2024 INTER-AMERICAN HUMAN RIGHTS MOOT COURT COMPETITION

BENCH MEMORANDUM

Topic: Protection and Guarantees of Human Rights in Digital Environments

Luciano Benítez v. Republic of Varaná

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1. INTRODUCTION AND CONTEXT

This case arises from the need for an in-depth exploration of how to decide freedom of expression cases emerging from the new digital platforms, where new actors—such as internet intermediaries—converge, and which have raised unresolved questions as to the scope of traditional freedom of expression guarantees in the digital world. Varaná is a hypothetical country that shares many contextual and legal similarities with most Latin American countries. It is a country that has implemented a "zero-rating" practice for internet access that creates a dichotomy between the right to freedom of expression and efforts to reduce the digital divide. Today, countries in Latin America are having the same debate and trying to strike a balance between the two ideas.

The countries of the region have also seen an increase in strategic lawsuits against public participation (SLAPPs) in which socially, economically, or politically powerful individuals and entities bring civil, criminal, administrative, and constitutional proceedings against journalists and human rights defenders to silence speech on issues of public interest. In the hypothetical case, the question arises as to whether Eye's lawsuit against Luciano can be classified as a SLAPP. Other novel issues being decided by judges in Latin America include disputes arising from the handling of personal data. These have become increasingly important as new technologies facilitate the massive collection of personal data. Applications and systems used in everyday life are gaining access to data that in the aggregate make it possible to profile individuals and invade their privacy. This case illustrates the danger of the mishandling of personal data and shortcomings in app security features.

With the emergence of new actors such as internet search engines—intermediaries—questions have also been raised in relation to the contingent or secondary liability of these actors for the content they host on their servers. One example of this is the European case of *Costeja v. Google*, which revolutionized the digital landscape from a legal perspective, including, specifically, the legal involvement of intermediaries in judicial proceedings with the spread of the concept of the "right to be forgotten," which can lead to the de-indexing of online content. However, the question remains as to whether this concept would also be compatible with the standards of the inter-American human rights system, or whether it is one that cannot be extrapolated.

Lastly, the internet and social media have brought about at least two additional discussions worthy of study. The first revolves around whether anonymity on social networks is an inherent guarantee of the right to freedom of expression, as some Latin American courts have held. The second question is whether rectification requires that the reach of the second publication be similar to that of the original publication. This case delves into both questions.

2. STRUCTURE OF THE BENCH MEMORANDUM

This document provides the judges of the Inter-American Human Rights Moot Court Competition with an outline of the arguments that the parties might make at the hearings. It is not intended to be an exhaustive presentation of all the material that

could be covered based on the case. But it lays out arguments from the perspective of the State and the victims that the participants in the competition are expected to have prepared in their analysis.

The authors of the hypothetical case have selected 13 issues as the areas in which the parties' arguments should have been developed. The document provides the arguments that each side should present on each issue. The authors also cite sources that any diligent student would find when developing their arguments, including decisions of the Inter-American Court of Human Rights and the European Court of Human Rights and relevant reports of the Inter-American Commission on Human Rights, with special emphasis on those prepared by the Office of the Special Rapporteur for Freedom of Expression. Additional comments on these 13 issues have also been included at the end of the document, and the judges should consider them in their evaluation as well.

The judges should review this bench memorandum from a didactic and academic perspective. The points of controversy it addresses are the minimum that the teams should be debating, but they may develop other issues not covered in this document; it is not an exhaustive list of all potential points of controversy. However, the failure to address any of the issues mentioned here should be taken into account by the judges when they evaluate the participants.

3. ARGUMENT TREE

3.1. Preliminary objections

The case was not designed for the parties to raise preliminary objections or procedural issues. However, possible arguments and the manner in which they should be addressed are presented in the argument tree.

ACHR Arts.	Issue	State's Arguments	Victims' Arguments
46 or others	Preliminary objections	The State is not expected to argue preliminary objections. However, it may try to object based on the principle of subsidiarity. The State should be alert to any attempt by the alleged victims to amend the lawsuit to include Luciano's family members or the person responsible for leaking information about Holding Eye to Luciano. The IACHR did not include these parties as alleged victims when it referred the case	In response, the victims should use the doctrine of estoppel or the doctrine of preclusion when preliminary objections are raised. The victims should take advantage of the fact that historically the Inter-American Court has been addressing arguments of subsidiarity more at the merits stage of the judgment than at the

		to the Court. The State should argue in its defense that it is not the appropriate time to do so and recall the limitation of the principle of *iura novit curia.* The State should object to any invocation of a violation of the Inter-American Convention on Protecting the Human Rights of Older Persons on the grounds of lack of jurisdiction *ratione temporis* and *ratione materiae.*	preliminary objections stage. The victims are not expected to amend the lawsuit to include new petitioners.

3.2. Strategic lawsuits against public participation (SLAPPs)

One of the legal issues to be resolved in the case will be to determine whether the tort action filed by Holding Eye against Luciano Benítez because of the article published on his blog—in which he referred to alleged bribes paid by the company and its efforts to cultivate a favorable image of the construction of an industrial complex—can be classified as a strategic lawsuit against public participation, or SLAPP. To resolve this issue, the students should refer to the case law of the Inter-American Court of Human Rights, as well as to guidance documents published by SRFOE, to identify the main elements of this concept.

In the case of *Palacio Urrutia et al. v. Ecuador*, for example, the Inter-American Court of Human Rights stated that SLAPPs arise when lawsuits are filed alleging *"crimes of slander or insult, not with the objective of obtaining a rectification but to silence the criticisms made regarding their actions in the public sphere."*[1] To that extent, SLAPPs are considered *"an abusive use of judicial mechanisms that must be regulated and controlled by the States, with the aim of allowing effective exercise of freedom of expression."*[2] In the same judgment, the Inter-American Court cites the Human Rights Council and its concern *"in the face of the strategic recourse to justice, 'by business entities and individuals using strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting.'"*[3]

Consistent with these findings, the students should identify, among other things: (i) the parties to the case, noting that the plaintiff is a powerful company and the defendant is an activist performing journalistic activities and exercising freedom of expression in the public interest; (ii) the purpose of bringing the legal action, the analysis of which should

[1] I/A Court H.R., *Case of Palacio Urrutia et al. v. Ecuador*.

[2] Ibid.

[3] Ibid.

note that Holding Eye sought to compel the journalist to reveal his sources and to pay 50,000 Varanasian reais (approximately US$30,000, or 80 times the monthly minimum wage at the time); (iii) that this case involves the litigation of a matter of freedom of expression; and (iv) the effects of this court case on Luciano.

The students should also note that even when a case is not related to a criminal proceeding, the IACHR has recognized 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"*[4] of the person subject to the penalty or of third parties. The fact that it is not a criminal defamation proceeding does not mean it cannot meet the elements of a SLAPP.

Both parties can use this same legal framework to contend that the State cannot restrict access to the courts for those who consider that their rights have been violated by excesses or abuses of freedom of expression, or that the State failed to provide mechanisms for the early termination of cases involving strategic litigation against public participation, or SLAPPs.

<table>
<tr><th>ACHR Arts.</th><th>Issue</th><th>State's Arguments</th><th>Victims' Arguments</th></tr>
<tr><td rowspan="2">8, 11, 13, 25</td><td rowspan="2">SLAPPs</td><td>The State is obligated to allow access to justice for all people to defend all their rights. Therefore, the State cannot unduly restrict legal actions brought for alleged violations of the rights to one's honor and good name.

In Luciano's case, no criminal case was brought against him. The only lawsuit he faced was a civil one.</td><td>The State should provide mechanisms for the early termination of certain legal proceedings in order to protect the right to freedom of expression and prevent a chilling effect on journalists.

Civil proceedings can be as or more intimidating than criminal proceedings. This is the case when disproportionate penalties are sought.</td></tr>
<tr><td colspan="2">I/A Court H.R., Kimel v. Argentina.
I/A Court H.R., Memoli v. Argentina.
I/A Court H.R., Fontevecchia and D'Amico v. Argentina.
I/A Court H.R., Tristán Donoso v. Paraguay.
I/A Court H.R., Uzcátegui v. Venezuela.
I/A Court H.R., Moya Chacón et al. v. Costa Rica.
I/A Court H.R., Álvarez Ramos v. Venezuela.</td></tr>
</table>

[4] I/A Court H.R., *Case of Fontevecchia and D'Amico v. Argentina*.

		I/A Court H.R., *Palacio Urrutia et al. v. Ecuador.* I/A Court H.R., *Baraona Bray v. Chile.* IACHR, A Hemispheric Agenda for the Defense of Freedom of Expression, OEA/Ser.L/V/II CIDH/RELE/INF. 4/09, February 25, 2009. IACHR. The Inter-American Legal Framework regarding the Right to Freedom of Expression. Joint Declaration, 2023.

3.3. Source confidentiality

The possible violation of the right to source confidentiality arises from the hearing held on December 5, 2014, during which, on cross-examination, Luciano disclosed the email account he communicated with to obtain the information published about Holding Eye. Given these facts, the students should develop at least two analyses: The first should be aimed at determining whether the right to source confidentiality applies to Luciano Benítez. To do so, the students will have to present arguments to prove or disprove whether Benítez can be considered a journalist. The second will be to determine whether the judge induced Benítez to reveal the source when he answered the question *"Do I have to answer?"* with *"The decision is up to you, but if you answer, this case may be over faster."*

To answer these questions, the students may cite various sources to show that, according to the Inter-American Court of Human Rights, *"the practice of journalism means that a person is involved in activities defined by or consisting of the freedom of expression that the American Convention protects specifically,"* [5] and that it is not necessary for the person to be remunerated for it; nor does it require the *"the application of knowledge acquired at a university"*[6] or membership in a professional association. Based on the inter-American legal framework on the classification of individuals as journalists, the students should consider the nature of Luciano's activity, the frequency with which he carried it out, the functions he performed for society, among other factors, in order to classify him (or not) as a journalist. They should then examine the judge's actions in detail.

ACHR Arts.	**Issue**	**State's Arguments**	**Victims' Arguments**
13, 8, 25	Source confidentiality	Source protection is limited to journalists and Luciano was not a journalist.	Luciano should be considered a journalist. There is no test to

[5]IACHR. Inter-American Legal Framework regarding the Right to Freedom of Expression.

[6] Ibid.

		Luciano is not a journalist under the laws of Varaná, nor should he be considered one under inter-American standards. The State did not ask Luciano directly to reveal his source, since no court order was issued to that effect. The State did not use arbitrary means to force Luciano to reveal the source. Disclosing the source did not result in any serious consequences for Luciano.	determine someone's status as a journalist. Luciano used his social networks for informational purposes and that is enough for his sources to be protected by the right to source confidentiality. The court hearing was a mechanism of undue pressure on Luciano to reveal his source. Even if Luciano was not considered a journalist, the judge did not conduct the hearing impartially, and interfered to force Luciano to provide information. Even if source confidentiality might not apply specifically, or if there was an exception, the judge should have made an informed decision and applied the expected tools in the court proceedings. Pressure during a hearing was not the right tool.
		IACHR. Report on Violence against Journalists and Media Workers. IACHR. Inter-American Legal Framework regarding the Right to Freedom of Expression. IACHR. Report, Silenced Zones: Highly dangerous areas for the exercise of freedom of expression. Joint Declaration on Wikileaks. Declaration of Principles on Freedom of Expression and its interpretation. Report on the Right to Information and National Security. 2020 (available in Spanish only). ECtHR. *Stichting Ostade Blade v. the Netherlands* (dec.) - 8406/06. January 19, 2016.	

		HRC. General Comment 34. Article 19: Freedoms of opinion and expression. CCPR/C/GC/34. September 12, 2011. HRC. Lukpan Akhmedyarov v. Kazakhstan. CCPR/C/129/D/2535/2015. July 23, 2020. I/A Court H.R., *Baraona Bray v. Chile.* I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights).* Advisory Opinion OC-5/85.

3.4. Personal data and Lulo Apps

The legal issue related to the handling of personal data arises from the leak and publication of data on the location of Luciano Benítez's cell phone at different points in time. As described in the hypothetical case, people had access to Benítez's cell phone location data that, when correlated with events such as marches or with information on the location of certain business groups, affected Luciano's image.

The first question derived from the above facts concerns the storage in a mobile app of personal data about a person's location. On this point, the students should ascertain the legitimacy of the collection and storage of such data by Lulo Apps. The facts of the case state that Lulocation asked users to agree to basic terms and conditions before allowing them to use the app. However, it is also indicated that Luciano did not read the terms and conditions in detail and ultimately accepted them to enjoy the benefits of the only such app he could access for free with his data plan.

Here, the students should discuss the consent given, arguing either that it is valid and meets the relevant international standards, or that it is flawed because the terms and conditions are essentially a contract of adhesion. The students should also address the State's role as the regulator of this relationship between private parties and its responsibility to ensure the security of personal data. On this point, the students may cite several IACHR decisions in which it has stated that *"it is crucial to develop rules for data protection that regulate the storage, processing, and use of personal data, as well as its transfer, whether among State entities or third parties,"*[7] and that States have the responsibility to *"educate people on their rights and the legal requirements for processing personal data and to inform them when their data has been collected, stored, processed, or disclosed."*[8]

In addition to discussing these issues related to the handling of personal data, the students are expected to address how behaviors and actions may be protected speech

[7] Standards for a Free, Open and Inclusive Internet, SRFOE, 2017.

[8] Ibid.

under the right to freedom of expression enshrined in the ACHR and that, to that extent, their leak and disclosure could undermine the exercise of that right.

ACHR Arts.	Issue	State's Arguments	Victims' Arguments
15, 16, 22	Personal data - Lulo Apps	The information is collected lawfully when the user has accepted the terms and conditions of the app, and Luciano did so. The State has no way to anticipate or regulate the hacking of mobile apps. The right to data protection is protected in the State—so much so that the perpetrators were convicted. The State should not require more from apps than is necessary for their operation. The hacking and leaks were not attributable to State agents in their official capacity. Under the principles of subsidiarity and complementarity, the litigation cannot continue because the appropriate remedy has already been determined at the domestic level.	Behaviors and actions constitute speech protected by Article 13 of the ACHR. (Cite case law on speech that does not involve words.) The interpretation of people's behaviors may give rise to a violation of the right to freedom of expression, as they may lead to self-censorship. (Cite case law on the chilling effect.) Acceptance of the terms and conditions of the apps violates human rights standards because it is in fact a contract of adhesion in which consent is vitiated. The State should have mechanisms in place to ensure that private companies validly obtain users' consent, providing them with clearly worded, accessible terms and conditions and ensuring minimum conditions that encourage users to actually read them. The State has insufficient legislation to safeguard the right to the protection of personal data.

			The acts that allowed the data to be hacked and leaked are attributable to State agents. It is irrelevant whether this occurred in their official or personal capacity. The State knew or should have known about it. If this argument is insufficient, the victims should say that States should require service providers to have mechanisms in place to ensure that their users have read the terms and conditions, and to make the information in them accessible and understandable to the general public without technical or unnecessarily complex language.
		Updated Principles on Privacy and Personal Data Protection, OAS, 2021. Report on the Right to Information and National Security. 2020. Standards for a Free, Open and Inclusive Internet, SRFOE, 2017. I/A Court H.R., *Petro v. Colombia.* I/A Court H.R., *Tarazona Arrieta v. Peru.* I/A Court H.R., *Urrutia Labreaux v. Chile.* I/A Court H.R., *Habbal v. Argentina.* IACHR. Report on Admissibility. *Viteri Ungarreti v. Chile.* Draft Articles on State Responsibility.	

3.5. Zero-rating

Another legal issue derived from the hypothetical case is whether the practice of zero-rating is valid in light of the inter-American human rights system. This practice originated in Varaná with Article 11 of Law 900 of 2000, under which the mobile telephone company P-Mobile offers all available Lulo apps for free. The IACHR has considered that the compatibility of zero-rating with human rights *"must pass the test*

of legality, necessity, and proportionality."[9] Accordingly, the students are expected to perform this analysis using the tests developed in the extensive case law of the Inter-American Court.

The students should also analyze the rationales for the adoption of these measures (e.g., the reduction of the digital divide) and the risks posed by zero-rating, especially for the right to freedom of expression. It is important that they identify that zero-rating practices centralize information in certain apps and limit the flow of information. Based on these considerations, the students should take positions for and against this practice depending on which party they represent.

<table>
<tr><th>ACHR Arts.</th><th>Issue</th><th>State's Arguments</th><th>Victims' Arguments</th></tr>
<tr><td rowspan="2">11, 13</td><td rowspan="2">Zero-rating</td><td>The practice of zero-rating pursues the legitimate aim of reducing the digital divide. It favors the equal rights of citizens who otherwise would not be able to access certain apps.</td><td>Zero-rating is a practice that limits free access to the internet and the free flow of information. It is an undue interference in the information that is accessed or distributed.

There are other ways to reduce the digital divide without limiting free internet access. These include, for example, of providing free internet access without having to limit it to certain apps, subsidizing internet access, and setting up public Wi-Fi networks.</td></tr>
<tr><td colspan="2">Standards for a Free, Open and Inclusive Internet, SRFOE, 2017.
Freedom of Expression and the Internet, SRFOE, 2013.
Practical Guide – How to promote universal access to the Internet during the COVID-19 pandemic, SRFOE, 2021.</td></tr>
</table>

3.6. De-indexing content on a web search engine

[9] Standards for a Free, Open and Inclusive Internet, SRFOE, 2017.

The tort action brought by Luciano Benítez against journalist Federica Palacios and the company Lulo Network—seeking the de-indexing of the published article containing his name—raises a legal issue related to the compatibility of de-indexing measures and inter-American human rights standards. The debate in this case should focus on whether de-indexing amounts to a measure that violates the right to freedom of expression, since it ultimately limits access to indexed content, or whether, on the contrary, it is a measure that, when used in exceptional cases, can ensure human rights.

To reach either of the above conclusions, the students should apply the three-part test which requires the measure to be: (1) established by law; (2) necessary; and (3) proportional. The students in both roles—as advocates for the victims or for the State—should apply this test to reach the desired conclusions.

The students are also expected to refer to the IACHR's position that *"States that allow for zero-rating plans to be offered should monitor their functionality and periodically evaluate their compatibility with human rights."*[10]

ACHR Arts.	**Issue**	**State's Arguments**	**Victims' Arguments**
11, 13	De-indexing content on a web search engine	De-indexing is equivalent to removing content and in this case is an unlawful limitation. (Cite case law on subsequent censorship.) De-indexing does not pass the three-part test. (The measure must be established by law both formally and materially, necessary and appropriate, and proportional. Limitations to freedom of expression must also be ordered by a competent, independent, and impartial judge or judicial authority observing all due process guarantees.)	De-indexing internet content is not censorship because the information remains online. Even if the de-indexing were to be considered detrimental to freedom of expression, the measure passes the three-part test. (Cite case law on the test.) De-indexing is exceptional and is designed in a specific, clear, and limited manner to protect people's rights to privacy and dignity while also respecting the rights to freedom of expression and access to information.
		Joint Statement on Media Independence and Diversity in the Digital Age, 2018.	

[10] Standards for a Free, Open and Inclusive Internet, SRFOE, 2017.

		Standards for a Free, Open and Inclusive Internet, SRFOE, 2017. *Herrera Ulloa v. Costa Rica.*

3.7. Liability of internet intermediaries

Another legal issue to be resolved in this hypothetical case is related to the liability of internet intermediaries. This issue arose after Luciano Benítez filed a tort action against the company Lulo because its platforms host information that he believed violated his rights to honor and good name. Both the trial and appellate court judges declined to even bring LuLook into the lawsuit on the basis of these allegations, accepting the company's arguments that it was merely an intermediary.

On this point, the students are expected to discuss the role of internet intermediaries and the feasibility of exempting them from any liability because they do not directly control content. In exploring this topic, the students are expected to refer to the need for intermediaries to *"put in place effective systems of monitoring, impact assessments, and accessible, effective complaints systems in order to identify actual or potential human rights harms caused by their services or activities"*[11] and that there are different liability regimes for intermediaries, such as strict liability or conditional liability.[12]

ACHR Arts.	**Issue**	**State's Arguments**	**Victims' Arguments**
13	Liability of internet intermediaries	Internet intermediaries have no control over the content that appears on their servers and therefore cannot be brought into legal proceedings in which such content is at issue.	Internet intermediaries should be aware of the importance they have gained and the control they have over information. They configure the algorithms that determine, for example, what content is displayed first or appears more readily. As a result, they are not exempt from limitations. Internet intermediaries should act in keeping with standards on business and

[11] Ibid.

[12] Ibid.

			human rights when moderating content.
		Joint Statement on Freedom of Expression and Gender Justice, 2022. Privacy and Data Protection, OEA/Ser.Q CJI/doc.450 /14 Manila Principles. IACHR. Report, Freedom of Expression and the Internet IACHR. Standards for a Free, Open and Inclusive Internet, SRFOE, 2017. I/A Court H.R., OC 5/85. Ruggie Principles. UN. Manila Principles on Intermediary Liability, 2015.	

3.8. Anonymity on social media

The legal issue of anonymity on social media arises from the application of Article 13 of the Constitution of Varaná, which prohibits anonymity. It is also directly related to Article 10 of Law 22 of 2009, which prohibits anonymity on social media and requires linking social media profiles to the user's identification document. The students are expected to discuss the relevance and validity of these legal provisions, with specific reference to their impact on the right to freedom of expression.

The students should also discuss both the risks of allowing anonymity on social media and the rights that could be ensured by allowing it. On this point, the students are expected to analyze whether anonymity can be considered an essential element of the right to freedom of expression on the internet. It will be advantageous for them to refer to IACHR decisions recognizing the value of anonymous speech for democratic participation and noting that this right derives not only from the right to freedom of thought and expression but also from the right to privacy.[13]

ACHR Arts.	Issue	State's Arguments	Victims' Arguments
13	Anonymity on social media	Anonymity can exacerbate the abuse of the right to freedom of expression. This is the case when it is used for harassment, hate speech, or other criminal purposes. It is a matter of public safety.	Anonymity is an essential element of the right to freedom of expression. The right to choose how to express oneself includes choosing to publish anonymously.

[13] Freedom of Expression and the Internet, IACHR, SRFOE, 2013.

		There are no explicit and specific guarantees that protect anonymity. Anonymous speech can prevent other people from accessing their rights.	Anonymity on social media is especially relevant in repressive states because it guarantees the freedom of expression of the individual's personality.
		Freedom of Expression and the Internet, IACHR, SRFOE, 2013. ECtHR. *Breyer v. Germany*. IACHR. Guide to Guarantee Freedom of Expression regarding Deliberate Disinformation in Electoral Contexts.	

3.9. Rectification

The right to rectification on the internet may have elements that differ from the traditional ones. Therefore, the judges' findings that journalist Federica Palacios appropriately rectified the information published by journalist Luciano Benítez may raise questions. They relate to the requirements for rectification on the internet and to the specific issue of whether the simple publication of the same information through the same media satisfies these requirements. The students are expected to take into account that while Palacios's first article had over 400,000 page visits, the second one reached only 100,000; and that the second article was not disseminated in the same manner as the first one, not even reaching one-fifth of the audience the first article reached.

The students should also identify that Article 14.1. of the ACHR does not establish specific requirements for correction or reply, but instead provides that the conditions under which it occurs shall be "as the law may establish." On this point, the Inter-American Court has stated in an advisory opinion that *"Article 14(1) does not indicate whether the beneficiaries of the right are entitled to an equal or greater amount of space, when the reply once received must be published, within what time frame the right can be exercised, what language is admissible, etc."*[14]

Using this legal framework, the students should be able to argue that the rectification was either sufficient or insufficient, depending on their role in the case.

ACHR Arts.	**Issue**	**State's Arguments**	**Victims' Arguments**

[14] I/A Court H.R., OC 7/86.

13, 14	Rectification	The State can only ensure that the rectification occurs in the same media as the initial publication. The State has no control over the algorithmic operation of the platforms, and the business model and operation of the platforms does not per se violate the human rights regime.	In the digital environment, the correction must have a similar reach to the initial publication. This means that it is not enough for it to be published on the same platform. It must reach a similar number of page views; otherwise, there is no fair redress.
		I/A Court H.R., OC 7/86. IACHR. Guide to Guarantee Freedom of Expression regarding Deliberate Disinformation in Electoral Contexts.	

3.10. Trial rights

The legal issue of trial rights cuts across the various legal proceedings in the hypothetical case. To resolve it, the students should analyze whether the actions of the judges of the State of Varaná were compatible with inter-American standards and whether adequate rationales were provided for those actions. To develop these questions, the students may draw on the case law of the Inter-American Court, which has occasionally relaxed the duty of judges to provide the reasons for their decisions.

In the case of *Rico v. Argentina*, for example, the Inter-American Court held that *"the obligation to provide a reasoned decision does not require a detailed answer to every argument of the parties, but may vary according to the nature of the decision and, in each case, it is necessary to examine whether the guarantee has been fulfilled."*[15] Accordingly, it will be up to the representatives of the victims and the State to present sufficient arguments to support compliance or noncompliance with this duty.

The students are also expected to examine the role of the Inter-American Court and whether it has the power to perform an in-depth review of the decisions handed down by domestic courts.

ACHR Arts.	**Issue**	**State's Arguments**	**Victims' Arguments**

[15] I/A Court H.R., *Rico v. Argentina*

8 and 25	Trial rights	The State only has the obligation to provide reasons for the way in which it decides appeals. There is no obligation of result derived from Articles 8 and 25 of the ACHR, only an obligation of means. Demanding a review could require the Court to act as a fourth instance. The State conducted all proceedings diligently. There was no procedural delay of any kind.	The State failed to provide adequate legal grounds for its decisions and disregarded inter-American standards. There is no impediment for the Court to evaluate the internal reasoning of decisions for the purpose of identifying human rights violations. The judge was not impartial during Luciano's hearing. The criminal investigations against those responsible for the leak should have been more expeditious, as the Prosecutor's Office suspected that the perpetrators had been acting for some time. * The victims may develop arguments about the delay in the domestic proceedings. However, the authors of the case see little room for this to occur.
		I/A Court H.R., *Kimel v. Argentina.* I/A Court H.R., *Memoli v. Argentina.* I/A Court H.R., *Rico v. Argentina.* I/A Court H.R., *Gonzalez Medina and family v. Dominican Republic.*	

3.11 The right to humane treatment

Among the issues that the teams should address are alleged impacts on the humane treatment of Luciano Benítez, especially in terms of mental and moral integrity. The hypothetical case highlights several facts that could serve as a basis for this analysis,

such as Luciano's decision to disconnect from the digital world, the destruction of his phone, and other facts that may be noted by the teams.

The Inter-American Court has held that "*the violation of a person's right to physical and psychological integrity is a category of violation that has different connotations of degree and ranges from torture to other types of humiliation or cruel, inhuman or degrading treatment, the physical and psychological aftereffects of which vary in intensity based on factors that are endogenous and exogenous to the individual (such as duration of the treatment, age, sex, health, context and vulnerability) that must be analyzed in each specific situation*" (*Case of Guzmán Albarracín et al. v. Ecuador*, para. 148).

ACHR Arts.	**Issue**	**State's Arguments**	**Victims' Arguments**
23	Humane treatment, especially mental and moral integrity	Luciano did not experience particularly severe psychological suffering. In several cases, the Inter-American Court has applied criteria developed by the ECtHR whereby treatment must reach a minimum level of severity in order to be considered inhuman or degrading and thus prohibited under Article 5 of the ACHR. The alleged violations of Article 5 of the ACHR are conflated with issues that the Court has already examined in the allegation of other violations in this case.	The intense psychological suffering that Luciano experienced is sufficient cause to declare a violation of Article 5 of the ACHR. In previous cases, the Inter-American Court has evaluated—even jointly at times—violations of freedom of expression and the right to political participation (protected under Articles 13 and 23) stemming from restrictions on political speech. An act need not be severe enough to constitute torture or cruel, inhuman, or degrading treatment in order for it to be considered a possible violation of Article 5. The Court has held that, even if they were not acts prohibited by Article 5.2 of the ACHR, those that produce distress, frustration, and anxiety or place victims in a situation of serious uncertainty and

			concern about future events may, in certain circumstances, violate Article 5 of the ACHR (specifically, art. 5.1).
		I/A Court H. R., *Case of the Rochela Massacre v. Colombia* I/A Court H. R., *Case of Guzmán Albarracín et al. v. Ecuador.* I/A Court H. R., *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala.* I/A Court H. R., *Case of the Pacheco Tineo family v. Bolivia.* ECtHR. *Sarban v. Moldova.*	

3.12 The right to political participation

The Inter-American Court has established that "*Political participation may include diverse and wide-ranging activities that the population carries out individually or on an organized basis in order to intervene in the appointment of those who will govern a State or who will be in charge of managing public affairs, as well as to influence the development of State policies through direct participation mechanisms302 or, in general, to intervene in matters of public interest, such as the defense of democracy*" (*Case of López Lone et al. v. Honduras*, paras. 162-163). Since Article 23 protects citizens' right to participate in the conduct of public affairs, directly or through freely elected representatives, the teams are expected to be able to use the Court's interpretation of Article 23, including from a position that encompasses the wide-ranging and diverse activities carried out by Luciano Benítez.

ACHR Arts.	Issue	State's Arguments	Victims' Arguments
23	Political participation	Even if other rights of the ACHR, such as Article 13, were considered to have been violated, there is insufficient evidence to find an autonomous violation of Article 23. Relevant considerations on the possible violation of	In previous cases, the Inter-American Court has evaluated—even jointly at times—violations of freedom of expression and the right to political participation (protected under Articles 13 and 23) stemming from

		this article would have already been made at the time of the assessment of possible violations of other articles of the ACHR. While the practice of journalism and the defense of human rights may be considered forms of political participation broadly speaking, in other cases on the issue the Court did not necessarily consider Article 23 to have been violated based on these findings alone.	restrictions on political speech. Luciano Benítez's journalistic and human rights advocacy work was specifically intended, through public denunciation, to disseminate information that could shape state policy and help citizens to influence the government's conduct of public affairs.
		I/A Court H.R., *Case of López Lone et al. v. Honduras.* I/A Court H.R., *Case of Escaleras Mejía v. Honduras.* I/A Court H.R., *Case of Acosta et al. v. Nicaragua.* IACHR. *Yoani Sanchez. Cuba.* IACHR. *Oscar Elías Biscet et al. Cuba.*	

3.13. Adaptation of laws and reparations

One issue that the students are expected to examine is whether existing legislation in Varaná is aligned with the inter-American human rights system. They are expected to discuss the relevance of zero-rating legislation, the absence of anti-SLAPP legislation and laws on the handling of personal data, the ban on anonymity, and the intermediary liability system.

Ideally, the students should also refer to the concept of "conventionality control" and the obligation of States to examine the compatibility of national rules and practice with the American Convention on Human Rights. It is also important to bear in mind that, according to the case law of the Inter-American Court, *"legal and administrative interpretations and proper judicial guarantees should be applied in accordance with the principles established in the jurisprudence of this Court in the present case."*[16]

[16] I/A Court H.R., *Case of Atala Riffo and daughters v. Chile.*

ACHR Arts.	Issue	State's Arguments	Victims' Arguments
1.1 and 2	Conventionality control, legislative adaptation, and reparations	The State's existing regulatory framework is sufficient to ensure human rights. There was no violation of the ACHR, there is no basis for the State to be found responsible. The State has already provided the necessary remedies, especially for the breach of personal data.	The State should adapt its domestic legislative framework, since it is inadequate, for example, in relation to zero-rating legislation and legislation for the protection of personal data, as well as in relation to the intermediary liability system and the prohibition of anonymity on the internet. The State should strengthen anti-SLAPP measures. The consequences of the personal data breach were not fully remedied. Conventionality control should have been applied to adapt or repeal those provisions of Varanasian law that were incompatible with the ACHR.
		Jurisprudence Notebook of the Inter-American Court of Human Rights No. 7: Conventionality Control.	

4. Additional remarks

- A leitmotif of the case is Eye's influence on the daily political, social, and economic life of the country. The judges may assess especially favorably the teams that engage on this point, especially from a human rights and business perspective.
- The parties are expected to consider Luciano's age and his socioeconomic status as conditions of vulnerability.
- The teams, especially the victims' representatives, should refer to the importance of digital literacy, including in connection with the protection of personal data.
- The judges can consider different views and approaches to the role of journalists

and human rights defenders, and to the importance of source protection in relation to whistleblowers or people who cooperate with the justice system.

- The State may be attentive to Luciano's sometimes contradictory stance on the right to freedom of expression, which calls for its broad protection on his behalf, but seeks to limit the exercise of the right by others. This can be taken into special consideration in the evaluations.
- Some discussions of the case are expected to involve issues of journalistic ethics and due diligence, including concepts such as disinformation. Although the authors do not consider this to be the main focus of the case, attention to these issues may be assessed positively in the evaluations.