Global Standards on the Chilling Effect: A Comparative Analysis of the Case Law from the African, European, and Inter-American Human Rights Systems

Authors[1]
Hawley Johnson
Anderson Javiel Dirocie De León
Juan Manuel Ospina Sánchez
Lautaro Furfaro
Estefanía Mullally

Abstract

The chilling effect on freedom of expression is a significant concern across legal systems, discouraging individuals from exercising their right to seek, receive, and impart information. While this effect varies across cultural and legal contexts, international human rights systems provide a framework for understanding and addressing it. This chapter offers a comparative analysis of case law from three major regional human rights courts—the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court and African Commission on Human and Peoples' Rights. Selected decisions from the Community Court of Justice of the Economic Community of West African States and the East African Court of Justice are also discussed. This chapter identifies commonalities and regional variations in courts' approaches to the chilling effect by examining landmark decisions and key principles. It explores how each court defines and conceptualises the phenomenon, the types of state actions or laws recognised as having a chilling effect, the standards of proof applied, and the remedies and reparations granted. This analysis enhances understanding of global standards, highlighting best practices and areas for legal development. It is particularly relevant to legal scholars, practitioners, and advocates working to protect freedom of expression worldwide.

1 Introduction

The term ''chilling effect'' appears in many judgments from jurisdictions around the world. On a common-sense level, it implies some limitations to the exercise of freedom of expression. However, its precise nature and how it is used in interpreting infringements to the right to freedom of expression differ.

A chilling effect implies an act of deterrence.[2] As such, it undermines freedom of expression through deterrence mechanisms that lead individuals or groups to self-censor. It manifests when State actions or legal frameworks create a climate of fear, discouraging speech and other forms of

[1] The authors sincerely thank Caroline James, Edison Lanza, Hélène Tigroudja, and Natalie Alkiviadou for their insightful expert comments on an earlier version of this chapter. They are also grateful to Adam El-Gohary, Mustafa Hammam, Ratania Edawi, and Watheq Abu Deif for their contributions to the background research and their meticulous assistance in refining the footnotes.

[2] Schauer (1978), p. 689.

expression. It refers not only to explicit forms of censorship, such as government bans on the publication of a book, but also to more subtle forms of control, like vague laws and excessive legal costs. These create uncertainty and fear among writers, journalists, media workers, activists, and other speakers.[3] Traditionally, this phenomenon is understood to lead individuals to self-censor and avoid speaking or participating in certain activities out of fear of legal consequences or privacy harms, even when those actions are lawful or desirable.[4] In many cases, the chilling effect constitutes a collective infringement on freedom of expression, as the violation of one individual's right deters similarly situated speakers from exercising their own right out of fear of facing the same consequences.

The concept of the chilling effect was first established in *Wieman v. Updegraff*, where the U.S. Supreme Court recognised that vague or overly broad restrictions could discourage the exercise of constitutional freedoms.[5] However, it was not until *Gibson v. Florida Legislative Investigation Committee* that the Court explicitly used the phrase "chilling effect" in relation to First Amendment rights, particularly freedom of association. In *Gibson*, the Court ruled that compelling the National Association for the Advancement of Colored People (NAACP to disclose its membership lists would deter individuals from associating freely due to fear of government reprisal, thereby creating a chilling effect.[6] The concept was further developed in *Baggett v. Bullitt*, where the Court struck down loyalty oaths required for public employees in Washington State, holding that their vague and broad nature created a chilling effect on First Amendment rights.[7] The Court recognized that such oaths forced individuals to self-censor out of fear of reprisal, even if their speech or associations were constitutionally protected. Since then, the concept has been increasingly applied in numerous cases by the Court itself. Over time, this reasoning has expanded beyond the U.S. legal system, with the chilling effect being adopted and incorporated, with its adaptations, into the jurisprudence of other jurisdictions around the world, including international human rights courts.

Although there is considerable academic literature that addresses the chilling effect from the perspective of freedom of expression, academia has not yet offered a comparative approach to this phenomenon focusing on the jurisprudence of regional human rights courts. As a result, by examining landmark decisions and key principles set by each tribunal, this work represents a first attempt to identify and explain the convergences and divergences surrounding this topic. This study seeks to fill this gap, by providing a novel and original addition to the field, and make a contribution to the debates around this issue.

The main research question of this study is: *How do regional and sub-regional human rights courts address the chilling effect regarding freedom of expression?*. To answer this question, the comparative analysis presented in this study is structured around four key research areas. First, it examines how the chilling effect is conceptualised in the case law of the three regional courts, exploring how each court defines the phenomenon, the terminology they use to refer to it, and how they apply the chilling effect reasoning. Second, the research categorizes State actions and laws that restrict freedom of expression within each regional system, identifying the different circumstances

---

[3] Townend (2017), p. 1.

[4] Penney (2022), p. 1454-1455.

[5] United States Supreme Court (SCOTUS), *Wieman v. Updegraff*, Judgment of 15 December 1952.

[6] SCOTUS, *Gibson v. Florida Legislative Investigation Committee*, Judgment of 25 March 1963.

[7] SCOTUS, *Baggett v. Bullitt*, Judgment of 1 June 1964.

in which the chilling effect materialises through diverse State strategies. Third, the study identifies those affected by the chilling effect to understand better the particular forms of silencing they endure and the extent of the impact on each group. Finally, the work assesses the remedies and reparations granted by each court in cases where the chilling effect has been established, offering insights into how the regional courts are willing to take measures to protect freedom of expression.

This study draws on relevant case analyses from Columbia Global Freedom of Expression's (CGFoE) Global Case Law Database to support its findings, as well as additional landmark cases from regional courts and existing scholarship. In total, approximately 160 cases were analyzed to ensure a comprehensive assessment of the chilling effect on freedom of expression.CGFoE is committed to advancing freedom of expression by enhancing the understanding of the international and national norms and institutions that best protect this human right. With a historical perspective on the evolving jurisprudence regarding the chilling effect on freedom of expression, this research supports its mission to deepen the understanding of global standards, identifying patterns, best practices, and areas of weakness related to the chilling effect.

2 Conceptualising the Chilling Effect in International Human Rights Law Jurisprudence

2.1 Chilling Effect in the European Court of Human Rights

The European Court of Human Rights (ECtHR) recognizes that vague or overly broad legal provisions, disproportionate sanctions, and other restrictive measures can create an environment where individuals, particularly journalists, activists, and legal professionals, engage in self-censorship to avoid potential penalties. This chilling effect is not merely speculative but is rooted in the Court's recognition of the inherent risk of error in the legal system and the vulnerability of public interest expression.[8] The Court has emphasised that such deterrent effects undermine democratic society by restricting public discourse and the flow of information on matters of general interest.[9]

A key feature of the ECtHR's approach is that the chilling effect does not require empirical proof of harm but rather an assessment of the potential future risk of deterrence. This perspective is evident in cases such as *Morice v. France*, where the Court noted that the mere possibility of legal consequences for critical speech against the judiciary could discourage lawyers from engaging in public debate on judicial matters.[10] Similarly, in *Cumpănă and Mazăre v. Romania*, the Court found that the fear of severe sanctions, such as imprisonment, had an evident chilling effect on journalistic freedom of expression.[11] The Court's concern extends beyond individual applicants to broader societal implications, recognizing that restrictions on one journalist, whistleblower, or activist can deter others from engaging in similar expressive activities.[12]

---

[8] ECtHR, *Altuğ Taner Akçam v. Turkey*, Judgment of 25 October 2011, para. 81.

[9] ECtHR, *Goodwin v. the United Kingdom* [GC], Judgment of 27 March 1996, para. 39.

[10] ECtHR, *Morice v. France* [GC], Judgment of 23 April 2015, para. 176.

[11] ECtHR, *Cumpănă and Mazăre v. Romania* [GC], Judgment of 17 December 2004, para. 114.

[12] ECtHR, *Financial Times v. the United Kingdom*, Judgment of 15 December 2009, para. 63.

Ultimately, the ECtHR's chilling effect principle underscores the need for legal frameworks that protect rather than inhibit freedom of expression, emphasizing that erroneous restrictions on public interest expression create more harm than an overprotection of such speech.

The ECtHR often considers the chilling effect within the proportionality framework, assessing whether State restrictions are necessary in a democratic society. However, its evidentiary approach varies. In *Guja v. Moldova*, the Court presumed a chilling effect without requiring direct proof, relying solely on the severity of the penalty imposed on the applicant.[13] Similarly, in *Independent News and Media v. Ireland*, the Court did not assess whether the impugned damages awarded had a chilling effect as a matter of fact but instead recognized it as a matter of principle.[14] However, in *Flux v. Moldova (No.6)*, the Court found no violation of Article 10 of the European Convention on Human Rights (ECHR) which protects the right to freedom of expression, after domestic courts ordered a newspaper to pay for damages and publish an apology following the publication of an article accusing a public official of corruption.[15] In a dissenting opinion, Judge Bonello strongly criticised the majority's approach, arguing that the Court had effectively reversed its longstanding protections for press freedom. He contended that journalists had been warned of the consequences of publishing material critical of the authorities, regardless of the pressing social need or the sufficiency of the factual basis. He also regretted that, in the Court's balancing exercise, the disregard for professional norms was deemed more serious than the suppression of democratic debate on public corruption.[16]

These inconsistencies could reveal that the composition of the deciding chamber seized with the case can greatly influence the outcome. For instance, in cases such as *Kyprianou v. Cyprus* and *Cumpănă and Mazăre v. Romania,*[17] the Second Section Chamber of the Court[18] refused to consider the chilling effect of prison sentences imposed on journalists or found them to be proportionate, despite prior case law, which was later corrected by the decisions of Grand Chamber.

2.2 Chilling Effect in the Inter-American Court of Human Rights

Turning to the Inter-American Court of Human Rights (IACtHR), out of nearly 50 cases on alleged violations of Article 13 of the American Convention on Human Rights (ACHR) relating

---

[13] ECtHR, *Guja v. Moldova* [GC], Judgment of 12 February 2008, para. 95.

[14] ECtHR, *Independent Newspapers (Ireland) Limited v. Ireland*, Judgment of 15 June 2017, para. 85.

[15] ECtHR, *Flux v. Moldova (No.6)*, Judgment of 29 October 2008, paras 31-34.

[16] ECtHR, *Flux v. Moldova (No.6)*, Judgment of 29 October 2008, Dissenting Opinion of Judge Bonello, joined by Judges Davíd Thór Björgvinsson and Šikuta, para. 17.

[17] ECtHR, *Kyprianou v. Cyprus* [GC], Judgment of 15 December 2005, para. 72; ECtHR, *Cumpănă and Mazăre v. Romania* [GC], Judgment of 17 December 2004, paras 59-60.

[18] The ECtHR decides cases through Chambers (seven judges) and the Grand Chamber (seventeen judges). Chambers hear most cases, while the Grand Chamber is reserved for exceptional cases involving serious legal questions. A case may be referred to the Grand Chamber after a Chamber judgment, but only if it raises a matter of significant importance.

to freedom of expression, only nine have explicitly included the concept of chilling effect,[19] while another 24 have made an indirect reference to this phenomenon. Throughout its jurisprudence, since its first mention in the 2004 case of *Herrera-Ulloa v. Costa Rica*,[20] the IACtHR has recognised the existence of the chilling effect but has not maintained a consistent application of the concept, sometimes using alternative terms such as "inhibiting",[21] "intimidating",[22] "dissuasive''[23], ''frightening''[24] deterrent effect"[25] or "silenc[ing]'' effect.[26] In the original versions in Spanish, the Court has used the terms *efecto inhibidor, efecto intimidatorio o amedrentador, efecto disuasivo, atemorizador e inidividor.* This lack of consistency regarding the terminology has made it difficult to consolidate a homogeneous jurisprudential standard. Further, the Court does not provide a clear rationale for why, in the face of similar phenomena such as criminal defamation laws and convictions, it sometimes employs the concept of a "chilling effect" while in other instances it resorts to similar notions like "inhibiting effect" or "intimidating effect".

In the vast majority of cases, the IACtHR uses the concept of a chilling effect as a qualification or description of violations of freedom of expression. However, only in the case *Leguizamón v. Paraguay* did the Court explicitly define the chilling effect as "an action that intimidates people or dissuades them from exercising their rights or fulfilling their professional obligations, due to fear of facing sanctions or suffering informal consequences such as threats or attacks". [27] While the concept of a ''chilling effect'' has not been applied consistently in all its decisions regarding freedom of expression, the Court has constructed a narrative in which undue restrictions on freedom of expression not only affect those who are directly sanctioned but also have a ''chilling effect'' on other social actors.

Methodologically, the Court has primarily addressed the chilling effect in its analysis of the necessity of restrictions on freedom of expression, though it has not always systematically integrated it into the tripartite test—a framework used to assess whether limitations on this right are permissible. The test requires that any restriction be (i) provided for by law, (ii) pursue a legitimate aim, and (iii) be necessary in a democratic society. Additionally, the Court has not consistently applied the tripartite test when determining violations of Article 13 of the ACHR.[28] Another notable aspect is that in many cases where the Court has found a chilling effect in the

---

[19] IACtHR, *Herrera-Ulloa v. Costa Rica*, Judgment of 2 July 2004, para. 113; *San Miguel Sosa v. Venezuela*, Judgment of 8 February 2018, para. 159; *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment of 28 November 2018, para. 172; *Bedoya Lima v. Colombia*, Judgment of 26 August 2021, para. 151; *Palacio Urrutia v. Ecuador*, Judgment of 24 November 2021, para. 124; *Moya Chacón v. Costa Rica*, Judgment of 23 May 2022, para. 83; *Leguizamón v. Paraguay*, Judgment of 15 November 2022, para. 56; *Baraona Bray v. Chile*, Judgment of 24 November 2022, para. 121; *Miembros de la Corporación Colectivo de Abogados "José Alvear Restrepo" v. Colombia*, Judgment of 18 October 2023, para. 744.

[20] IACtHR, *Herrera-Ulloa v. Costa Rica*, Judgment of 2 July 2004, para. 113.

[21] IACtHR, *Ricardo Canese v. Paraguay*, Judgment of 31 August 2004, para. 206.

[22] IACtHR, *Perozo v. Venezuela*, Judgment of 28 January 2009, para. 361.

[23] IACtHR, *Granier (Radio Caracas Televisión) v. Venezuela*, Judgment of 22 June 2015, para. 164.

[24] IACtHR, *Granier (Radio Caracas Televisión) v. Venezuela*, Judgment of 22 June 2015, para. 164.

[25] IACtHR, *Granier (Radio Caracas Televisión) v. Venezuela*, Judgment of 22 June 2015, para. 164.

[26] IACtHR, *Grijalva Bueno v. Ecuador*, Judgment of 3 June 2021, para. 161.

[27] IACtHR, *Leguizamón v. Paraguay*, Judgment of 15 November 2022, para. 56.

[28] IACtHR, *Bedoya Lima v. Colombia*, Judgment of 26 August 2021, among others.

context of freedom of expression violations, it has relied on testimony from journalists, human rights or freedom of expression experts, victims, and media workers or entrepreneurs. This suggests an evidentiary approach that places significant weight on testimony capable of conceptualizing or identifying the chilling effect in each specific case.[29]

The Inter-American system has identified a remarkable diversity of subjects affected by the chilling effect or its implicit derivatives (inhibition, intimidation, silencing), including journalists and media workers,[30] judges,[31] activists,[32] women journalists,[33] social leaders,[34] indigenous communities,[35] and public officials[36]. In cases such as *Herrera Ulloa v. Costa Rica*, *Palacio Urrutia v. Ecuador* and *Norín Catrimán v. Chile*, the Court has highlighted how the imposition of criminal and civil sanctions, as well as the application of anti-terrorist legislation, have a chilling effect that goes beyond the individual case and affects the exercise of freedom of expression at the societal level.[37] Similarly, cases such as *Granier v. Venezuela* have highlighted how State action against the media can send an ‘‘intimidating message’’ to other actors in the sector.[38] However, the degree of certainty required by the Court to demonstrate the existence of a chilling effect varies considerably from case to case, reflecting a lack of consolidated judicial development in this area.

One of the most emblematic cases in consolidating the concept of the chilling effect in Inter-American jurisprudence is *Palacio Urrutia v. Ecuador* (2021), in which the Court analysed the impact of strategic lawsuits against public participation (SLAPPs) and disproportionate civil sanctions on the work of journalists. In this case, the Court stressed that the fear of economic and criminal reprisals for publishing critical investigations can lead to self-censorship, affecting not only the journalists directly involved but also the entire ecosystem of the investigative press.[39] In *Fontevecchia and D'Amico v. Argentina*, the Court held that imposing subsequent liability on a journalist, including civil sanctions, for an alleged violation of the former President of Argentina's privacy, ‘‘did not satisfy the requirement that it be necessary in a democratic society’’.[40] While the Court refrained from assessing the proportionality of the civil sanction's amount, it emphasized that the fear of a disproportionate civil penalty can be as, if not more, intimidating and restrictive to freedom of expression than a criminal sanction. Such penalties, the Court noted, can jeopardise

---

[29] IACtHR, *Bedoya Lima v. Colombia*, Judgment of 26 August 2021. In this case, the Court placed great importance on the testimony of the victim. The Court also cites the testimony of expert witness Catalina Botero, who confirms that this type of incident has a chilling effect.

[30] IACtHR, *Ríos v. Venezuela*, Judgment of 28 January 2009.

[31] IACtHR, *López Lone v. Honduras*, Judgment of 5 October 2015.

[32] IACtHR, *Miembros de la Corporación Colectivo de Abogados "José Alvear Restrepo" v. Colombia*, Judgment of 18 October 2023.

[33] IACtHR, *Bedoya Lima v. Colombia*, Judgment of 26 August 2021.

[34] IACtHR, *Norín Catrimán v. Chile*, Judgment of 29 May 2014.

[35] IACtHR, *Norín Catrimán v. Chile*, Judgment of 29 May 2014.

[36] IACtHR, *San Miguel Sosa v. Venezuela*, Judgment of 8 February 2018.

[37] IACtHR, *Herrera-Ulloa v. Costa Rica*, Judgment of 2 July 2004, para. 113; *Palacio Urrutia v. Ecuador*, Judgment of 24 November 2021, para. 124; *Norín Catrimán v. Chile*, Judgment of 29 May 2014, para. 376.

[38] IACtHR, *Granier (Radio Caracas Televisión) v. Venezuela*, Judgment of 22 June 2015, paras 198 and 234.

[39] IACtHR, *Palacio Urrutia v. Ecuador*, Judgment of 24 November 2021, paras 123-124.

[40] IACtHR, *Fontevecchia and D'Amico v. Argentina,* Judgment of 29 November 2011, para. 74.

the personal and family life of those affected, ultimately leading to unjustified self-censorship, both for the individuals involved and for other potential critics of public officials' performance.[41]

The Court is concerned with the chilling effect beyond criminal and civil sanctions. In other cases, it has been recognized that threats, violence, and even impunity for crimes against journalists have a chilling effect on those reporting them. For instance, in *Bedoya Lima v. Colombia*, the Court recognized that the extreme physical and sexual violence suffered by journalist Jineth Bedoya not only constituted a violation of her individual rights but also sent a threatening message to other female journalists. This had a chilling effect on reporting on sensitive issues such as armed conflict.[42] Similarly, in *Leguizamón v. Paraguay*, the murder of a journalist investigating corruption networks on the Paraguayan border was recognized as an extreme form of chilling effect. Impunity for this crime discouraged other journalists from pursuing similar investigations, thus undermining society's right to information of public interest.[43]

The Court has also addressed disciplinary sanctions concerning judges. In *López Lone v. Honduras*, the dismissal of judges who were critical of the military coup d'état in Honduras was interpreted as producing an inhibiting effect on the judiciary as a whole, affecting its independence and its willingness to speak out on issues of public importance.[44]

2.3 Chilling Effect in the African Court of Human and Peoples' Rights, ECOWAS Court of Justice, and East African Court of Justice

Looking at the African System and subregional courts in Africa, namely the Court of Justice of the Economic Community of West African States (ECOWAS Court of Justice) and the East African Court of Justice, out of the 37 cases analyzed for this study, only one used the term "chilling effect" explicitly.[45] 26 other cases did not use the concept directly but rather used analogous or indirect language that describes phenomena traditionally associated with the chilling effect. In the remaining ten, no violation of freedom of expression was found.

Despite parties introducing the concept before the African Court on Human and Peoples' Rights (ACtHPR),[46] its Commission,[47] and the East African Court of Justice,[48] these bodies have rarely used the term explicitly. However, they still recognize the harmful societal impact of restricting freedom of expression. This implicit reference to the chilling effect found in 26 cases can be inferred from various decisions by judicial and quasi-judicial bodies in the African region.

---

[41] IACtHR, *Fontevecchia and D'Amico v. Argentina,* Judgment of 29 November 2011, para. 74.

[42] IACtHR, *Bedoya Lima v. Colombia*, Judgment of 26 August 2021, para. 151.

[43] IACtHR, *Leguizamón v. Paraguay*, Judgment of 15 November 2022, para. 56.

[44] IACtHR, *López Lone v. Honduras*, Judgment of 5 October 2015, para. 176.

[45] ECOWAS Court, *Federation of African Journalists and others v. Republic of Gambia*, Judgment of 13 February 2018, p. 41.

[46] ACtHPR, *Lohé Issa Konaté v. the Republic of Burkina Faso*, Judgment of 5 December 2014, para. 143.

[47] ACmHPR, *Scanlen & Holderness v. Zimbabwe*, Judgment of 3 April 2009, para. 58.

[48] EACJ, *Mseto and Anor v. A.G. of Tanzania*, Judgment of 21 June 2018, para. 11.

The judgments illustrate several potential consequences of the chilling effect. One is that criminal defamation convictions against journalists covering political figures could stifle debate on matters of public interest.[49] Another is that compulsory accreditation/ membership, and other media licensing regulations could lead to self-censorship among media professionals.,[50] A further conclusion is that judicial harassment of human rights defenders, journalists, and activists had a discouraging effect on others engaging in public criticism.[51] In addition the Court is concerned that the broad and ambiguous criminalisation of demonstrations might deter individuals from exercising their right to protest.[52]

Without explicitly using the term "chilling effect," the ACtHPR and subregional counterparts recognize the implications of self-censorship for freedom of expression. The jurisprudence reflects an understanding that disproportionately restricting expression, even in individual cases, can suppress broader participation and deter others from exercising their rights. It is worth noting, however, that references to this phenomenon within the human rights jurisprudence of the African region remain relatively brief. Moreover, none of the decisions issued by these courts appear to have explicitly required a burden of proof to substantiate claims of a potential chilling effect. Instead, judicial and quasi-judicial bodies seem to have relied on broader behavioral assumptions rooted in deterrence theory, implying them as a matter of principle—much like the ECtHR and the IACtHR have done in numerous cases, as discussed above.

3 Chilling Effect by Category: An Overview of the State Actions and Laws Restricting Freedom of Expression

The European, Inter-American, and African systems have all addressed various State actions that restrict the right to freedom of expression. In the ECtHR, the compelled disclosure of journalistic sources, excessive defamation awards, disproportionate penalties for protests, and overbroad surveillance have been identified as contributors to the chilling effect. In *Steel & Morris v. United Kingdom*, the Court recognised how defamation proceedings, through their financial burden, discouraged critical reporting on corporate practices,[53] and in *Eon v. France,* it underlined that penalising satirical political expression could deter citizens from engaging in robust public debate.[54] These cases underscore the ECtHR's concern with the systemic consequences of State actions, which not only affect individual complainants but also have a broader, inhibiting effect on public discourse. A notable aspect in *Guja v. Moldova* is the recognition of the chilling effect on whistleblowers.[55] The Court highlighted that media coverage of an employee's dismissal for

[49] ACmHPR, *Media Rights Agenda and others v. Nigeria*, Judgment of 31 October 1998 or *Agnes Uwimana-Nkusi v. Rwanda*, Judgment of 2019.

[50] ECOWAS Court, *Isaac and Anor v. Nigeria*, Judgment of 24 November 2023; ACmHPR, *Scanlen & Holderness v. Zimbabwe*, Judgment of 3 April 2009.

[51] ACtHPR, *Abdoulaye Nikiema (Norbert Zongo) v. The Republic of Burkina Faso*, Judgment of 28 March 2014; ACmHPR, *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v. Zimbabwe*, Judgment of 3 April 2009.

[52] ACmHPR, *Egyptian Initiative for Personal Rights v. Egypt*, Judgment of 12 October 2011.

[53] ECtHR, *Steel and Morris v. the United Kingdom*, Judgment of 15 May 2005, para. 95.

[54] ECtHR, *Eon v. France*, Judgment of 14 June 2013, para. 61.

[55] ECtHR, *Guja v. Moldova* [GC], Judgment of 12 February 2008, para. 95.

reporting misconduct could deter other potential whistleblowers due to fear of similar repercussions. However, the Court has not consistently articulated this element in its jurisprudence, with authors like Dr Ronan Ó Fathaigh arguing that focusing on this media coverage risks undermining the broader chilling effect of State actions, as a lack of media attention could be seen as reducing the chilling effect.[56] Similarly, in *Novaya Gazeta and others v Russia*, the Court held that the inclusion of a journalist's name on a list of terrorists and extremists was a clear manifestation of the chilling effect resulting from criminal prosecution in connection with their expressive conduct.[57]

In the Inter-American Human Rights System, a similar recognition of chilling effects has emerged, particularly in the context of criminal defamation laws, which have a detrimental impact on journalistic freedom. Cases such as *Palacio Urrutia v. Ecuador*[58] and *Moya Chacón v. Costa Rica*[59] illustrate how disproportionate civil and criminal penalties for publishing information of public interest not only punish individual journalists but also foster a culture of self-censorship across the profession. In *Álvarez Ramos v. Venezuela*, the Inter-American Court held that criminalising speech critical of public officials amounts to intimidation, further extending the chilling effect.[60] Other State actions, including violence against journalists and media restrictions, have also been found to have a chilling effect. In *Bedoya Lima v. Colombia*, the extreme violence—particularly the use of sexual and gender-based violence—against a female journalist was interpreted as a deliberate message of deterrence, aimed at discouraging other female journalists from covering sensitive topics such as the armed conflict as mentioned in 2.2.[61] In *Granier v. Venezuela*, the refusal to renew the licence of a television station critical of President Hugo Chávez's government was seen as an indirect form of censorship aimed at silencing independent media, creating an intimidating environment for the press.[62] Furthermore, in *López Lone v. Honduras*, the Court held that the mere fact of instituting disciplinary proceedings against judges for criticising a military coup had an ''intimidating effect'' on judicial independence.[63] This shows that the chilling effect in the Inter-American system is not restricted to criminal or civil sanctions but extends to various State strategies that suppress free expression.

An analysis of 15 cases in the African region identifies harassment and violence against speakers as key issues creating a chilling effect. Additionally, compulsory media licensing regulations, such as mandatory accreditation, discourage freedom of expression within the media. Courts have also scrutinised criminal defamation laws, with four cases concluding that their application—particularly to political figures—stifles democratic debate.[64] Although the African

---

[56] Fathaigh (2019), pp. 366-367.

[57] ECtHR, *Novaya Gazeta and others v. Russia*, Judgment of 11 February 2025, para. 94.

[58] IACtHR, *Palacio Urrutia v. Ecuador*, Judgment of 24 November 2021, para. 125.

[59] IACtHR, *Moya Chacón v. Costa Rica*, Judgment of 23 May 2022, para. 35.

[60] IACtHR, *Álvarez Ramos v. Venezuela*, Judgment of 30 August 2019, para. 122.

[61] IACtHR, *Bedoya Lima v. Colombia*, Judgment of 26 August 2021, para. 113.

[62] IACtHR, *Granier (Radio Caracas Televisión) v. Venezuela*, Judgment of 22 June 2015, para. 163.

[63] IACtHR, *López Lone v. Honduras*, Judgment of 5 October 2015, para. 176.

[64] ECOWAS Court, *Federation of African Journalists and others v Republic of Gambia*, Judgment of 13 February 2018; ACtPHR, *Lohé Issa Konaté v. the Republic of Burkina Faso*, Judgment of 5 December 2014; ACmHPR, *Media*

system has not referred systematically to the phenomenon of the chilling effect, the assumption underlying many of these decisions is that violations of freedom of expression, such as harassment and legal restrictions, discourage future participation in public discourse, further entrenching a climate of fear and inhibition.

4 Chilling Effect by its Targets: Categorising Common Trends

The case law of the regional human rights systems reveals certain common trends regarding the types of wronged parties who bring cases and whose freedom of expression violations have generated a chilling effect. In the ECtHR, case law illustrates that journalists are frequent targets of the chilling effect. In *MGN Ltd. v. United Kingdom*, the Court recognised how the legal risks associated with investigative journalism deterred media outlets from reporting on contentious issues.[65] In *Halet v. Luxembourg*, the Court addressed the chilling effect on whistleblowers, highlighting how criminal penalties for disclosing corruption discouraged others from revealing misconduct.[66] Activists and protesters are similarly affected, as illustrated in *Taranenko v. Russia*, where severe penalties for peaceful demonstrations were found to deter public assemblies.[67] Judges too are subject to chilling effects, as seen in *Wille v. Liechtenstein*,[68] where the Court found that a judge's non-reappointment following critical public remarks constituted a violation of Article 10, acknowledging the broader chilling effect on judicial independence and the free expression of public officials. This focus on journalists, whistleblowers, activists, and judges demonstrates the ECtHR's broad concern for the deterrent effect of State actions on the exercise of free expression.

In the Inter-American system, journalists remain the most frequently represented group affected by chilling effects, particularly due to criminal defamation laws. In cases such as *Palacio Urrutia v. Ecuador* and *Álvarez Ramos v. Venezuela*, the Inter-American Court found that criminal penalties for publishing information of public interest not only punished individual journalists but also encouraged self-censorship across the profession.[69] The Court has highlighted the chilling effect on other groups considered generally vulnerable to this effect, such as judges and activists. In *López Lone v. Honduras*, the dismissal of judges for criticising a coup was seen as a threat to judicial independence,[70] while in *Norín Catrimán v. Chile*, the use of anti-terrorist legislation against leaders of the Mapuche indigenous people was recognised as a State strategy to suppress social protest.[71] Furthermore, in *Viteri v. Ecuador*, the Court acknowledged the potential chilling effect on other whistleblowers following the sanctions imposed on one individual.[72] Cases like *Women Victims of Sexual Torture in Atenco v. Mexico* further show how violence against protesters

---

Rights Agenda and others v. Nigeria, Judgment of 31 October 1998; *Agnes Uwimana-Nkusi v. Rwanda*, Judgment of 2019.

[65] ECtHR, *MGN Ltd. v. the United Kingdom*, Judgment of 18 January 2011, para. 201.

[66] ECtHR, *Halet v. Luxembourg* [GC], Judgment of 14 February 2023, para. 149.

[67] ECtHR, *Taranenko v. Russia*, Judgment of 15 May 2014, para. 95.

[68] ECtHR, *Wille v. Liechtenstein* [GC], Judgment of 28 October 1999, para. 50.

[69] IACtHR, *Palacio Urrutia v. Ecuador*, Judgment of 24 November 2021, para. 118; *Álvarez Ramos v. Venezuela*, Judgment of 30 August 2019, para. 76.

[70] IACtHR, *López Lone v. Honduras*, Judgment of 5 October 2015, para. 176.

[71] IACtHR, *Norín Catrimán v. Chile*, Judgment of 29 May 2014, para. 375.

[72] IACtHR, *Viteri v. Ecuador*, Judgment of 27 November 2023, para. 96.

can deter future social mobilisations, illustrating the broader societal impact of chilling effects beyond the individual victims.[73]

In the African system, journalists and media professionals are the most frequent targets of measures restricting freedom of expression, particularly in cases involving criminal defamation and media licensing restrictions, as seen in *Lohé Issa Konaté v. Burkina Faso*.[74] The African system has also recognised the chilling effect on activists and human rights defenders, particularly in cases of judicial harassment and violence. More than 15 cases in the African system and subregional courts have addressed limitations on freedom of expression, often focusing on defamation and media licensing. These cases confirm a recurring trend in the representation of journalists and speech on matters of public interest.

A key point to highlight is that the overrepresentation of certain groups in the jurisprudence of these courts, along with the absence of others, does not mean that the chilling effect only affects or arises in the cases of those who are represented. Rather, this trend reveals another reality: who holds the relative power to initiate litigation in response to such human rights violations. In other words, the chilling effect can be so severe for certain groups, in specific contexts, that it not only leads them to self-censor their original expression but also discourages them from pursuing institutional mechanisms to challenge it.

5 Remedies and Reparations for Chilling Effects

The European, Inter-American and the African human rights systems offer distinct approaches to remedies for chilling effects, reflecting their unique legal and societal contexts. For its part, the ECtHR, employs a range of remedies to address chilling effects, balancing compensation with structural reforms. In cases like *Goodwin v. the United Kingdom*, where a violation of Article 10 was found, the Court opted for a declaratory judgment, emphasising the importance of recognising the chilling effect without awarding financial compensation.[75] It considered that its finding constituted adequate just satisfaction.[76] However, in cases such as *Nikula v. Finland* and *Halet v. Luxembourg*, the Court did award financial compensation, with amounts varying depending on the severity and context of the violations.[77] Additionally, the ECtHR mandates structural reforms when necessary, as seen in *Halet*, where the Court recommended aligning domestic laws with Article 10 to protect freedom of expression better.[78] The Court has also issued directives to amend incompatible domestic laws, such as in *Sanoma v. The Netherlands* and *Dyuldin and Kislov v. Russia*, to prevent future chilling effects, particularly concerning press freedom.[79]

---

[73] IACtHR, *Case of Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment of 28 November 2018, para. 172.

[74] ACtHPR, *Lohé Issa Konaté v. the Republic of Burkina Faso*, Judgment of 5 December 2014.

[75] ECtHR, *Goodwin v. the United Kingdom* [GC], Judgment of 27 March 1996, para. 39.

[76] ECtHR, *Goodwin v. the United Kingdom* [GC], Judgment of 27 March 1996, para. 50.

[77] ECtHR, *Nikula v. Finland*, Judgment of 21 March 2002; *Halet v. Luxembourg* [GC], Judgment of 14 February 2023.

[78] ECtHR, *Halet v. Luxembourg* [GC], Judgment of 14 February 2023, para. 158.

[79] ECtHR, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], Judgment of 14 September 2010, para. 100; *Dyuldin and Kislov v. Russia*, Judgment of 31 July 2007, paras 45-51.

A notable aspect of the ECtHR's approach is its use of Article 46 of the ECHR to enforce urgent measures to address violations of freedom of expression. In *Fatullayev v. Azerbaijan*, the Court ordered the immediate release of the applicant who had been imprisoned for defamation, emphasising the urgent need to put an end to violations of Article 10.[80] This highlights the Court's commitment to ensuring that States take swift action to prevent further chilling effects on freedom of expression. The Court's willingness to order the immediate release of individuals, even in cases of defamation, reflects its concern about the broader societal consequences of criminal sanctions that can discourage the free exchange of ideas.

The ECtHR's remedies also extend to preventive measures and structural changes. In *Fatih Taş v. Turkey (No. 5)*, for example, the Court applied Article 46 to mandate that Turkey's Article 301 be brought into conformity with the Court's case-law to prevent further violations.[81] These remedies reflect the ECtHR's broader commitment to addressing not only the individual harm caused by chilling effects but also the structural conditions that perpetuate such violations, ultimately fostering a more robust protection of freedom of expression.

In the Inter-American system, the remedies for chilling effects are more expansive and often combine restitution,[82] the obligation to investigate,[83] and guarantees of non-repetition.[84] For example, in *Herrera-Ulloa v. Costa Rica*, the IACtHR ordered the annulment of the criminal conviction of journalist Mauricio Herrera Ulloa, expunging his criminal record and publishing the Court's judgment in widely circulated newspapers.[85] This remedy aimed not only to remedy the individual harm but also to prevent similar chilling effects on the practice of journalism.[86] In *López Lone v. Honduras*, the Court ordered the reinstatement of judges dismissed for opposing a coup d'état, thus addressing both the personal harm and the broader chilling effect on judicial independence.[87] By contrast, the Court did not extend this logic to cases such as *San Miguel Sosa v. Venezuela*, where it held that the reinstatement of public servants who had been dismissed for signing a petition against the then-President Hugo Chavez was not necessary because the damage caused by the arbitrary dismissal was included in the amount of damages.[88] The IACtHR has also sought to prevent future violations by ordering the creation of protective measures, such as in *Bedoya Lima v. Colombia*, where the Court ordered the creation of a fund for female journalists

---

[80] ECtHR, *Fatullayev v. Azerbaijan*, Judgment of 22 April 2010, para. 177.

[81] ECtHR, *Fatih Taş v. Turkey (No. 5)*, Judgment of 4 September 2018, paras 38-40.

[82] A form of reparation that seeks to restore the victim to the position they were in before the violation of their right to freedom of expression. See, e.g. IACtHR, *Palacio Urrutia v. Ecuador*, Judgment of 24 November 2021, paras 167-171.

[83] Recognising that impunity perpetuates a climate of self-censorship and fear, the Court has demanded effective and diligent investigations in several paradigmatic cases where the physical and psychological integrity of journalists have been violated. See, e.g. IACtHR, *San Miguel Sosa v. Venezuela*, Judgment of 8 February 2018, paras 231-233; *Bedoya Lima v. Colombia*, Judgment of 26 August 2021, paras 171-174.

[84] This measure aims not only to remedy violations of freedom of expression in specific cases, but also to change the structural conditions that foster the chilling effect. See, e.g. IACtHR, *Leguizamón v. Paraguay*, Judgment of 15 November 2022, paras 122-123.

[85] IACtHR, *Herrera-Ulloa* v. *Costa Rica*, Judgment of 2 July 2004, para. 195.

[86] IACtHR, *Herrera-Ulloa v. Costa Rica*, Judgment of 2 July 2004, para. 113.

[87] IACtHR, *López Lone v. Honduras*, Judgment of 5 October 2015, paras 296-298.

[88] IACtHR, *San Miguel Sosa v. Venezuela*, Judgment of 8 February 2018, para. 242.

affected by gender-based violence. Similarly, in *Palacio Urrutia v. Ecuador* and *Leguizamón v. Paraguay*, the Court ordered legal reforms to remove provisions that disproportionately restricted freedom of expression, particularly in relation to defamation laws and journalist protection mechanisms.

The African human rights system, while less explicit in directly addressing chilling effects, has also made strides in issuing remedies that foster a broader environment of freedom of expression. The African Commission on Human and Peoples' Rights (ACmHPR) and the African Court on Human and Peoples' Rights (ACtHPR) have often recommended reforms to laws that disproportionately restrict freedom of expression, particularly in cases involving criminal defamation and media licensing.[89] In cases such as *Lohé Issa Konaté v. Burkina Faso*, the ACmHPR called for the reform of defamation laws to align them with the principles of the African Charter on Human and Peoples' Rights. Similarly, in *Egyptian Initiative for Personal Rights v. Egypt*, a case involving harassment and violence against speakers, the ACmHPR has urged States to investigate violations and ratify relevant instruments, such as the African Charter on the Rights of Women in Africa.[90] On the topic of compulsory membership/accreditation or unlawful media licensing regulations, similar remedies have been enacted.[91] Regional bodies have requested governments to amend or reform laws to remove arbitrary restrictions on freedom of expression to ensure transparency and non-discrimination and create a better climate for media outlets in the region. These remedies reflect these bodies' commitment to addressing systemic issues that hinder the free expression of journalists, activists, and other vulnerable groups, aiming to create a more supportive environment for the exercise of freedom of expression across the continent.

6 Conclusion

This chapter examined the chilling effect on freedom of expression across the European, Inter-American, and African human rights systems, including decisions from sub-regional courts in the African continent. While each regional system recognises the chilling effect, their approaches vary. International human rights courts serve as crucial fora for challenging violations of freedom of expression and addressing the chilling effect of State actions. Given the State's central role when it comes to restrictions of speech—whether through direct sanctions, legal uncertainties, or failure to protect speakers from violence—these courts play a fundamental role in setting standards to mitigate self-censorship and uphold democratic discourse. Notably, even when private actors perpetrate violence against journalists, activists, or other speakers, the State's

[89] ECOWAS Court, *Federation of African Journalists and others v. Republic of Gambia*, Judgment of 13 February 2018; ACtHPR, *Lohé Issa Konaté v. the Republic of Burkina Faso*, Judgment of 5 December 2014; ACmHPR, *Media Rights Agenda and others v. Nigeria*, Judgment of 31 October 1998; *Agnes Uwimana-Nkusi v. Rwanda*, Judgment of 2019.

[90] ACmHPR, *Egyptian Initiative for Personal Rights v. Egypt*, Judgment of December 2011.

[91] ECOWAS Court, *Isaac and Anor v. Nigeria*, Judgment of 24 November 2023; EACJ, *Mseto and Anor v. A.G. of Tanzania*, Judgment of 21 June 2018; ACmHPR, *Scanlen & Holderness v. Zimbabwe*, Judgment of April 2009; *Open Society Justice Initiative v. Cameroon*, Judgment of 2019.

failure to prevent, investigate, and prosecute such acts exacerbates the chilling effect by fostering an environment of impunity and fear.

However, the reach of these courts is inherently limited by the cases brought before them. Courts can only adjudicate claims that reach their dockets; they cannot proactively prioritise issues or extend their jurisdiction to those who are unable or unwilling to litigate. The absence of certain voices in litigation—particularly those whose freedom of expression is so severely curtailed that they cannot challenge violations—highlights a structural limitation in the judicial protection of free speech, even more so when the counterpart is the State. The chilling effect can be so profound that entire groups are effectively silenced, unable to access justice due to fear, economic constraints, or other systemic barriers.

Reparations ordered by Human Rights Courts in cases involving the chilling effect suggest that an explicit reference to the concept is not a prerequisite for requiring States to comply with international standards or implement structural remedies. Instead, these courts have recognised the need for measures that go beyond individual compensation, including legal reforms, guarantees of non-repetition, and mechanisms to prevent further violations. The scope of these reparations varies depending on each court's general practice, with some tribunals adopting more expansive remedial frameworks than others. The IACtHR's approach, which includes annulments, protective mechanisms, and creating funds for victims, is the most expansive in that regard.

A particularly thought-provoking issue arises in the context of media coverage of an employee's dismissal for reporting misconduct. While such coverage may amplify awareness of the case, it is the dismissal itself that generates the chilling effect by deterring other potential whistleblowers. Focusing on media exposure as the primary source of deterrence misplaces the emphasis, as even in the absence of public reporting, similarly situated employees would likely become aware of the dismissal and self-censor accordingly. Courts must, therefore, remain attentive to the structural mechanisms that produce chilling effects, rather than attributing them to media dynamics alone.

The evidentiary approach of international courts to the chilling effect varies across jurisdictions. While some courts require direct evidence of deterrence, others presume its existence based on the nature of the restriction and its broader societal impact. The ECtHR, for instance, has at times recognised the chilling effect as a matter of principle rather than requiring empirical proof. Similarly, the IACtHR has relied heavily on expert testimony, journalistic reports, and victims' statements to establish the chilling effect, particularly in cases of violence against journalists or the use of criminal sanctions to silence dissent. Meanwhile, African human rights bodies have, in most cases, acknowledged chilling effects implicitly rather than explicitly, reflecting a more cautious approach to its legal articulation.

As with any legal issue, these courts should ensure the consistent application of the chilling effect principle within their case law. This will strengthen their ability to uphold freedom of expression effectively and predictably. In this regard, courts should base their findings on the existence of a chilling effect on a principled assessment that considers the broader societal impact of the affected speech. Only in exceptional cases that deviate from established patterns should courts require empirical proof of the chilling effect. Similarly, when it comes to reparations, to the

extent that each framework allows it, these courts should favour measures that address both the individual and collective harm caused by such freedom of expression violations.

When addressing the chilling effect, while a precise legal term that serves as a reference at an international level would be ideal, courts should prioritise the underlying elements of the phenomenon—such as deterrence, fear, and self-censorship—and the applicable legal standards, rather than focusing excessively on specific terminology. A clear example is the IACtHR, which has effectively addressed this issue despite historically using varying terminology. This variation may be partly due to Spanish being its working language, leading to the adoption of different terms equivalent to ‘‘chilling effect’’ in the absence of an agreed-upon translation.

Ultimately, the comparative analysis presented in this chapter underscores both the significance and the complexity of the chilling effect in international human rights law. While courts have developed jurisprudential frameworks to address this phenomenon, challenges remain in ensuring consistency within each court’s jurisprudence, expanding access to justice for affected individuals, and implementing structural reforms that prevent future violations. By focusing on the deterrence effect, applying consistent legal frameworks, adopting proactive remedies, and promoting legal reforms, regional human rights systems can better safeguard democratic discourse and public participation.

References

Fathaigh R Ó (2019) Article 10 and the chilling effect: A critical examination of how the European Court of Human Rights seeks to protect freedom of expression from the chilling effect. PhD dissertation, Ghent University

Penney J W (2022) Understanding chilling effects. Minnesota Law Review 106:1451–1530

Schauer F (1978) Fear, risk and the First Amendment: Unraveling the chilling effect. Boston University Law Review 58:685–732

Townend J (2017) Freedom of expression and the chilling effect (Version 1). University of Sussex