

American University Washington College of Law

2024 InterAmerican Human Rights Moot Court Competition

Hypothetical Case: Protection and Guarantees of Human Rights in Digital Environments

Luciano Benítez v. Republic of Varaná

THE REPUBLIC OF VARANÁ

1. The Republic of Varaná is an island nation in the South Atlantic Ocean. It has an area of

enactment The Constitution authorizes the different branches of government to carry out diffuse/concrete constitutional review

4. The Republic of Varaná is a state with a civil law tradition, in which codified law is a primary source of law

5. Article 3 establishes a six-year term of office for the president of the Republic of Varaná. The same candidate may be reelected up to two times. Legislators also hold office for six years, and legislative elections are held every three years for half of the seats in the Assembly. Legislative representatives may be reelected indefinitely

6. Article 13 of the Constitution provides

“Free expression and freedom of the press are guaranteed, and the dissemination of thought and opinion, with no prior censorship. Anonymity is prohibited. The State shall enact no law that precludes or restricts the freedoms enshrined in this article

Everyone has the right to generate, process, or disseminate information, and any lawful instrument suitable for such purposes

7. In addition, Article 11 of the Constitution provides

“All persons have the right to a good name and privacy, and the State the obligation to ensure these rights, as well as to prevent their infringement by third parties. All persons also have the right to know and update the information collected about them, and to request its rectification

8. The Republic of Varaná has ratified all the human rights instruments of the American human rights system, understood as those categorized as human rights treaties by the Department of International Law of the OAS. The Republic of Varaná ratified the ACHR on 03/02/70, the same date on which it accepted the jurisdiction of the Inter-American Court of Human Rights, under Article 62 of the ACHR

9. In 2000, the National Assembly of Varaná passed Law 900, Article 11 of which reads

“Net neutrality The State shall ensure free access to the internet. The State shall not allow discrimination of any kind. However, internet service providers may offer free applications in their plans in order to reduce the digital divide, which shall not be understood as discrimination.”

10. Members of Congress Alberto Carranza and Marcela Puerro opposed the content of this law, arguing in debate that it allowed zoning¹ and undermined the neutrality. This argument was dismissed by the majorities in Congress and the law was passed in compliance with all legal requirements.

11. Law 900 of 2000 made no further regulatory progress. Its content was never expanded and no criteria were ever established to define the scope of its application.

12. At the same time, Article 10 of Law 22 of 2009 establishes

“Anonymity on social networks is prohibited. Individuals may not create online profiles without linking their account to their national identity document.”

13. In 2015, a coalition of four representatives of the Root Party, the main opponent of the Ocean party, introduced a Personal Data Protection Bill. To date, this bill has not been enacted, despite the Root Party's majority in the National Assembly.

THE OCEAN ERA AND VARANÁ' S ECONOMIC HEYDAY

14. Since the adoption of the Constitution until recently, the Ocean Party had won every presidential election, starting with the November-December 1993 election. Still, international observation missions, including the OASOM, have always reported these elections to be “free and fair.” The party has governed the country since February 1, 1994, with no question as to the democratic legitimacy of the governments elected. Until 2015, the Ocean Party won the majority of legislative seats.

15. This period of Varanasian history is known as the “Ocean Era,” and it was characterized by accelerated economic development. This was due especially to the exploitation of the region's natural resources, including an oil industry that, thanks to the discovery of new reserves in 1995, has made the country the eighth largest oil producer and exporter in the world since 2003.

16. However, a real transformation of the economic model began in 2002, when researchers from the National University of Varaná, funded by the “

25. Ever since his youth, Luciano has been interested in protecting the environment, especially the sea and coastal territories, and in preserving Paya culture. He regularly participated in meetings of Paya activists discussing the government's environmental policies and the actions of private companies. Because he was eloquent and always very well informed, Luciano quickly became an opinion leader among his neighbors and friends in the capital and among the inhabitants of his hometown in Río del Este.

26. Luciano was also a steadfast opponent of projects for the exploration and exploitation of vanadate in polymetallic nodules in marine areas rich in coral reefs and biodiversity. He participated in many marches and supported Assemblywoman Lucia Perez of the Root Party in her campaign against the expansion of vanadate exploitation activities in the Republic of Vanuatu.

27. Unlike many people of Luciano's generation, he always saw new technological developments as an opportunity to make his life easier. He learned to use computers in public libraries when they were introduced, familiarized himself with the Internet as soon as it was accessible to the general public, and bought a cell phone as soon as he could.

28. He began to use social networks from his cell phone, WiFi networks, and to engage with groups of environmentalists in his instant messaging apps. His granddaughter also showed him apps where he could listen to music, pay his household utility bills, and even track his health status. Luciano was enthusiastic about how he was benefiting from new technologies.

29. So, in 2014, when his mobile carrier, Pr Mobile, offered him all the apps available from Lulo,

monthly minimum wage at the time) for having started what the company described as a “campaign against it.”

40. Luciano was represented by the NGO Blue Defense, which provides pro bono legal advice to people it considers to be human rights defenders. The NGO promptly took the case considering that Luciano (whose income was approximately twice the minimum wage) was extremely worried about the large sum he could be ordered to pay, since he would be unable to satisfy the debt if he sold various personal assets. The NGO's response to Eye's legal action, besides raising other arguments and issues, described the action as “a strategic lawsuit against public participation (SLAPP), alleged that this type of lawsuit had a chilling effect” on journalistic and human rights advocacy work, and asked for Luciano's journalistic source to be protected under the principle of source confidentiality.

41. In an interlocutory order, the Civil Trial Court of the Capital found that Luciano was not a journalist, as he only had a blog on LuloNetwork. Therefore, he could not claim the right to protect the confidentiality of his source. On November 4, 2014, the judge ordered Luciano to appear at an initial hearing scheduled for December 5, 2014, at which he could be examined by the opposing party and present evidence in his defense. The NGO Blue Defense appealed the interlocutory order. However, Luciano appeared at the hearing on December 5, 2014. At the hearing, Holding Eye's attorney asked him, “Who gave you the information about the company?” Faced with this question, Luciano asked the judge, “Do I have to answer?” to which the judge replied, “The decision is up to you, but if you answer, this case may be over faster.” With this clarification, Luciano answered and revealed the email account he had contacted to obtain the information he published.

42. Holding Eye asserted at the hearing that this information was sufficient to identify the source and to protect its rights in the future. The judge adjourned the hearing in accordance with the requisite protocols. On December 8, 2014, Holding Eye withdrew all of its claims and moved to dismiss the case. The judge concluded the proceedings on January 21, 2015. On February 12, 2015, the appellate court dismissed the appeal filed by the NGO Blue Defense on behalf of Luciano, since the source had already been revealed and the case was moot. The NGO filed a request for clarification, stating that one objective of the appeal was precisely for the court to find that Luciano was indeed a journalist and that, even though the case had been closed, it was in the party's interest. On May 6, 2016, the Court denied this motion, on the grounds that there was no procedural need to continue with the case, since the origin of the controversy had been resolved. This was an adversarial proceeding in which one of the parties waived all. Therefore, to continue to process the case would undermine procedural economy and create a needless backlog in the courts.

43. A few weeks after the December 2014 hearing, on February 4, 2015, Luciano was approached at the entrance of a National Assembly session he was covering by a man who identified himself as the user of the email address whistle@pato.com. The man told Luciano he was a junior lawyer in Holding Eye's legal department and said that unfortunately he had been found out, fired from the company, and held liable for breach of his confidentiality agreement with Eye. On this basis, he was being sued in a confidential legal action which could result in a fine of R\$100,000 (approximately US\$240,000). He also feared that he would be charged criminally. The man asked Luciano to keep this information confidential to avoid trouble, but urged Luciano to continue his work. He also thanked Luciano for his trust in publishing the information. He then left and Luciano did not see him again. Luciano did not share this information with anyone and never had contact with the man again, but he was very upset and, in addition to other factors (to be discussed below), he stopped posting on his blog for several days. The next time he posted was on February 28, 2015.

THE PROFILE

44. On December 7, 2014, a week before Election Day of that year, Federica Palacios, journalist and blogger for the state-owned digital media outlet VaranáHoy, published an article entitled "Luciano Benítez: Environmental Fraud and Partner of Extractivists?" on her personal LuloNetwork blog, "Inconsistencias Reveladas" and in the online newspaper VaranáHoy.

45. Federica based her article on information given to her by an anonymous source. She met all the requirements of truthfulness and impartiality. She took the information to a systems engineer who assured her that the information was accurate and unmodified. Federica also confirmed the information with other sources. Lastly, she contacted Luciano to give him the opportunity to dispute the content of the article, but he refused to read or be part of the article, claiming that he had been greatly harmed by the previous incidents.

46. The following are excerpts from the published article:

Luciano Benítez: Environmental Fraud and Partner of Extractivists?

Luciano, the supposed protector of the environment may be a fraud. His actions are far from what he preaches. In this new installment of "Inconsistencias Reveladas"

a. On August 16, 2014, Luciano attended the massive march in support of the "Operation Hold the Line" (OHL) operations. In fact, according to our source, Benítez's route began on 11th Street, right where the march was convened, and ended at

60. After months of continuous harassment on social media and not being able to rehabilitate his image with what he considered to be the truth, Luciano decided to disconnect from the online world. On Aug. 25, 2015, he took his old cell phone and burned it in a bonfire to symbolize the end of an era. He refused to buy a new one, despite constant requests from his children and friends so they could stay in touch. He went into a deep depression and isolated himself in his home. He began to undergo psychological treatment, but still did not feel much better.

61. This created a lot of problems for Luciano, as he not only lost any semblance of a social life but also began to have trouble accessing his pension and paying for some public services. Monthly access to his pension was digitized and, despite insisting on going to the relevant offices, there was no way to complete the process in person. In addition, the water utility only received payments online. Being disconnected, Luciano could not find efficient alternatives.

62. On August 8, 2015, months after the publication of the article Luciano Benítez: Environmental Fraud and Partner of Extractivists, the Office of the Prosecutor General of the Nation announced that it had been investigating Pablo Méndez and Paulina González, two IT experts working in the intelligence service of the Ministry of the Interior since October 2014. These individuals were suspected of having used the software Andromeda to obtain the personal data of human rights activists from social media accounts, such as LuloNetwork, and mapping applications, such as LuloLocation. This software, which the Prosecutor's Office claims was acquired to support the investigation of serious crimes and threats to national security, is installed on selected devices through phishing,² and is easily self-destructed to avoid suspicion of its presence. The person operating it can use it to access social networks connected to the device. Andromeda was developed by a Varanasian company, Vigila S.A., whose website states that its clients are government agencies only.

63. In its announcement, the Prosecutor's Office stated that the police were very efficient in the criminal case and by May 8, 2015, both individuals were in prison for computer crimes and abuse of authority through the improper use of government software. In its investigation, the Prosecutor's Office found that Pablo Méndez and Paulina González had acted out of a personal desire to counteract the public engagement of profiles they believed could hinder the Ocean Party's victory in the 2014 National Assembly election. Their efforts were in vain, as the Root Party won the election with a majority and Lucía Pérez was presiding over the Assembly. The Prosecutor's Office also found that these two individuals had unlawfully accessed Lulo's data and shared it.

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PROCEEDINGS BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

75. Having exhausted all domestic remedies, Lucia with the support of the NGO Blue Defense

79. The Inter-American Court summoned the parties in the case of Luciano Benítez v. Republic of Varanato to a hearing on the merits, including possible reparations and costs, that up to that point the State had not filed preliminary objections. The hearing at which the parties will present their oral arguments and closing statements will take place during a regular session of the Inter-American Court of Human Rights, to be held in Washington, D.C. on May 20 to 24, 2024, at the American University Washington College of Law

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