigated for acts of corruption.

In its ruling, the INAI held that the information regarding existent criminal investigations against public officers, including their names, was of public interest and could not be classified as confidential, even more, when the investigations involved acts of corruption. The decision also held that transparency and the right of access to information are the main tools in the fight against corruption and that disclosing this type of data fosters public scrutiny and accountability, as set by international human rights standards on the matter.

Documents

Case RRA-7058

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/01/RRA-7058.pdf

Brazil

The Case of the Brazil Fake News Inquiry (2021)

Case Summary and Outcome

A Brazilian judge ordered Facebook and Twitter to suspend the accounts of individuals under investigation for the "dissemination of fake news, false accusations, threats" and other illegal conduct, "affecting the honorability and security of the Supreme Court, as well as that of its members and their families". Following growing criticism of the Supreme Court online, the Chief Justice had ordered a criminal inquiry and appointed a justice to preside over the inquiry. That justice found that there was evidence of a "coordinated use of organized computer tools, such as accounts on social networks, to create, disclose and disseminate false information or capable of harming institutions of the rule of law, notably the Supreme Court". After ordering Twitter to suspend the accounts and learning that the suspensions were restricted to viewers from within Brazil, the judge issued an additional order requiring Twitter to block access to the accounts for all users irrespective of their location.

In this matter, the Supreme Court has been criticized for lacking jurisdiction to preside over a criminal inquiry and for conflating the roles of police, prosecution and the judiciary. In addition, the judgment does not provide sufficient analysis of the content of the social media posts in question and places the severe restriction of a prior restraint on social media posts by individuals under investigation before applying lesser restrictions. There is also no assessment of the Court's authority to order the suspension of social media accounts on a global scale.

Documents

Order of July 22 2020 (Portuguese)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/06/Brazilian-Supreme-Court-26-May-2020.pdf

Order of May 26 2020 (Portuguese)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/06/Brazilian-Supreme-Court-22-July.pdf

Order of July 28 2020 (Portuguese)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/06/decisao-alexandre-moraes-twitter.pdf

The Case of the Anti-Fascist Dossiers (2021)

Case Summary and Outcome

The 10th Civil Court in São Paulo, Brazil held that a state representative who had compiled and shared with the police dossiers of individuals he accused of being "antifascists" had violated the privacy of those individuals. After the state representative had asked his followers on Twitter to share information on people he said were "antifascists" he said that he had collated information on more than 1000 individuals. The information was leaked which included personal information of the individuals concerned. The Court found that even though it was not clear who had leaked the information, the state representative had contributed to the information's dissemination, and so held that he had harmed and should pay damages to the individuals whose right to privacy had been infringed.

This ruling limits the expression of social media users who facilitate the publication of individuals' personal information online but protects the right to privacy of those individuals, and uses personal data protection and privacy rights to limit how information is made available on social media to the detriment of other social media users.

Documents

Judgment (Portuguese)
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/12/Antifascist-Dossiers.pdf

The Case of Sao Paulo Subway Facial Recognition Cameras (2021)

Case Summary and Outcome

A Civil Court in São Paulo, Brazil held that the use of facial recognition technology on a subway line was an infringement of the right to privacy of one's image and to the freedom of information. After the operator of a subway line in São Paulo introduced interactive subway car doors which displayed personalized advertisements to the passengers based on information gathered through facial detection technology, a consumer rights organization approached the Court seeking damages and an order prohibiting the use of the equipment. The Court held that the use of any facial recognition or detection software required the consent of users, and ordered the subway operator to cease using the technology.

In the first case involving facial recognition on public transportation, the Court expanded the protection given by the rights to privacy and prohibited the use of facial recognition technology which has repeatedly been described as having a chilling effect on freedom of speech by rejecting the claim that "face detection" technology did not require data protection.

Documents

Judgment
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/12/Subway-Facial-Recognition-Judgment.pdf

Fakhoury v. Crusoe (2021)

Case Summary and Outcome

The São Paulo Court of Justice held that a businessman was not entitled to an automatic right of reply in response to a magazine's report linking him to "virtual militancy" in defense of the President. After the magazine had published the report, the businessman wrote to it, stating that his honor had been offended

by the report and he requested a right of reply. He further argued that he should have been consulted before the report's publication. The lower court found in the businessman's favor, but, on appeal, the Court held that there had been no injury to the businessman's honor and that allowing individuals to veto the publication of articles in which they were mentioned would inhibit investigative journalism and threaten the right to freedom of expression.

This judgment recognized the existence of the rights to freedom of expression and reply to vindicate an individual's reputation, and held that in the event of a conflict between these constitutional guarantees the right to freedom of expression should be privileged. It contributes to an understanding that freedom of expression should be fostered by guaranteeing the uncensored functioning of the Brazilian press, and that this serves to contribute to deepening democracy.

Documents

Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/05/Fakhoury-Judgment.pdf

Attorney General v. Silveira (2021)

Case Summary and Outcome

The Brazilian Supreme Court imposed house arrest with electronic monitoring on a congressman who had been arrested after posting a YouTube video threatening the Supreme Court justices. Although the congressman had argued that his position as a parliamentarian guaranteed him immunity for his statements and that his video was protected by the right to freedom of expression, the Court held that his conduct was not covered by those protections and that his arrest and detention were therefore permissible. The Court found Silveira's videos constituted a true threat to the Ministers of the Supreme Federal Court as they intended to prevent and impair the independence of the judiciary as well as the maintenance of democratic rule of law – all of which was "clearly out of step with the postulate of freedom of expression."

In confirming a version of detention for the congressman, the Court accepted that expressions which may threaten national security or the political and social order can be criminally punished. The Court found the videos to be a credible threat to public order in the context of Brazil's political history. Daniel Silveira is part of a group of far-right politicians aligned with Brazil's President Jair Bolsonaro who have openly defended the military dictatorship from 1964-1985 and called for a return to it through the dissolution of democratic institutions, such as the Congress and the Supreme Court. The Supreme Court has further ordered an investigation into those activists, including Silveira, who have been accused of plotting to overthrow the democratic political system.

Documents

Case File

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/03/Report_file_Daniel-Silveira-4.pdf

First Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/03/Decisa%CC%83o_STF_Alexandre-de-Moraes_Daniel-Silveira.pdf

Third Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/03/Third-Silveira-Judgment.pdf

Nelson Curi et al v. Globo Comunicacao e4 Participacoes S/A (2021)

Case Summary and Outcome

The Brazilian Federal Supreme Court held that a general right to be forgotten is incompatible with the Federal Constitution. In 2004, the family of a murdered woman had approached the courts, arguing that the use of images of the woman and her relatives in broadcast of a television program detailing her 1958 murder infringed their rights to privacy. The Court stated that the Constitution does protect the rights to privacy, honor, image, and personality and that situations which have invoked the right to be forgotten can be determined under those existing laws. It held that a general and abstract right to be forgotten would be an excessive and authoritarian restriction of the right to freedom of expression and information.

In going against the international jurisprudential trend that recognizes the right to be forgotten, the Court stressed that the mere passage of time cannot transform the lawful publication of facts into an unlawful activity, while noting that the public interest in accessing information outweighs an individual's right to be forgotten and that the protection of personality rights must be assessed on a case-by-case basis.

Documents

Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/12/Nelso-Curi.pdf

Uruguay

Nicolas Souto Gancio v Ministry of Public Health (2022)

Case Summary and Outcome

The Supreme Court of Justice from Uruguay granted access to information regarding the number of people who died in the country that previously had received a vaccine against COVID-19. The applicant filed an access to public information petition against the Ministry of Public Health asking for the number of people who died in Uruguay for any reason, from March 1 to April 26 of 2021, specifying how many of these people had received, at the time of their death, COVID-19 vaccines, with the indication of date, quantity of doses and type of vaccines administered. The Ministry of Public Health denied access to the information arguing that they were not obligated to "create new information" as the data was scattered among various databases. The Supreme Court overturned the decision of the Court of Appeals of 7th Turn noting that the fact that the Ministry had to collect the data from various sources under their control does not entail the creation of new information. The Court ruled that limitations to access to public information must be interpreted narrowly and therefore the collection of data available from different sources cannot exempt public institutions from their transparency obligations.

The Supreme Court of Justice expanded access to information rights by clarifying that the collection of information which public institutions have in their possession, even when dispersed among different databases, does not fit into the exception for information production. The Court protected the right by defining that exceptions must be interpreted narrowly due to the principle of maximum publicity.

Documents

Ruling (in Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/08/Sentencia_405-2022.pdf

Sudestada and Fabian Werner v. Google

Case Summary and Outcome

The Civil Court of Appeals of 7th Turn declared that Uruguayan courts do not have jurisdiction to decide on a case in which Google applied the right to be forgotten according to European Law against a local

media outlet and a journalist. Sudestada, a news portal, filed an Amparo against Google for deindexing an article in which the journalist, Fabián Werner, reported on the involvement of two Uruguayan law firms in a money laundering scheme revealed in the Panama Papers. Sudestada and Werner claimed the measure violated their rights to freedom of expression and due process. Google argued that the decision was taken to comply with a request from a Spanish citizen grounded in the European privacy framework, limited to that jurisdiction, and therefore the content was available to Uruguayan users. The Court considered that the content was not removed from the internet globally but only deindexed by one search engine in a specific region, to conclude that the deindexing did not entail a restriction to freedom of expression or press. The Court found that the defendant acted according to a foreign law and that Uruguayan courts are not competent to evaluate the legitimacy of the decision or the process. For this reason, the Court concluded that plaintiffs should look for relief in Spanish courts.

Documents

Courts of Appeals Ruling
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/01/Sentencia-Segunda-Instancia.pdf
First Instance Ruling
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/01/Sentencia-Primera-Instancia.pdf
IFEX-ALC
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/01/Amicus-Curiae-IFEX.pdf

Ecuador

Palacio Urrutia v Ecuador (2021)

Case Summary and Outcome

The Inter-American Court of Human Rights found that the State of Ecuador violated the right to freedom of expression of Emilio Palacio Urrutia, Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga, and César Enrique Pérez Barriga, as enshrined in article 13 of the American Convention of Human Rights. The Court argued that the criminal convictions and civil sanctions against the aforementioned individuals, for the publication of the article "NO a las mentiras", that criticized then President Rafael Correa, were disproportionate and could have a chilling effect that inhibited the dissemination of ideas, opinions, and information. The Court also found that the article "NO a las mentiras" was a form of protected speech that deserved special protection, since it was an opinion piece, about a public official and a matter of public interest.

This decision by the IACtHR expands freedom of expression. The ruling reiterates a tendency of some international courts seeking to de-criminalize defamation, in matters of public interest, thus widening the scope of protection of freedom of expression in the region. It is worthy of note that in the reparations, the Court ordered the State to take legislative measures against SLAPPs and train its public officials on international standards about freedom of expression. This has the potential to foster a better environment for democratic debate and the exercise of critical journalism.

Documents

Judgment
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/02/seriec_446_esp.pdf
Amicus Curiae Brief on behalf of the High Level Panel of Legal Experts on Media Freedom

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/02/HL-Panel-Urrutia-v-Ecuador-Amicus-FINAL-ENG.pdf

Grijalva Bueno v. Ecuador (2021)

Case Summary and Outcome

The Inter American Court of Human Rights 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 Inter-American Convention. 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.

This decision issued by the IACtHR expands freedom of expression by recognizing that the proceedings carried against Grijalva had a retaliatory intent that could have a chilling effect on the work of human right defenders, thus breaching article 13 of the ACHR. In this regard, it is important that the Court considers that the State has the obligation to provide protection, and foster a better environment, so public officials can disclose human rights' violations without fear of reprisals, which provides a robust protection of speech on matters of public interest.

Documents

Judgment (Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/02/Grijalva-Bueno-v.-Ecuador.pdf

The Case of Nonconsensual Pornography Sent to Victim's Parents (2021)

Case Summary and Outcome

In January 2021, the Constitutional Court of Ecuador held that the storage and sharing of sexual photos without the consent of the victim were a violation of her constitutional rights to personal data protection, reputation, and intimacy. The victim pursued a habeas data action against the defendant, who had found the pictures in a family-shared computer, saved them in flash memory, and sent them to the parents of the victim. The Court reasoned that intimate images were personal data sent exclusively to the defendant's partner and required previous consent to be processed by anyone else. When the defendant saved the photos and shared them with other people, she inflicted damage and violated human rights grounded on dignity and informational self-determination.

The Constitutional Court of Ecuador delivered a decision in which it considered the rights to personal data protection, honor, and reputation of a non-public person in a "revenge porn" case. While the decision restricts the freedom to disseminate intimate images without consent, the Court balanced the competing rights. In light of the circumstances of the case, the Court weighed in favor of the right to privacy finding that pictures in which the person is recognizable are considered personal data and, as such, his or her consent is necessary to conduct any processing beyond domestic use. This includes storing and sharing them with third parties, regardless of the purpose and/or family relationship with the victim.

Documents

Constitutional Court Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/09/CASO-No.-2064-14-EP.pdf

Guatemala

Indigenous People Maya Kaqchikel from Sumpango v Guatemala (2021)

Case Summary and Outcome

The Inter-American Court of Human Rights found that the State of Guatemala breached articles 13 and 26 of the American Convention of Human Rights, on the ground that its regulation regarding the allocation of radio frequencies was discriminatory against indigenous peoples. According to the "Ley General de Telecomunicaciones" (General Telecommunications Bill) radio frequencies will always be allocated to the highest bidder in a public auction. This made it impossible for structurally impoverished indigenous communities to operate their own media outlets, which in turns harms diversity and pluralism in media. Similarly, the Court considered that the criminal persecution undertaken by the State of Guatemala against members of two indigenous communities operating radio stations without licenses, along with other criminal proceedings used to undermine the operation of the radio stations, were disproportionate measures that breached article 13.2 of the American Convention.

This decision by the IACtHR expands freedom of expression by recognizing that the current regulatory framework for the allocation of radio frequencies is discriminatory and forbids, *de facto*, the participation of indigenous communities. In doing so, along with the remedies issued by the Court, this regional tribunal strengthens pluralism and diversity in Guatemala´s media, fostering an environment in which representation is more egalitarian, and democratic participation is more robust. Likewise, the fact that the Court found that the criminal measures issued against two indigenous communities, violated their freedom of expression, provides a better climate for the exercise of this right by members of historically and structurally discriminated groups.

Documents

Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/02/seriec_440_esp.pdf

Honduras

Hernandez v. Honduras (2021)

Case Summary and Outcome

The Inter-American Court of Human Rights declared the State of Honduras responsible for the violation of Vicky Hernández's right to freedom of expression, under article 13 of the American Convention on Human Rights. The Court found there was enough evidence to consider that Hernández was murdered because of her gender identity as a trans woman and because she was a sex worker. Similarly, the Tribunal asserted that the State failed to conduct a proper investigation into her murder, without prejudices, that took into account her work as a human rights' defender of the LGBTI community. The Court argued that identity and its manifestation were protected under article 13 of the American Convention, thus in light of the events surrounding the death of Hernández, Honduras breached her right to freedom of expression, along with other rights.

This ruling by the IACtHR expands freedom of expression by considering that Gender Identity is a form of expression in itself, that deserves protection against discriminatory interferences. In doing so, it widens the scope of protection of freedom of expression, as an instrumental right for the articulation of identity. Through this the Court also provides robust protection to the rights of the LGBTI community, in cases of discrimination and violence.

Documents

Judgment

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/02/seriec_422_esp.pdf

Colombia

Bedoya Lima v. Colombia (2021)

Case Summary and Outcome

The Inter-American Court of Human Rights 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 Bogota, 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 and because she was a female journalist.

The decision expands expression by implementing international human rights standards for the protection of female journalists who have been victims of sexual violence in relation to their journalistic work. This is a landmark judgment, as it is the first decision of an international human rights court referring to this phenomenon. In addition, the judgment plays a key role in advancing the creation of standards of heightened due diligence by the governments with regards to women journalists.

Documents

Judgment (Spanish)
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2021/12/seriec_431_esp-1.pdf

Torres Palacios v. Vice President of the Republic (2021)

Case Summary and Outcome

The Colombian Constitutional Court held that the Vice President of the Republic's public statements or opinions do not belong exclusively to the scope of freedom of expression but also to how she fulfills or exercises her duties towards the citizens. Her expressions are covered by the burdens of truthfulness and impartiality, except when she defends her management, responds to critics, or expresses opinions on a political issue. A Colombian citizen filed the application to protect constitutional rights against the Vice President after the Vice President published a post on her Facebook and Twitter accounts in which she consecrated the country to the Lady of Fátima. The Court held that the Vice President of the Republic violated the principle of secularism on which the Colombian state is based. It urged her to avoid linking her personal opinions, and especially expressions of her faith, to the institution she represents and respect the principle of secularism and the guarantee of the fundamental rights to freedom of religion and worship and freedom of conscience.

The Constitutional Court established clear limits to public officials' freedom of expression. Nevertheless, the Court's reasoning on how public officials' social media accounts have a general nature is aligned with the comparative findings of *Knight First Amendment Institute v. Donald J. Trump No. 17 Civ. 5205 (NRB) USCA17-5205 (2nd Cir. 2019).* This reasoning, in the end, is helpful for cases in which public officials block access to their social media accounts, undermining access to information and, to some extent, newsgathering.

Documents

Decision (in Spanish)
https://www.corteconstitucional.gov.co/Relatoria/2021/T-124-21.htm

Restrepo Barrientos v. El Colmbiano Newspaper (2021)

Case Summary and Outcome

The Constitutional Court of Colombia ruled that a newspaper violated the fundamental rights of a journalist to a life free from violence, non-discrimination against women, the right to work and the right to petition, after she was allegedly sexually harassed by a co-worker. Through its actions and omissions, the newspaper failed in its duties to prevent, investigate and punish the violence that she suffered, as the newspaper did not have the necessary gender sensitive policies or procedures in place. The Court analyzed the phenomenon of sexual violence against women journalists and its impact on self-censorship. For the Court, the State and individuals have clear obligations to prevent, investigate, prosecute and punish violence and/or discrimination based on gender, particularly in the field of journalism and the media.

The decision expands expression. It sets a positive precedent in the protection of gender equality in cases of women journalists. The decision advances in the creation of a favorable environment for freedom of expression, as it refers to the obligations of private companies to guarantee the rights of their workers. Although the case was related to a labor dispute, the general reference to discrimination and risks faced by women journalists sets a basis for other cases related with other types of violence against them.

Documents

Decision

https://www.corteconstitucional.gov.co/relatoria/2021/T-140-21.htm

Unconstitutionality of Article 55 of the Press Act (2021)

Case Summary and Outcome

The Constitutional Court held that Article 55 of the Press Act Number 29 of 1944 was unconstitutional because it could lead to a self-censorship mechanism, thereby illegitimately limiting freedom of expression. In 2020, a group of citizens filed an unconstitutionality action against Article 55 of the Press Act which established rules on the burden of proof in civil liability proceedings for communications that damaged honor and reputation. The Court noted that the provision of a preferential civil liability regime for damages allegedly caused by opinions spread through mass communication channels could lead to self-censorship mechanisms that would have a paralyzing effect and obstruct the free flow of information. In this sense, the rule constitutes a prohibited means to achieve a legitimate end. The Court then concluded that this provision of the Press Act violated the right to freedom of expression and press of individuals, journalists, and mass media (Articles 20, 73, 74, and 93 of the Constitution).

By considering a reversal of the burden of proof as an inadequate measure to protect honor and reputation, the Court expanded the interpretation of what constitutes censorship. According to the Court, the rule leads to a chilling effect which can be considered self-censorship and hence, a violation of the Constitution and the American Convention of Human Rights.

Documents

Ruling

https://www.corteconstitucional.gov.co/relatoria/2021/C-135-21.htm

Chile

Valenzuela v Undersecretariat of Public Health (2021)

Case Summary and Outcome

The Transparency Council of Chile granted an access to information request lodged by Sofía Valenzuela Zuccar, in which she requested data on the number of confirmed cases of COVID-19 between March 2020 and September 2021, disaggregated by age and commune. Valenzuela originally requested the information from the Undersecretariat of Public Health who responded to the request by sharing a link to the resource "COVID-19 Databases" and claimed all the required information could be found there. After having completed an amparo process, the Council presented a favorable decision for the applicant, in which it determined that the obligation to search for and provide information cannot be delegated to the citizen. In addition, it ordered the delivery of the requested information with the necessary redactions to protect the personal data within the documents.

The decision expands the right to freedom of expression by providing robust protection to the right to access public information. The Council applied constitutional principles consistent with international human rights law standards regarding access to information to guarantee this right when weighed with the right to privacy and the protection of personal data.

Documents

Decision (in Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/01/CPLT-Jurisprudencia-_-Sofia-Valenzuela-Zuccar-con-SUBSECRETARIA-DE-SALUD-PUBLICA.pdf

Rivero Bravo v. Regional Secretariat of Health of the Valparaiso Region (2021)

Case Summary and Outcome

The Transparency Council of Chile protected the right of access to information of the plaintiff by ordering the Regional Ministerial Secretariat of Health of the Valparaiso Region to disclose information on the salary statements of a public official and their job duties. The plaintiff's information request was originally rejected by the Regional Ministerial Secretariat of Health of the Valparaíso Region, who alleged a violation of the right to protection of personal data of third parties. For the Council, the required information was public in its nature, since it mainly referred to the salary of a public official paid with public funds in the context of his employment. Through its decision, the Council protected the integrity of sensitive information contained in State documents, reinforced the principle of active transparency of the public function, and ordered the delivery of the information to the requester.

This decision expands the right to freedom of expression since it provides a robust protection to the right to access information regarding issues of public interest, such as the salaries of public officials. In doing so, it abides by international human rights standards in the matter, as set by the ICtHR, which foster transparency, accountability, and public oversight of the state.

Documents

Decision (in Spanish)

https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/01/CPLT-Jurisprudencia-_-Pamela-Rivero-Bravo-con-SEREMI-DE-SALUD-REGION-DE-VALPARAISO.pdf

Maureira Alvarez v. Google (2021)

Case Summary and Outcome

The Supreme Court of Chile partially revoked a ruling of the Court of Appeals of Concepción that rejected a writ for protection filed by Maureira Álvarez, a former public official, against media outlets for maintaining internet-based publications connected to a criminal investigation into his alleged role in the

embezzlement of public funds. While the veracity of the events were agreed upon, Mr. Álvarez argued that the charges had been dismissed and that the permanence of incomplete information online violated his right to privacy and honor and submitted that the latter rights should prevail over freedom of expression. The Court observed that despite the passage of time and the dismissal of the charges, the information maintained public relevance since it concerned allegations of corruption against a public official in his professional capacity. As Chilean law does not recognize the so-called "right to be forgotten," the Supreme Court weighed the right to access information against the right to private life and honor to hold that the media outlets had violated the Mr. Álvarez's right to honor by failing to include the definitive dismissal of the charges against him. Hence, the Court further ordered the media outlets to update their posts to include a link to the full text of the judgment dismissing the charges against Mr. Álvarez.

The decision expanded Freedom of Expression since the Court ordered the media outlets to update the news report to include a link to a Court of Appeals' ruling, thereby providing complete access to information to the users/ public. Freedom of speech also encompasses the right to information which is true and unaltered. By directing the Respondents to make complete disclosure with respect to the outcome of the Court of Appeals, the decision enforces and expands the right to free speech in its true sense. Another positive aspect lies in the Court's decision that the so-called right to be forgotten must prioritize the protection of the right to information when the disclosure of facts is relevant to the public interest.

Documents

Supreme Court Judgement
https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/03/Rol-N%C2%B0140.332-2020.pdf

Munoz v. Civil Registrar's Service (2022)

Case Summary and Outcome

The Chilean Transparency Council accepted a claim from the petitioner and held that the Civil Registrar's Service should provide information regarding the amount of individuals who changed their sex and their names under the Gender Identity Law and indicate whether they are under or over 18 years old.

The Civil Registrar's Service had denied the information because it considered it was personal data whose disclosure would affect the right to privacy. They also argued that they did not have the information and had no obligation to create a new database.

The CPLT ordered the Civil Registrar's Service to provide the requested data within 5 days.

Case about access to public information. Case granted access to the information in question. It held that anonymous and statistical information that had no data related to identified or identifiable persons could not be classified as confidential. Fosters access to government-held information to social relevance.

Documents

Chilean Transparency Council Decision: Case C1057-22
https://jurisprudencia.cplt.cl/cplt/decision.php?id=CPLT000057277