LUCIANO BENÍTEZ

PETITIONER

v.

REPUBLIC OF VARANÁ

RESPONDENT

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STATEMENT OF FACTS

The Republic of Varaná and its legal instruments for a free and democratic society

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his blog.[9] Mr. Benítez used the map app Lulocation.[10] In October 2014, Mr. Benítez received screenshots from an anonymous source allegedly showing illegal payments from Holding Eye to a government official.[11] Conducting no verification, he published the screenshots on his blog.[12] Holding Eye filed a tort action against him for intentionally harming the company, requesting the source of the screenshots and damages.[13] The trial judge made Mr. Benítez aware that the case would likely resolve more quickly if he revealed the source, so Mr. Benítez shared the source.[14] Holding Eye withdrew all claims, and the case was dismissed.[15]

Published article about the Petitioner's activities

Blogger and journalist Federica Palacios anonymously received information about Mr. Benítez.[16] After verifying the facts, she informed Mr. Benítez of her intent to publish, and provided him an opportunity to respond, which he refused.[17] Ms. Palacios published the article titled, "Luciano Benítez: Environmental Fraud and Partner of Extractivists?" on both her personal blog and the state-owned *VaranáHoy*.[18] Equipped with credible evidence that Mr. Benítez spent time in locations associated with Holding Eye–and frequently engaged with Holding Eye social media–the article encouraged readers to draw their own conclusions.[19] Following its publication, Mr. Benítez suffered backlash from the environmentalist community.[20] As soon as Mr. Benítez posted

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[9] *Id.*, ¶36.
[10] *Id.*, ¶30-31.
[11] *Id.*, ¶37.
[12] *Id.*
[13] *Id.*, ¶39; Questions, ¶4.
[14] *Id.*
[15] *Id.*, ¶42.
[16] *Id.*, ¶45.
[17] *Id.*
[18] *Id.*, ¶44.
[19] *Id.*, ¶46.
[20] *Id.*, ¶¶47-49.

LEGAL ANALYSIS

I. INTERNAL PROCEEDINGS

The Varanasian Supreme Court's judgment in public action of unconstitutionality 1010/13 made clear that social media accounts must have identifying information.[27] Public interest legal NGO Blue Defense filed a petition in January 2015 for Mr. Benítez, who desired a new anonymous social media account.[28] The first instance court rejected the claim and all subsequent appeals were denied in accordance with the due process of law.[29] In March 2015, Mr. Benítez filed another public action of unconstitutionality challenging Law 900 on grounds of free expression, information pluralism, and net neutrality.[30] The Court also denied this action, highlighting the importance of narrowing the digital divide and protecting private enterprise, and the Petitioner did not appeal or further exhaust remedies.[31] Start-up Alternativa has since stopped requiring identification–without state repercussions–but Mr. Benítez has not made a new profile.[32]

II. STATEMENT OF JURISDICTION

Varaná accepted the jurisdiction of the Inter-American Court of Human Rights (IACtHR) per Article 62 of the American Convention on Human Rights (ACHR) on February 3, 1970.[33] This Court has subject matter jurisdiction in this case because the Petitioner alleges violations falling

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[27] *Id.*
[28] *Id.*, ¶58.
[29] *Id.*, ¶59.
[30] *Id.*, ¶70.
[31] *Id.*
[32] *Id.*
[33] Hypothetical, ¶8.

under articles 5, 8, 11, 13, 14, 15, 16, 22, 23, and 25 of the ACHR in conjunction with Articles 1.1 and 2. Furthermore, because the alleged violations occurred after the Republic ratified the ACHR, this Court has temporal jurisdiction over these proceedings. This Court may also exercise personal jurisdiction here, as the Petitioner is a national of Varaná, a member state of the Organization of American States (OAS), which ratified the ACHR. Yet, in honor of the sovereignty of each state party, the jurisdiction of the IACtHR is still limited. Although Varaná understands that the *ratione personae, ratione temporis* and *ratione loci* elements were fulfilled for the Court to exercise its jurisdiction over the case, it also would like to highlight that article 47(b) mandates that cases that do not tend to establish alleged violations under the ACHR are inadmissible; the IACtHR cannot act as a fourth instance court of appeal that considers the guilt of individual actors[34]

[4]

information and ideas of all kinds, and to receive and have access to the information and ideas disclosed by others."[38] It is vital to the functioning of a democratic society, as affirmed in the 2001 Inter-American Democratic Charter,[39] and States must actively ensure the flow of information from a "plurality of means of communication."[40] The ACHR uniquely expressly defines rights holders as human beings; however, subsequent liability may be imposed, as needed and established by law, to ensure "respect for the rights and reputations of others."[41]

Thus, the right to free expression is not absolute. States may restrict expression when established by law and necessary to protect the rights of others.[42] Such restrictions may be inevitable in "hard" or "tragic" cases of colliding rights.[43] This Court has articulated that limitations on expression must be sparinglyes n

system–and motivated by a "compelling government interest."[45]

the only sanctions entertained in this case were civil in nature.[50] Lastly, this civil action was withdrawn and dismissed within a matter of weeks and was properly resolved according to the rule of law.[51]

Furthermore, the law creating the cause for Holding Eye's suit against Mr. Benítez complies with the ACHR. Mr. Benítez claimed the suit was a *Strategic Lawsuit Against Public Participation* (SLAPP) and chilled journalistic expression. However, the law itself is neutral and merely allows harmed entities to seek remedies. A SLAPP suit is distinguished from a legitimate one when it is filed with the intent to threaten or muzzle their target rather than to seek justice.[52] Here, Holding Eye asserted that knowing the source of Mr. Benítez's information was enough to protect its rights in the future and withdrew its claims showing a lack of intent to harm Mr. Benítez.

Varanasian courts decided to limit the liability of Holding Eye and its subsidiaries (as intermediaries which hosted an article based on Mr. Benítez's private data) and also decided against forcing the company to de-index material connected to Mr. Benítez. Holding such Internet service providers, "mere conduits," liable for "provid[ing] technical Internet services such as providing access, or searching for, or transmission or caching of information," is expressly disfavored in the global consensus established by special rapporteurs on the freedom of expression.[56] Intermediaries are vital protectors of free expression and privacy.[57] Where subsequent liability is appropriate to impose, it should be limited to only the authors of the content in question, unless the intermediaries specifically intervene or refuse court orders with which they have the capacity to comply.[58] Here, there are no established facts to prove that Holding Eye intervened with content, and no court orders with which they refused to comply.

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Spain).[61] In *Google Spain*, the CJEU held Google subject to European privacy regulations because its subsidiary Google Spain was established and profited in Spain.[62] While the CJEU also acknowledged that in some cases the general public's collective right to access information may prevail, in *Google Spain*, the court prioritized the petitioner's right to privacy and the protection of personal data.[63]

De-indexing, according to Special Rapporteur Edison Lianza, like removal of content, "has a limiting effect on the right

cultural norms of prioritizing collectivism.[67] But where it can be read in, or applied in sub-regional or national contexts, it must be properly balanced, as detailed by the African Commission on Human and Peoples' Rights (ACHPR) in Article XII of the Declaration of Principles on Freedom of Expression in Africa.[68] In 2014, the African Declaration on Internet Rights and Freedoms was released at the UN Internet Governance Forum, and while the declaration welcomes internet regulation inspiration from around the world, it cautions against applying problematic laws from other regions without considering the contexts and local conditions in African countries.[69] Here in Varaná, 35% of our population identifies as indigenous and 30% Afro-descendant;[70] collective rights such as the collective aspect of the right to free expression must therefore be weighed especially heavily.

Zero-rating apps in Varaná do not infringe upon free expression

Varaná is committed to increasing the public's access to the internet, and by allowing private companies to offer apps for free along with the internet service they provide, more Varanasian citizens can access the digital environments they need. In keeping with IACHR interpretation of *Principles on Freedom of Expression,*[71] Varaná has adopted measures of positive differentiation to bring greater internet access to both low-income and rural communities, both of whom face marginalization in the digital age. These measures include statutory permission for private enterprises to provide free access to some internet apps.

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[67] Yohannes Eneyew Ayalew, *Untrodden Paths Towards the Right to Privacy in the Digital Era Under African Human Rights Law*, 12(1) INT'L DATA PRIVACY L. 16 (2022).
[68] *Id.;* Declaration of Principles on Freedom of Expression in Africa, ACHPR, 32nd Session (2002), art. XII, *Protecting Reputations.*
[69] African Declaration on Internet Rights and Freedoms, Introduction, at 4 (2014).
[70] Hypothetical, ¶1.
[71] IACHR Annual Report 2013. Report of the Special Rapporteur for Freedom of Expression 2013 Chapter IV (Freedom of Expression and the Internet). OEA/Ser.L/V/II.149. Doc. 50. (2013), ¶15.

The Petitioner may allege that privileging access to certain apps over others limits the potential reach of alternatives, violating the collective right to receive (more) information, as well as the individual right for users to impart information (more broadly) in whatever fora they wish. These concerns, however, are outweighed by the Republic's legitimate interest in expanding access to the internet for greater numbers of people in Varaná. Understandably, a greater portion of the population will be more likely to access online resources if they are free. Even the Petitioner specifically signed up for Lulo specifically because it was free on his mobile phone plan.[72] The National Assembly democratically passed Law 900 in 2000, deliberately allowing "internet service providers [to] offer free applications in their plans in order to reduce the digital divide, which shall

Modeled after Article 12 of the UDHR,[77] Article 17 of the ICCPR[78] and Article 8 of the ECHR,[79] Article 11 of the ACHR guarantees that all human beings have the right to have their honor respected and dignity recognized[80] through protection against unlawful attacks on one's honor and reputation.[81] Honor and reputation are distinct in that honor relates to self-esteem and self-worth whereas reputation deals with the perceptions others hold.[82] An attack against reputation and honor can include promulgation of false information that distorts or restricts the public opinion or status of an individual or entity.[83] A state may limit the rights of individuals to protect the reputation of corporations.[84]

interference is one that is (a) clearly established in law;[89] (b) serves a legitimate purpose; (c) and is suitable, necessary, and proportionate in a democratic society.[90] In a democratic society, the rights in Article 11 apply to public figures under a lower threshold because of the figure's voluntary exposure to scrutiny and the increased risk of damages to their privacy.[91] Therefore, in cases involving a public figure, the Court must consider the (a) lower threshold in addition to the (b) public's interest in the action or information sought to be protected.[92]

Varaná complied with its duty to prevent and punish third-party infringements of privacy.

Varaná did not violate its obligations under the ACHR when it purchased Andromedia, a software used to access location data from mobile phones to investigate serious crime. While this Court previously ruled to include telephone calls and origins of calls in the sphere of privacy,[93] it has not contemplated location tracking unrelated to communication. Such sharing should not fall into the sphere of privacy in communication because physical location alone is not communication and is often public knowledge because the public is witness to one's location.

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from computers to fight cybercrime.[95] A mobile phone is a form of a computer as defined in the BCC because it is a device that performs automatic processing[96] and Andromedia is the measure that empowers authorities to fight cybercrime. Thus, the interference is clearly established in law. Second, combatting serious crime can form the legitimate basis for restricting several rights under the ACHR, and privacy rights under Article 11 may also be limited to achieve such aims, insofar as the limitations are executed lawfully.[97] Varaná's purpose in obtaining Andromedia was precisely to combat serious crime.[98] Third, allowing authorities to access this data is suitable,

reais each in reparations to Mr. Benítez and other victims.[100] This Court previously decided that an appeals process lasting over 5.5 years was not reasonable and thus violated due process in a highly sensitive case involving the rape of a child.[101] This case was finalized in less than half that time despite its less urgent matter. Additionally, this conviction serves as an example to other government employees that Varaná will not tolerate abuse of authority, thus deterring future violations.

Varaná's prohibition of anonymity satisfies the demands of the ACHR

Anonymity and privacy are not synonymous. Regulating anonymity online does not prevent user privacy and Varaná can prohibit anonymity online while adhering to the right to privacy the ACHR demands. The IACtHR has not ruled on the propriety of anonymity online but other international instruments have addressed the topic. One tool is the UN Resolution on the Right to Privacy in the Digital Age which encourageshrinP-0.03(ul3(i)R0(e)4r)3()ih 82(n t)-2(he)-6(De)-

information to identify active users. It did not state that other users must have sufficient information to identify each other or that all posts must be attributed to an identifiable individual. For this reason, it is common practice for sites to require identification to create an account while allowing usernames to differ from the user's legal name, or pseudonymization. Pseudonyms allow users to interact and communicate anonymously with others on the platform. Mr. Benítez had the opportunity to create such a profile and anonymously post in online groups to rehabilitate his reputation as he desired.

If requiring national identification to create online profiles infringes on the right to privacy, Varaná still complied with its obligations under the ACHR. Article 11 guaranteeing privacy is not absolute and can be restricted when guaranteeing other rights such as the Right to Humane

information that was decades old.[111] With time, valid information can become less transparent, complete, and valuable in relation to its expression. In contrast, recent news is more valuable.[112]

Third, denying the request to de-index was proportionate to the needs of a democratic society. Public figures who willingly expose themselves to scrutiny enjoy a reduced right to privacy when the information in controversy is in the public interest. For example, this Court decided that it was unnecessary for the Argentinian Supreme Court to sanction the director and editor of the magazine *Noticias* for publishing embarrassing information about the illegitimate son of the then Argentinian President,[113] reasoning that the information was public, but in any case, the integrity of a public figure is in the public's interest.[114]

The present case is similar. Mr. Benítez is a well-known figure and opinion leader.[115] He gained over 80,000 followers on social media through his active political and environmental discourse. When his following declined, he desired to regain his public status. He willingly exposed his life to public comment and the lesser privacy threshold applies to him. Mr. Benítez's integrity is relevant and in the public interest, considering he acted as a source of information on Holding Eye's activities by broadcasting interviews and protests on topics which influence Varaná's economy and politics and subsequently the lives of citizens. It would not be a free and democratic society if states were forced to remove any potentially critical information about a well-known figure, especially when the information was largely verified.

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[111] *Id.*; Hurbain v. Belgium, App. No. 57292/16, Eur. Ct. H.R. (2021); [C.S.J.] 21 enero 2016, "Grazinai v. El Mercurio," Rol de la cause: 22243-2015 (Chile).
[112] Axel Springer AG v. Germany, App. No. 39954/08, Eur. Ct. H.R. (2012).
[113] Fontevecchia & D'Amico v. Argentina, ¶¶53-75 (2011).
[114] *Id.*
[115] Hypothetical, ¶25.

The Republic of Varaná respected Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in conjunction with Article 1(1) of the ACHR

The judge in Holding Eye's tort action against Mr. Benítez did not violate Mr. Benítez's rights.

Through Article 8 of the ACHR, everyone is guaranteed a right to a fair trial, adjudicated in a timely manner by a "competent, independent, and impartial tribunal."[116] Specifically, a court must be both subjectively and objectively impartial. In terms of subjectivity, an impartial court means that the judge must not have any direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and must not be involved in the controversy.[117] Subjective impartiality is presumed unless there is evidence to the contrary[118]

Mr. Benítez filed the appeal just less than a year before the Supreme Court denied the extraordinary appeal.

Mr. Benítez chose to reveal the source of his information and the disclosure led Holding Eye to withdraw its claims, but had he pursued the case further and proven the veracity of the screenshots or his lack of intent to harm Holding Eye (and instead an intent to expose the truth thus successfully defending his statements), the effectiveness of the judgment could have been demonstrated. Varaná gave a similar opportunity to Mr. Benítez when he filed his defamation claim against a Holding Eye subsidiary.

Varaná delivered justice to the Petitioner for the breach of his data

Against Varaná's digital data laws which comply strictly with the BCC,[134] two state employees misused software intended for investigating crimes to obtain Mr. Benítez's location data and leak it to the press.[135] The Republic acted swiftly, and just five months after Ms. Palacios published the article about Mr. Benítez, remedied the harm in alignment with human rights standards by performing due diligence in investigating, prosecuting, sentencing the offenders, and subsequently delivering reparations (26,000 Varanasian reais each) to their victims.[136]

The Republic of Varaná respected Article 14 (Right of Reply) in conjunction with Article 1(1) of the ACHR

The ACHR protects "anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication," by

[134] Questions, ¶25.
[135] Hypothetical, ¶62.
[136] *Id.*, ¶76.

story to include a link to his explanation within one day of his posting.[144] Furthermore, upon

she diligently verified with other sources) was not factually inaccurate. Therefore, it may be that Mr. Benítez was not owed any right of reply. Still, if the Court determines that he was, the replies he was afforded exceeded the standards set forth in the Inter-American system. Costa Rica requested an Advisory Opinion from this Court to help determine the sufficiency of legal protections for the right of reply in Costa Rican law.[148] Interestingly, while the Court explained therein how states may give effect to the right (ways in which Varanasian laws are in complete alignment, as the right of reply is firmly established in Article 11 of the Constitution),[149] in one of several concurrences, Judge Espiell considered also the collective, social dimension of the right of reply, the idea that the general public has the right to be correctly informed about matters of public interest.[150] Here, that goal was clearly met, as both Mr. Benítez's own explanatory post and another published by Ms. Palacios detailed the context of the facts exposed in her first article. While this Court has been clear that equal or

As it did in *Baena Ricardo v. Panamá*, this Court must find that there was no violation of the right to (peaceable) assembly.[157] In *Baena*, workers participated in a march for labor rights and their employment was subsequently terminated; however, there lacked sufficient evidence to show the State infringed on the right to peaceably assemble because state law enforcement agents protected the event,

The Republic of Varaná respected Article 23 (Right to Participate in Government) in

on Older Persons separates into two distinct articles the definition of and duty to prevent violence from the duties regarding "torture or cruel, inhuman, or degrading treatment or punishment." If they were the same or if one included the other, they would have been addressed concurrently in the same article.

III. REQUEST FOR RELIEF

Considering the arguments explained above, the Republic of Varaná respectfully requests this Honorable Inter-American Court of Human Rights to conclude and declare that:

(1) Varaná respected all the rights and freedoms established in Articles 13, 11, 8, 25, 14, 15, 16, 22, 23, and 5; or in the alternative;

(2) that if any of the rights enumerated above were violated, that they were subsequently satisfactorily ensured, remedied, and compensated in accordance with Article 63(1) of the ACHR.