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À PROPOS DE NOUS

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ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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THE RIGHT OF ACCESS TO INFORMATION AT THE INTER-AMERICAN COURT OF HUMAN RIGHTS

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The Inter-American System for the protection of human rights is one of the world’s three regional human rights systems¹ and it is responsible for monitoring and ensuring the implementation of human rights guarantees in the 35 independent countries of the Americas that are members of the Organization of American States² (henceforth, OAS).

In particular, the Inter-American System is composed of two bodies: a) the Inter-American Commission of Human Rights, and b) the Inter-American Court of Human Rights. The Commission is responsible for the promotion and protection of human rights, while the Court produces advisory opinions on issues pertaining to the interpretation of the Inter-American instruments at the request of an OAS Member State.

The Inter-American Court’s jurisdiction is twofold: a) a contentious jurisdiction, within which these types of cases are resolved with, providing the necessary provisions as well as the mechanism to monitor their own judgments; and b) an advisory opinion.

In the Inter-American system, the interconnection between access to public information and democracy has been highlighted in several ways in recent years. There have been many resolutions of the General Assemblies of the Organization of American States (OAS) on the importance of access to public information and the need for its protection³.

¹ They are the African Human Right System, the European System of Human Rights and the Inter-American Human Rights Systems.

² All 35 independent states of the Americas have ratified the OAS Charter and are members of the Organization. On June 3, 2009, the Ministers of Foreign Affairs of the Americas adopted resolution AG/RES. 2438 (XXXIX-O/09), that resolves that the 1962 resolution, which excluded the Government of Cuba from its participation in the inter-American system, ceases to have effect in the Organization of American States (OAS). The 2009 resolution states that the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS. This information is available in:

http://www.oas.org/en/member_states/default.asp.

³ Cf. Resolution AG/RES. 1932 (XXXIII-O/03) of June 10, 2003, on «Access to Public Information: Strengthening Democracy»; Resolution AG/RES. (XXXIV-O/04) of June 8, 2004, on «Access to Public Information: Strengthening Democracy»; Resolution

The Inter-American Democratic Charter established that one of the fundamental components of democracy is “the transparency of government activities, probity, the responsibility of governments in public administration, respect for social rights and freedom of expression and press”⁴. The same Charter describes that the participation of citizens in decisions on public affairs is a necessary condition for the full and effective exercise of democracy⁵.

Throughout history, the jurisprudence of the Inter-American Court has been adapted, going from circumstances in which the claims were directly related to events that happened during internal armed conflicts or authoritarian governments to scenarios where it was required to condemn states within democratic governments. In consequence, the cases in which the Court had to intervene throughout these years were diverse, going through cases of forced displacement, freedom of expression as well as cases in which it was necessary to defend the rights of especially vulnerable groups such as children, people with different sexual orientation or native people.

In this article, I will focus, in particular, on the landmark decision of the Inter-American Court where the right of access to information was recognized for the first time: *Claude Reyes v. Chile*⁶ (2006) and the standards which were established by the Court in this matter.

THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Progressively, the Inter-American Court has built an extensive jurisprudence⁷ on the right of freedom of thought and expression

AG/RES. 2121 (XXXV-O/05) of June 7, 2005, on «Access to Public Information: Strengthening Democracy»; and AG/RES. 2252 (XXXVI-O/06) of June 6, 2006, on «Access to Public Information: Strengthening Democracy»; Resolution AG/RES. 2288 (XXXVII-O/07) of June 5, 2007, on «Access to Public Information: Strengthening Democracy»; Resolution AG/RES. 2418 (XXXVIII-O/08) of June 3, 2008, on «Access to Public Information: Strengthening Democracy»; Resolution AG/RES. 2514 (XXXIX-O/09) of June 4, 2009, on «Access to Public Information: Strengthening Democracy»; Resolution AG/RES. 2607 (XL-O/10) of June 8, 2010, on «Model Inter-American Law on Access to Public Information»; Resolution AG/RES. 2661 (XLI-O/11) of June 7, 2011, on «Access to Public Information and Protection of Personal Data»; Resolution AG/RES. 2727 (XLII-O/12) of June 4, 2012, on «Access to Public Information and Protection of personal data»; Resolution AG/RES. 2811 (XLIII-O/13) of June 6, 2013, on «Access to Public Information and Protection of personal data»; Resolution AG/RES. 2885 (XLVI-O/16) of June 16, 2016, on «Inter-American program on Access to public information».

⁴ Inter-American Democratic Charter, Article 4.

⁵ *Ibidem*, Article 6.

⁶ I/A Court H.R., *Case of Claude-Reyes et al. v. Chile*. Judgment of September 19, 2006. Merits, Reparations and Costs. Series C No 151.

⁷ I/A Court H.R., *Case of «The Last Temptation of Christ» (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73; I/A Court H.R., *Case of Ivcher Bronstein v. Perú*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 6, 2001. Serie C No. 74 I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No.

protected by Article 13 of the American Convention, where it describes its individual and social dimensions.

Previously, the Court had already made reference to the right of access to information, both in Advisory Opinion No. 5⁸ (1985) on “Compulsory Membership of Journalists”⁹ as well as in the cases *Palamara Iribarne v. Chile*¹⁰ (2005) in which the Court emphasized the importance of democratic control by the population to promote transparency of state activities and accountability of officials and, also in *Myrna Mack Chang v. Guatemala*¹¹ (2003), in which it highlighted that government authorities could not rely on “State secrecy” policies for not providing the information required by the judicial authority.

111; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135; I/A Court H.R., *Case of López Álvarez v. Honduras*. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193; I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194; I/A Court H.R., *Case of Perózo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195; I/A Court H.R., *Case of Fontevecchia and D’Amico v. Argentina*. Merits, Reparations and Costs. Judgment of November 29, 2011. Series C No. 238; I/A Court H.R., *Case of Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248; I/A Court H.R., *Case of Uzcátegui et al. v. Venezuela*. Merits and reparations. Judgment of September 3, 2012. Series C No. 249; I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279; I/A Court H.R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293.

⁸ 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 of November 13, 1985. Series A No. 5.

⁹ «The Court, however, considers that the same concept of public order requires that, in a democratic society, the greatest possibilities of circulation of news, ideas and opinions be guaranteed, as well as the widest access to information by of society as a whole. Freedom of expression is inserted in the primary and radical public order of democracy, which is not conceivable without free debate and without dissent having full right to manifest itself. In this regard, the Court adheres to the ideas expressed by the European Commission on Human Rights when, based on the Preamble to the European Convention, it was pointed out that the purpose of the High Contracting Parties in adopting the Convention was not to grant reciprocal rights and obligations in order to satisfy their national interests, but to establish a common public order for the free democracies of Europe with the aim of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law. («Austria vs. Italy.» Application No. 788/60, European Yearbook of Human Rights, vol.4, (1961), p.138). It is also in the interest of democratic public order, as conceived by the American Convention, that the right of each human being to freely express himself and the right of society as a whole to receive information be respected scrupulously» y. 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 of November 13, 1985. Series A No. 5, par. 69.

¹⁰ I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135.

¹¹ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101.

A) The Case Claude Reyes

This case constitutes a leading case in the right of access to information and it refers to the refusal of the Chilean State to provide three citizens with certain information required by the Foreign Investment Committee, related to a forestry company about a deforestation project to be carried out in Chile. Through this judgment, the Inter-American Court recognized that the right of access to information is a human right protected by Article 13 of the American Convention¹². The Inter-American Court determined that the information, which had not been delivered, was of public interest and that, consequently, Chile had to comply with its international obligations.

Here, there are five (5) concepts of this leading case that should be highlighted because they are considered to be the Inter-American standards in this matter. They are as follows:

- (i) Access to information is a right;
- (ii) The State has to comply with some positive obligations to guarantee the exercise of this right;
- (iii) The actions of the State should be governed by the principles of publicity and transparency;
- (iv) The restrictions regarding to the right of access to information shall be established by law, while using the minimum standards.
- (v) The State must guarantee the right of the person to be heard with due guarantees and a simple and prompt legal resource to realize this right.

Before analyzing each of them, it is appropriate to point out some particularities of the case:

- it was proved that the information had been requested under the control of the Committee on Foreign Investments, and that said Committee was a legal person under public law;
- such information was related to a foreign investment contract originally signed between the State and two foreign companies and a Chilean receiving company, in order to

¹² Article 13. Freedom of Thought and Expression: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

1. Respect for the rights or reputations of others; or
2. The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

develop a forestry industrialization project, which generated a great public discussion on the environmental impact;

- the State refused to provide the requested information, without a valid justification;

The Chilean state refusal to release information was only partial because the State eventually complied with its obligation to provide some information. After the facts of the case, Chile has made important progress in normative terms of the right of access to information, which included, among others, a constitutional reform, and at the time the Court decided, a bill was in the process of becoming a law.

B) Access to Information is a Right

The Court has considered that, by expressly stipulating the right to *seek* and *receive* information, Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions pondered by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason established by the Convention, the State is allowed to restrict access to the information in a specific case.

Being considered a right — protected in the Article 13 of the American Convention on Human Rights¹³ — this entitles its owners to appeal before national or international judicial instances when violated. This means that the information could be requested without necessarily proving a direct interest to obtain it.

In addition, the delivery of information to an individual can be known by the society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right of freedom of thought and expression includes the protection of the right of access to State-held information, which also clearly includes two dimensions, individual and social, which should simultaneously be guaranteed by the State¹⁴.

In this regard, the Court added that in a democratic society, it is essential that the State authorities be governed by the principle of maximum disclosure, which establishes the presumption that all information is accessible, and only subjected to a limited system of exceptions¹⁵ – which will be described in detail in point c)-.

¹³ In the same way as the American Convention, other international human rights instruments, such as the Universal Declaration of Human Rights in its article 19 and the International Covenant on Civil and Political Rights in its article 19 too, establish a positive right to seek and receive information.

¹⁴ *Cf. Case of Claude-Reyes, supra* note 12, para. 77.

¹⁵ *Ibidem*, para. 92.

C) State Obligations

Since it is a *right*, the State has to comply with some positive obligations to guarantee the exercise of such right.

The Court has highlighted in its jurisprudence two essential rules of the Convention that guide states action in this field. On the one hand, the general obligation to guarantee human rights contained in Article 1.1 of the Convention. On the other hand, the commitment—appearing in article 2—to adapt the domestic law and the functioning of the State to the Convention.

This implies the obligation to organize the whole structure of the state in a way that guarantees the full exercise of human rights. The Court has established that this duty entails the elimination of norms and practices that violate the guarantees provided for in the Convention, as well as the parallel obligation to issue rules and promote practices to ensure that the established rights are respected. These reflections mean that the Chilean State must enforce the necessary norms and put into practice the required policies to guarantee full access to public information.

D) Principles of Disclosure and Transparency

In relation to this point, the State actions should be governed by the principles of maximum disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, so that they can question, investigate and consider whether public functions are being performed adequately. Access to State-held information of public interest allows citizens' participation in public administration through the social control that can be exercised through such access.

Democratic control by society fosters transparency in State actions and promotes the accountability of State officials in relation to their public activities. Hence, for the individual to be able to exercise democratic control, the State must guarantee access to the information of public interest that it holds. By permitting the exercise of this democratic control, the State encourages greater participation by the individual in the interests of society¹⁶.

E) Restrictions to the Right of Access to Information

In relation to the above, the state authorities should be governed by the principle of maximum disclosure. The rule should be advertising and the secrecy, the exception.

The discretionary and arbitrary labeling of public officials in the classification of information as “secret”, “reserved” or “confidential”, generates legal uncertainty regarding the exercise of this right and the State power to restrict it.

¹⁶ *Op.Cit.*, para. 86-87.

In this regard, the Inter-American Court has established four (4) requirements that must be met in order for a restriction to be legal.

The first one is that the restriction should be previously enforced by law as a means to ensure that it is not left to the discretion of the public power. Such laws should be enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established. Related to this point, and by means of Advisory Opinion No. 6, the Court established that *laws* do not mean any legal regulation, but general legislative acts adopted by the legislative body laid down in the Constitution and democratically elected for that purpose, according to the procedures established in the Constitution of each country¹⁷.

The second one is that the restriction thus established must respond to an objective permitted by the American Convention, that is, exclusively to ensure “respect for the rights or reputation of others” or “protection of national security, public order or public health or morals”¹⁸.

The third one is that the restrictions imposed must be necessary in a democratic society. They should satisfy an imperative public interest, interfering to a minimum extent in the effective exercise of such right.

The fourth one is that it corresponds to the State to show that it has complied with the above requirements when establishing restrictions to the access to the information it holds¹⁹.

In this case, it has been proved that the restriction applied to the access to information was not based on a law. At the time, there was no legislation in Chile that regulated the issue of restrictions to access to State-held information. Furthermore, the State did not prove that the restriction responded to a purpose stipulated by the American Convention or that it was necessary in a democratic society, because the authority responsible for responding to the request for information did not adopt a justified decision in writing to communicate the reasons for restricting access to this information in the specific case.

In addition, the State administrative authority responsible for taking a decision on the request for information did not adopt a duly justified written decision, which would have provided information regarding the reasons and norms on which he based his decision not to disclose part of the information in this specific case. It was not established whether, if this restriction was compatible with the parameters embodied in the Convention. Hence, this decision was arbitrary and did not comply with the guarantee that it should be duly justified protected by Article 8 (1) of the Convention. In consequence, the Court concluded that the decision of the administrative authority violated the right to

¹⁷ I/A Court H.R., *The word «Laws» in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No.6.

¹⁸ *Cf. Case of Claude-Reyes, supra* note 12, para. 90.

¹⁹ *Ibidem*, para. 93.

judicial guarantees embodied in Article 8 (1) of the Convention, in relation to Article 1(1)²⁰.

When analyzing a limitation to the right of access to information, we must consider the balance between the different interests involved and the need of preserving the object and end of the American Convention, for the exceptions only apply when the existence of an essential damage to protected interests should be proved and when said damage is greater than the public interest to have access to such information. Likewise, it should be demonstrated that the protection of the legal objective by means of the limitation, cannot be reasonably achieved by a less restrictive means of access to the information.

F) Right to be Heard with Due Guarantees and a Simple and Prompt Legal Resource

It is important to emphasize that the State must guarantee the right of people to be heard with due guarantees and a simple and prompt legal resource to make this right effective.

The Inter-American Court has determined that decisions taken by internal institutions restricting access to public information must be duly substantiated; otherwise they would be arbitrary decisions. The Court points out that in this case the administrative denial decision was not communicated in writing or was duly justified.

On the other hand, the Court considered that in the processing and resolution of the legal resource of protection requested, the standards of due process established in Section 8 (1) of the Convention had not been met. It also emphasized the essential principle that, in the face of denial of information under state control, there is a simple, rapid and effective judicial resource that determines if an infringement of the right of the information occurred.

G) Other Precedents in the Jurisprudence of the Inter-American Court

In this particular part, it is important to mention that there are other cases where these rights were enforced by the Inter-American Court: *Gomes Lund et al. v. Brasil*²¹ (2010) and *I.V. v. Bolivia*²² (2016).

The case *Gomes Lund* refers to the arbitrary detention, torture and enforced disappearance of 70 people as a result of operations of the Brazilian Army between 1972 and 1975 in the context of the military dictatorship of Brazil.

Here, the right of access to information occurred with the next of kin of the victims. In this regard, the Inter-American Court

²⁰ Cf. *Case of Claude-Reyes*, *supra* note 12, para. 122-123.

²¹ I/A Court H.R., *Case of Gomes Lund et al. («Guerrilha do Araguaia») v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219.

²² I/A Court H.R., *Case of I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329.

replicated its jurisprudence on the right of freedom of thought and expression, in which it has maintained that Section 13 of the American Convention protects the right of every person to request information that is under the control of the State, with the exceptions permitted under the exceptions regime of the Convention.

The Inter-American Court has established that in cases of human rights violations, state authorities cannot rely on mechanisms such as state secrecy, confidentiality of information or reasons of public interest or national security, to stop providing the information required by the judicial or administrative authorities responsible for the investigation. The Court also held that when it comes to investigating a punishable offense, the decision to classify the information as secret and deny its delivery or to determine if the documentation exists can never depend exclusively on a state body whose members have been attributed to the commission of the wrongful act.

Finally, the Court concluded that the State cannot rely on the lack of proof of the existence of documents requested by the victims or their relatives, but, on the contrary, it must substantiate the refusal to provide them, proving that it has taken all measures to pick one that the information requested did not exist. In this sense, the Court pointed out that, in order to guarantee the right of access to information, public authorities must act in good faith and diligently carry out the necessary actions to ensure the right of freedom of thought and expression, especially when it is a question of knowing the truth of what happened in cases of serious violations of human rights such as forced disappearances and extrajudicial execution that occurred in this case.

On the other hand, recently, in the *Case I.V. v. Bolivia* (2016), the Court issued a judgment whereby it declared the State of Bolivia to be international responsible for the violation, among other rights²³, of access to the information recognized in Article 13.1 of the American Convention of Human Rights.

The principal controversy in this case was to determine whether the fallopian tube ligation performed on Ms. I.V. on 1 July 2000 in Bolivia by a public official in a state hospital was contrary to the international obligations of the State, i.e. if such procedure was carried out by obtaining the informed consent of the patient, under the parameters established in the law for this type of medical act at the time of the events.

In its sentence, the Court considered that the obligation to obtain informed consent meant establishing limits to medical action and ensuring that these limits were adequate and effective in practice, so that neither the State nor third parties, especially the community medical, interfered in the personal or private integrity of individuals, especially in relation to access to health services,

²³ It was also declared the international responsibility of the State for the violation of the rights to personal integrity, personal liberty, and dignity, private and family life and to founding a family, recognized in articles 5.1, 7.1, 11.1, 11.2 and 17.2 of the American Convention of Human Rights.

and in the case of women, family planning or other services related to sexual health and reproductive health. Similarly, the informed consent rule relates to the right of access to health information, because the patient can only consent in an informed manner if they have received and understood the information needed to make a full decision.

Therefore, in the area of health, the Court replicated the instrumental nature of the right of access to information, since it is an essential means for obtaining informed consent and, therefore, for the effective realization of the right to autonomy and freedom in reproductive health.

The Court emphasized that in the area of sexual and reproductive health, the obligation of active transparency on part of the State implies the duty of health personnel to provide information that helps people to make free and responsible decisions regarding their own body and sexual and reproductive health, which are related to intimate aspects of their personality and private and family life²⁴.

CONCLUSION

Safeguarding the individuals from the arbitrary exercise of public authority is the main purpose of the international protection of human rights.

Certainly, access to public information is an essential requisite for the exercise of democracy, greater transparency and responsible public administration and, in a representative and participative democratic system, the citizenry exercises its constitutional rights through a broad freedom of expression and free access to information.

As it is at the same level of other Human Rights, it has to be interpreted as such and said interpretation shall be made in accordance with the republican principle of government and with current democratic principles. Thus, it must be considered in the broadest possible sense — as a rule — and every restriction shall then pass the reasonability and proportionality tests established by the enforcement body of the American Convention.

Therefore, the basis of access to information held by the Government consists in the right every individual has to know the way in which their authorities and public officials carry out their duties.

To conclude, it is important to highlight that in the Inter-American system, as it has been mentioned before, the Claude Reyes sentence constitutes a very important step for the ratification of the status of the *right* of access to information. Given the weight of the judgment of an international court, the principles contained therein are mandatory references in the

²⁴ I/A Court H.R., *Case of I.V. v. Bolivia*. Preliminaries Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para.156/157.

internal organization of States and in the design and implementation of their legal norms.

All this transcends this specific case, not only because the interpretation of the Court goes in the direction of establishing guidelines that go beyond the case described, but because the courts of the region are starting to use this conceptual approach in processing and solving cases that share similar characteristics.

That is, cases before the Court has an agenda that transcends the parts of the case, while the decisions it issues may have an impact, on at least two (2) main levels:

i) in individual cases, since the countries apply the jurisprudence of the Court, and,

ii) in a structural manner in the country involved. In this way, the Court positions itself as an inducer of structuring public policies²⁵.

Finally, it should be noted that the 21st century faces a broad range of new and permanent challenges to freedom of expression in relation to the use of new technologies, artificial intelligence, protection of privacy and personal data on the Internet, among others.

The guarantee of human rights in this digital environment; free software for the exercise and defense of rights on the Internet; the use of new technologies to disseminate non-discrimination and inclusion policies; the guarantee of social coverage and the right of access to ICTs are needs which will also have to be met. So, the Inter-American Court has to be ready to protect these human rights the digital world presents nowadays. Maybe it is just a matter of time...

²⁵ H. LEAL, C. MÓNICA, – F. D. ALVES, *A corte interamericana de direitos humanos como indutora de políticas públicas estruturantes: o exemplo da educação em direitos humanos- Uma análise dos casos Ximenes Lopes e Gomes Lund versus Brasil - Perspectivas e desafios ao cumprimento das decisões*, Revista do Instituto Brasileiro de Direitos Humanos No15, 2015.

