

Facts

- The Court found that the Chilean authorities failed to provide access to four of the seven items of information requested. The requested info was of clear public interest. [paras. 72-73]

Violation of Article 13 Right to Information

- The Court found unanimously a violation of Article 13 of the Convention (freedom of thought and expression)
- The Court concluded that *Article 13 contains a right of general access* to government-held information: “With respect to the facts of the present case, the Court concludes that article 13 of the Convention, which specifically establishes the rights to ‘seek’ and ‘receive’ ‘information’, protects the right of all persons to request access to information held by the State, with the exceptions permitted by the restrictions regime of the Convention. As a result, this article supports the right of persons to receive such information and the positive obligation on the State to supply it, so that the person may have access to the information or receive a reasoned response when, for ground permitted by the Convention, the State may limit access to it in the specific case. The said information should be provided without a need to demonstrate a direct interest in obtaining it, or a personal interest, except in cases where there applies a legitimate restriction. Disclosure to one person in turn permits it [the information] to circulate in society in such a way that it can be known, obtained, and evaluated. In this way, the right to freedom of thought and of expression contemplates protection of the right of access to information under State control....” [para. 77]
- The court notes the connection between freedom of expression and information and rights of democratic participation, concluding that “access to information held by the State .. permits participation in public governance.” [paras. 84-86]

Principles Governing Restrictions on Access

- The Court notes that exceptions should be allowed but that they should be limited to those permitted by the Convention (respect for the rights and reputations of others, protection of national security, public order, health or public morals) and stresses that these should always be proportionate and minimize restriction of the right being protected. [paras. 88-91]
- The Court ruled that “in a democratic society it is indispensable that state authorities are governed by the principle of *maximum disclosure*, which establishes the presumption that all information should be accessible, subject to a restricted system of exceptions.” [para. 92]
- The *burden* is upon the State “to prove that in setting restrictions on access to information in its possession it complied with the restrictions” laid out by the Court. [para. 94]

Principles Applied to the Present Case

- At the relevant time there was *no legal basis* in Chile for denying access to the information. [para. 94]
- By *failing to justify their refusal* to provide access, the Chilean authorities violated the principles that require restrictions on rights to pursue legitimate goals and be necessary in a democratic society. [para. 95]
- The failure to adopt precise criteria on exemptions in the domestic legal system “creates ample room for discretionary and arbitrary state actions in classifying information as secret, reserved or confidential.” [para 98]

Obligation to Take Measures Necessary to Guarantee the Right to Information (Art. 2)

- The Court also ruled that States should adopt means of guaranteeing the rights protected by the Convention – in other words, an access to information law or similar -- and should eradicate norms and practices that violate the Convention rights. The Court notes that “in particular, this means a legal framework that regulates restrictions on access to information held by the State that should comply with the Convention standards and may only impose restrictions *for reasons permitted by the Convention*”. [para. 101—aptly numbered!]

Violations of Fair Trial Rights (Art. 8.1)

- The Court found that Chile had also violated the applicants’ right to a fair trial in the context of the administrative and judicial proceedings brought by the applicants to challenge the denial of information [see para. 174]

What Chile must do:

- The Court ordered Chile to *provide the information* requested about the Rio Condor project or adopt a reasoned decision as to why it is not providing it. [paras. 157-58]
- The Court ordered Chile to publish key paragraphs of the sentence in the State Journal, and – importantly – to adopt the necessary measures to guarantee the right of access to State-held information in the future. These should include measures “to guarantee the effectiveness of *an adequate administrative process* for dealing with requests for information, which sets deadlines for providing the information and is handled by properly trained officials. [para. 163]
- In addition, the Court requires the state to *train public officials* on the right of access to information:
“In this case the administrative authority charged with responding to the request for information ... showed an attitude that threatened the right of access to State-held information. In this respect, this Tribunal notes with concern that various elements of proof presented in this case coincide in showing that public officials do not respond effectively to information requests.” [para. 164]
- “The Court considers that the State [Chile] should, in a reasonable time, conduct training for the bodies, authorities, public agents charged with receiving requests for information on the norms that regulate this right, including on the Convention standards that they should respect with regard to restrictions on access to such information.” [para. 165]