DOCTORAL (PHD) DISSERTATION PRELIMINARY DEBATE

"The Violation of the Right to Life by Security Forces of the States in the Practice of the Inter-American Court of Human Rights and the European Court of Human Rights"

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Contents

Abbreviations

IACtHR: Inter-American Court of Human Rights

ECtHR: European Court of Human Rights

ECHR: European Convention on Human Rights

OHCHR: Office of the High Commissioner of Human Rights.

OAS: Organization of American States

EU: European Union

ICJ: International Court of Justice

Chapter I: Objectives of the Research

1. Introduction

The right to life and intrinsic human dignity are inviolable, indivisible, and inalienable. However, they have been violated differently and with massive reach over time. The states must respect the right to life to protect other human rights. The right to life can be violated in many ways, but paying special attention to this right's violation by the state's security forces is necessary. It is relevant to establish that this research will analyse the deprivation of the right to life perpetrated by the state's security forces. This work will not examine other significant parts of the right to life, such as the death penalty[1], euthanasia[2], or abortion[3] in countries in Europe and America, as their analysis requires independent research, as case law and literature are rich in these fields.

This work aims to determine the standards of the European Court of Human Rights and the Inter-American Court of Human Rights when they issued judgments related to the violation of the right to life by security forces. It also intends to determine whether there are differences and/or similarities in the standards applied by two essential tribunals of Europe and America. This research will focus on the judgments issued by the ECtHR and the IACtHR related to the violation of the right to life perpetrated by security forces of the states.

This work will have four chapters and a conclusion. The first chapter will define the essential notions of this work and the characteristics of the court object of this study. The second chapter will be about the theoretical basis of this work with five subchapters. The third chapter will include the different categories of violation of the

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[1] Barry, Kevin M. "The Death Penalty and the Fundamental Right to Life". In: *BCL Rev*. Vol. 6. P.P. 1545-1604. 2019.

McCloskey, T.H.M.J.B. "The Death Penalty and the Right to Life." In: *Commonwealth Law Bulletin*, Vol 38, Nº3. P.P.485-508. 2012.

[2] Math, Suresh Bada; Chaturvedi Santosh K. "Euthanasia: Right to Life vs Right to Die." In: *The Indian Journal of Medical Research*. Vol 136, Nº6. P.P. 899-902. December 2012.

Ganthaler, Heinrich. "Euthanasia and the Right to Life". In: *Acta Universitatis Lodsiensis. Folia Philosophica. Ethica-Aesthetica-Practica*. Nº 21. P.P. 45-57. 2008.

[3] Carrier, L.S. "Abortion and the Right to Life". In: *Social Theory and Practice*. Vol. 3, Nº 4. P.P. 381-401. Florida State University Department of Philosophy. 1975.

McMahan, Jeff. "The Right to Choose an Abortion". In: *Philosophy and Public Affairs*. Vol. 22, Nº 33. P.P. 331-348. Published by Wiley. 1993.

right to life by security forces and analyse the judgments in each category of both courts. In this Chapter, the standards of each court regarding this crime will be determined. The last chapter will examine the standards of different cases regarding the violation of the right to life by the state's security forces. In this chapter, the standards established in the third chapter will be compared to determine their differences and similarities. Finally, there will be a conclusion about this research that will state the final notions.

2. Research Problem

This study's research problem is to examine the ECtHR and IACtHR standards of judgment about violations of the right to life caused by the security forces of the state parties. It is an explorative and descriptive problem.

Furthermore, it is longitudinal, as the standards established in the judgments of the ECtHR and IACtHR are over a determined period.

The judgments analysed from the practice of the ECtHR and the IACtHR are from 1988 to 2025. These dates are chosen because the IACtHR has been delivering judgments since 1988.[4] Although the ECtHR began delivering judgments in 1960, starting from the same date in both tribunals is necessary because, in this way, the comparison is more balanced. Only contentious cases will be considered for this work.

Regarding the objective of this research, this examination aims to identify and analyse similarities and differences between the standards on which the decisions issued by the IACtHR and the ECtHR are based, referring to the violation of the right to life caused by the state's security forces. This could determine how these international tribunals impose sanctions and impute the responsibility for violating the right to life to the arbitrariness of the state party's armed, police, and security forces.

This work aims to determine these similarities and/or differences to understand and analyse how these tribunals rule about this fundamental aspect of the right to life. Several works have been written about each category of violation of the right to life or

[4] IACtHR. Case Velásquez Rodríguez V. Honduras. Merits, Reparations and Costs. Judgment 29 July 1988. Series C No. 4.

the characteristics of each tribunal.[5] Moreover, some works compare these courts in different aspects.[6] However, my aim is unique because this research is about determining the similarities and differences between the standards concerning the violation of the right to life by the state's security forces in the IACtHR and the ECtHR. This is a particular subject because it takes a specific right, the right to life, and a unique perpetrator, the security forces. Although the security forces are the ones who commit the homicide, it is the state that is responsible for the actions of these forces. These can commit the homicide by action or omission, or intentionally or not. However, the states are the parties to the courts and have accepted the convention on human rights. Every organ of the state responds to it, and the state is responsible for its actions or omissions regarding human rights violations, such as security forces. Moreover, this work concentrates on Europe's and America's specific regional courts of human rights.

The specific objectives of this work are:

-Identify the standards applied to each specific case of violation of the right to life by security forces in the Inter-American Court of Human Rights practice and the European Court of Human Rights judgments.

-Compare the standards applied in the ECtHR and the IACtHR judgments.

-Determine the situation between the tribunals studied, establishing whether there is a dialogue or different criteria concerning the applied standards.

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[5] López Guerra, Luis. "Desapariciones Forzadas en la jurisprudencia del Tribunal Europeo de Derechos Humanos". In*: Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Instituto de Estudios Constitucionales del Estado de Querétaro. P.P. 431-452. México, 2020.

Claude, Ophelia. "A Comparative Approach to Forced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights." In*: Intercultural Human Rights Law Review.* Vol. 5. P.P. 407-461. 2010.

Piovesan, Flávia and Julia Cortez da Cunha Cruz. "Desaparición Forzada de Personas in the Inter-American System of Human Rights". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM.* P.P.20-42. 2020

[6] Parra Vera, Oscar. (2016) "Algunos aspectos procesales y sustantivos de los diálogos recientes entre la Corte Interamericana de Derechos Humanos y el Tribunal Europeo de Derechos Humanos." In: Santolaya. Pablo y Wences, Isabel (Coord.) *La América de los Derechos.* Centre of Political and Constitutional Studies. P. 565- 606. Madrid, Spain.

-Precise the judgments of the courts considering the articles of the Conventions relating to the right to life on which they are based and the differences between these. These provisions protect the right to life in Article 4 of the American Convention on Human Rights and Article 2 of the European Convention of Human Rights.

The Research Questions are:

1. Which standards are established by the Inter-American Court of Human Rights and the European Court of Human Rights in the judgments of violation of the right to life by security forces?
2. What are the similarities and differences between these standards?

3. Significance of the Study

The institutional and abusive violence exercised by the state´s security forces against their citizens constitutes a concern that is more visible and generalised in our current society and all over the world. Examples of this can be seen with the death of George Floyd in 2020 by the police of the United States or the repression in Colombia that occurred in April of 2021, perpetrated by security forces over the protesters.[7] A more recent case, for example, is the one that happened in France, where two motorcycle police officers from the Public Order Directorate spotted a car driven at high speed by a minor on an avenue west of Paris. The police officers approached the vehicle and asked the young man to park for a check. But the young man preferred to escape, along with two passengers, and the police followed him, demanding that he stop. Finally, the car had to stop because of traffic. The two police officers approached the driver and told him not to try to escape. They pointed their guns at him to dissuade him from fleeing and asked him to turn off the engine. But the young man tried to flee again, the policeman next to him fired a shot, and the driver, who had continued to flee, finally crashed into a wall.[8] This happened in June 2023 and triggered several protests of people repressed by the police in France. Another case is of a young man of 26 years

[7] https://apnews.com/article/death-of-george-floyd-minneapolis-police-reformd109eb0d3094119ddbcb560676467f19

https://www.telesurtv.net/news/colombia-indepaz-documenta-cifras-violencia-policial-20210616-0002.html

[8] https://idehpucp.pucp.edu.pe/boletin-eventos/violencias-urbanas-en-francia-represion-policial-e-insurreccion-de-jovenes-marginales-28384/

old who was killed by the police in Argentina. He was in the car with his friend, and the police intercepted them. They thought that the police wanted to rob them, so they fled, and then the police started to shoot and kill one of the men. This took place on 27 February 2025.[9] These are just the most recent examples of the number of violations and abusive force the state uses against citizens.

Without questioning the sufficiency of the domestic instruments in each country, it is essential to remember that the international level of human rights contributes to the jurisprudence that is not always present in the internal justice of the states.

What makes this work significant is the development and findings of the differences and similarities between the standards of the IACtHR and the ECtHR established in the third Chapter of this work. Moreover, it is determined to analyse if there is a dialogue or different criteria between these two regional tribunals of critical relevance. This work presents these relevant conditions for the academic and legal fields regarding worldwide standards.

4. Some Characteristics of this Work

The focus point of this research is the actions of state security forces violating the right to life in the IACtHR's and the ECtHR's practice. The subject is particular and limited to only one aspect of the right to life, where the perpetrators are the state's security forces. The regional human rights courts decide about the states' responsibility, considering whether these have complied with the provisions of the European and American Conventions of Human Rights. I wanted to concentrate on violations of the right to life by security forces because I think that is a fascinating subject not examined in depth in the literature nowadays. Considering this subject's many violations, it is significant to establish research on this issue. Furthermore, the court's decisions can have significant social effects, as in the case of Bulacio V. Argentina.[10] It played an essential role in this work because it was paradigmatic of the excessive use of force and brutality by the police, and it shook the whole society when it was determined.

[9] https://elcanciller.com/policiales/mar-del-plata--cinco-policias-de-civil-persiguieron-a-un-joven-que-creyo-que-intentaban-robarle-y-lo-mataron-a-balazos_a67a5019a803733900a8727ac

[10] IACtHR. Case Bulacio V. Argentina. Merits, Reparations and Costs. Judgment 18 September 2003. Series C No. 100.

While studying human rights at the university, I heard about this case, and it became necessary for me to study the behaviour of the security forces in a democratic state.

I applied several methods to this work. The technique I used for analysing the judgments was a case study. In Chapter III, the cases are presented with the standards in the different categories of violation of the right to life by security forces that I established after researching the judgments which are the objects of this study. Choosing some key cases to develop the standards for academic purposes was necessary because each court has many judgments about different categories. Furthermore, I used comparative law and the six methods.[11] I compared the standards in this category. I also applied document analysis for the first chapter, establishing the significant theoretical concepts for this thesis.

It is necessary to define the boundaries of my research. It is directed to determine similarities and differences between the standards in decisions regarding the violation of the right to life by the state's security forces in the ECtHR and the IACtHR, establishing determined cases as examples and five categories of breach of this right by this subject in these specific courts. I compare standards between the ECtHR and the IACtHR because they are more similar regarding the rights they protect in their conventions and have a vast trajectory that the African Court on Human and Peoples' Rights does not have. Later, I will explain in more detail why I chose these tribunals and left out the African Court. Primarily, this court concentrates on rights against discrimination, poor government, racial issues and genocide, which are very important. Still, its Convention and methodology differ from the categories of violation of the right to life by security forces that were established in this work and are used to judge other rights that are very significant but differ from the work of the IACtHR and the EtCHR and the violation of the right to life by security forces.

It is essential to determine that this research will study the right to life and the deprivation of life by security forces, establishing five categories where these situations may happen. Relevant to this work is the interconnected relation between the right to life and the right to a person's security and liberty, as well as the prohibition

[11] The six methods inside comparative law are: 1. The Functional Method, 2. The Structural Method, 3. The Analytical Method, 4. The Law-in-Context Method, 5. The Historical Method, and 6. The Common Core Method. Van Hoecke, Mark. "Methodology of Comparative Research". In: *Law and Method. European Academy of Legal Theory Series.* P.P. 1-35. 2011. Great Britain.

against torture, degrading, or inhuman treatment or punishment observed in Article 5 of the American Convention on Human Rights and Article 3 of the European Convention on Human Rights.

Furthermore, it is essential to clarify that the judgments of the courts studied concern the background and merits of the matter in contentious cases. This will exclude provisional measures and preliminary exceptions.

Moreover, the work establishes the right to life with its substantive and procedural aspects. After the procedural element and the investigation, the court may impose legal consequences for the crimes that the responsible must comply with. Generally, some reparations can be found in different forms, such as compensation and finding the truth, among other ways. The judgment is also a form of reparation.

Finally, it is determined if the security forces violate the right to life by action or omission. Although the security forces cause death, they respond to the state, so they bear responsibility for this.

4. A. The Concept of Standards

Standards for this research will be understood as the patterns used by the IACtHR and the ECtHR when deciding on a case and dictating a judgment condemning or absolving the accused. These can be determined according to the fundamentals established in the decisions of both tribunals and the decision-making process. The standards determined why the court in question decided in the way that it did. These patterns established in the court's judgments determine the fundamental base for their decisions and are according to the interpretation of the human rights conventions. The courts define these standards when establishing the substantive and procedural aspects of the right to life, its violations and the responsibility of the state parties.

According to the Merriam-Webster dictionary, a standard is established by authority, custom, or general consent as a model or example. The same dictionary determines that a pattern is a form or model proposed for imitation. These definitions can establish a vital base for defining the standards to which the courts object to the research applied in their decisions.[12]

[12] https://www.merriam-webster.com/dictionary/standard

https://www.merriam-webster.com/dictionary/pattern

This work needs to define the concept of standards to understand the comparison between the judgments of the IACtHR and the ECtHR. I will analyse the standards of the cases examined during these years to create a scientifically solid base for the study of my chosen subject.

4. B. Methodology of the Research

This investigation is doctoral legal research. It is an inductive work because conclusions will be generalised by studying the research object. The qualitative method will be applied. Primary and secondary sources are used to collect the necessary data. Comparative law will also be applied. Six different methods are included in this last category.[13] Furthermore, the case-study method will be essential for examining the judgments.

The methodological technique of documentary investigation will be used to conduct the research. The objectives will be reached through the investigation, reading, and critique analysis of the judgments related to the right to life concerning the deaths caused by the security forces of the state that the IACtHR and the ECtHR have established. The methodological technique selected allows, through the observation and the analysis of documentation, to look back, understand, and interpret the current reality.[14] These judgments permit the construction of a determined reality, and the purpose of this research is to accredit the interpretations and justifications made in the analysis. Starting from what is examined in the judgments, the standards used by both courts will be determined. Furthermore, it will establish an essential background for academics and jurists who must attend cases related to security forces violating the right to life.

The European Court of Human Rights and the Inter-American Court of Human Rights will be compared. The primary documents will be texts of doctrine about these two tribunals, the right to life, and the case law of contentious cases of these tribunals.

[13] 1. The Functional Method, 2. The Structural Method, 3. The Analytical Method, 4. The Law-in-Context Method, 5. The Historical Method, and 6. The Common Core Method will be applied together.

[14] Yuni, José Alberto. Urbano, Claudio Ariel. *"Técnicas para investigar: Recursos metodológicos para la preparación de proyectos de investigación."* Ed. Brujas, First Edition. Córdoba, Argentina. 2014. P. 40.

The first chapter presents the objectives and the methodology of this work. For this chapter it was used documental analysis. As the second chapter is a recollection of information about the theoretical basis of this work, the best method to apply is the documentary analysis to examine doctrine and case law about this subject. The third chapter analyses the case law of these courts about the violation of the right to life by security forces and classifies these judgments into five categories. For this, it is helpful to use case study and comparative law to understand how the courts decide on these cases. These judgments will be divided into categories of violation of the right to life by security forces of the state that will be established in the theoretical basis of Chapter II to make a more profound and dynamic comparison. Comparative law will be used in the third and fourth chapters, and combining the six abovementioned methods is part of this research method. The case study will also be applied. Also, comparative law is suitable for comparing the differences and similarities. The fourth chapter and the conclusion compare the courts' standards, applying the comparative law method. Furthermore, the qualitative method is used in the four chapters.

The ECtHR and IACtHR judgments are used as primary sources. I understand the language of both courts' decisions so that I could use these primary sources. Also, I applied many texts I had collected over the past few years as secondary sources in the research.

The text *"How to do Comparative Law"*[15] by John C. Reitz, and the comparative law method improved my work by helping me create a more dynamic, coherent, and organised exposition of the information. I used Mark Van Hoecke's *"Methodology of Comparative Research"* to describe the six comparative law methods.[16] This research will combine the abovementioned methods, considering each technique's advantages and disadvantages.

Reitz offers nine principles of comparative law:

1. Consider the relationship between the study of comparative law and the study of foreign law.

[15] Reitz, John C. "How to do Comparative Law". In: *The American Journal of Comparative Law*. Vol. 46. P.P. 617-635. 1998. P. 625.

[16] Van Hoecke, Mark. "Methodology of Comparative Research". In: *Law and Method. European Academy of Legal Theory Series.* P.P. 1-35. Great Britain. 2011. P. 26.

2. Basic techniques for comparing law in different legal systems and the unique value of that type of study.

3. 4. 5. Basic technique of comparing law in different legal systems and the exceptional value of that type of study.

6. 7. 8. Specific guidelines or carry out a comparison involving legal subjects.

9. Concerns the attitude that he believes to be indispensable guidance to strengthen the quality of comparative law studies and increase interest in the field.[17]

Furthermore, Reitz establishes other basic principles of the comparative method that are:

1. Comparative law involves drawing explicit comparisons, and most non-comparative foreign law writing could be strengthened by explicitly comparing.

2. The comparative method focuses on the similarities and differences among the compared legal systems. Still, in assessing the significance of differences, the comparatist needs to consider the possibility of functional equivalence.

3. The process of comparison is particularly suited to lead to conclusions: (a) distinctive characteristics of each legal system and (b) commonalities concerning how the law deals with the particular subject under study.

4. One of the benefits of comparative analysis is its tendency to push the analysis to broader levels of abstraction through its investigation into functional equivalence.

5. The comparative method can lead to an even more interesting analysis by inviting the comparatist to give reasons for the similarities and differences among legal systems or to analyse their significance for the cultures under study.

6. In establishing what the law is in each jurisdiction under study, comparative Law should (a) be concerned with describing the everyday conceptual world of the lawyers, (c) take into consideration the gap between the law on the books and law in action, as well as (d) essential gaps in available knowledge about either the law on the books or the law in action.

7. Comparative and foreign law scholarship requires strong linguistic skills in the anthropological field study to collect firsthand information about foreign legal systems. Still, it is also reasonable for the comparative scholar without the necessary

[17] Reitz, John C. "How to do Comparative Law". In: *The American Journal of Comparative Law.* Vol. 46. 1998. P.P. 617-635. P. 625.

linguistic skill or in-country experience to rely on secondary literature in languages the comparatist can read, subject to the usual caution about using secondary literature.

8. Comparative law scholarship should be organised to emphasise explicit comparison.

9. Comparative studies should be undertaken in a spirit of respect for the other.[18]

It is relevant to establish my line of thought to create the structure of the thesis. The idea is to establish the first theoretical part (Chapter I, Chapter II) with different aspects of the courts and the right to life, the categories of violation of the right to life that I settled, and the state's obligations. This theoretical part defines the background, challenges, essential notions, and concepts of human rights, especially the right to life. The second is a practical part (Chapter III) that determines the key cases of violation of the right to life by security forces in the IACtHR and the ECtHR. This part defines which cases are analysed and determines their facts and standards. Finally, the third part (Chapter IV) is theoretical and practical because it compares the standards divided into the substantive and procedural aspects. This includes an example of a fake case I invented and an interesting academic exercise in which I examined how the courts would decide according to the analysis and comparison of the standards. Finally, the conclusion determines the relevant notions discovered in the research. It establishes if the theoretical and practical parts have a connection or if the practical part differs from the theoretical, meaning that the practical should adjust to the theoretical or the theoretical should establish ideas closer to reality, which is the practical part.

I built the work in this way because I aimed to determine the standards applied by the regional human rights courts of America and Europe in cases regarding the violation of the right to life by the state's security forces and compare them. For this, a comparison between these standards is established, and the differences and similarities in the substantive and procedural aspects are determined. Finally, it is significant to determine if there is a dialogue or different criteria in the cases between the IACtHR and the ECtHR.

5. Human Rights Courts

This part will establish the relevant characteristics and organisation of the international human rights courts. Furthermore, it will explain why the IACtHR and the ECtHR

[18] Ibid.

were the objects of this research and not the African Court on Human and Peoples' Rights. Moreover, the basic history and features of the IACtHR and the ECtHR, as well as the significant perspectives of authors about these courts, are also included.

5. A. African Court of Human and Peoples´ Rights and its differences with the IACtHR and the ECtHR

Currently, three critical regional human rights courts operate: the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Human and Peoples' Rights.[19]

I will compare the European and American ones. I will also develop some characteristics of the African Court of Human Rights to determine why I did not include it.

The idea of creating the African Court of Human and Peoples´ Rights was first raised in 1961 in the Lagos Law Resolution. However, it was not until 1998 that the Assembly of Heads of State and Government of OAU (the Assembly of African States) adopted the Protocol to establish the Court, which came into force in January 2004. After some delay, the 4th AU Summit in January 2006 saw the election of the eleven judges.[20]

Africa is the world´s second-largest and most populous continent. It has historically been a region with widespread human rights violations manifested in several forms, including slavery, (neo) colonialism, apartheid, and multidimensional (extreme) poverty.[21] This work centres on comparing the IACtHR and the ECtHR because their human rights violations and judgments are more similar to those of the African Court. This latter tribunal shows that its cases have dealt with different and specific discrimination violations, colonialism, and its consequences.

[19] Lamm, Vanda. "Some Thoughts on the Proliferation of International Courts and Tribunals". In: *Társadalomtudományi Kutatóközpont Jogtudományi Intézet*. P.P. 414-424. Hungary, 2019. P. 416.

[20] Nalbandian, Elise G. "The Challenges facing African Court of Human and People´s Rights". In: *Mizan Law Review. Vol I No. 1, June 2007*. P.P. 75-89. 2007. P. 80.

[21] Ssenyonjo, Manisuli. "Responding to Human Rights Violations in Africa. Assessing the Role of the African Commission and Court on Human and People´s Rights" (1987-2018). In: *International Human Rights Law Review* 7 (2018) Brill Nijhoff. IHRL Review. P.P. 1- 42. 2018. P. 30.

The African Charter on Human and Peoples´ Rights (African Charter) was adopted in June 1981 and entered into force on 21 October 1986. The African Charter was ratified by 54 African member States, except the Kingdom of Morocco (which re-rejoined the AU in January 2017), marking the birth of the African regional human rights system. Over the years, several other human rights treaties have been adopted in Africa to strengthen the protection of the rights of vulnerable groups. In 1987, the Organization of African Unity (OAU) elected 11 members of the African Commission on Human and Peoples´ Rights (the African Commission). This organ receives and considers cases alleging human rights violations by any state party to the African Charter and makes quasi-judicial *"recommendations"*. The jurisdiction of the Commission is compulsory and automatic as it extends to all state parties to the African Charter.[22]

The African Commission was established in 1987 following the entry into force of the African Charter in 1986. Its headquarters are based in Banjul, The Gambia. The Commission consists of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality, and competence in human and people's rights. Commissioners are nominated by state parties to the Africa Charter and elected by the AU Assembly of Heads of State and Government. Still, they are required to serve in their capacity. The Commission is mandated to interpret all the provisions of the African Charter at the request of a state party, an institution of the AU, or an African Organization recognised by the AU. In addition, the Commission considers communications or complaints lodged by individuals and non-governmental organisations (NGOs), subject to meeting the admissibility criteria without requiring the complainant to be a victim or a victim's family member.[23]

The main achievements of the Commission include the development of standards on the various provisions of the African Charter through (i) decisions on the admissibility of communications mainly concerning exhaustion of domestic remedies; (ii) adoption on merits of communications; (iii) adoption of resolutions, principles, guidelines, general comments, model laws, and advisory opinions; (iv) special rapporteurs and working groups to deal with thematic human correct issues; (v) consideration of state reports a conducting on-site visits and (vi) referral of communications (unimplemented

[22] Ibid.

[23] Ibid.

interim measures serious or massive human rights violations, or Commission´s admissibility and merits finding) to the African Court.[24] These characteristics are most similar to those of the IACtHR and the ECtHR. The African Court took these older courts as a model.

Since its operation in July 2006, the African Court on Human and Peoples´ Rights has supplemented the protective mandate of the African Commission by providing legally binding judicial decisions.[25] Another reason for excluding this Court from this research is that it is a new Court that has been working for only 20 years, while the other two Courts are much older, with more cases and more experience to explore and compare. The Court has jurisdiction to determine *"all cases and disputes"* submitted to it concerning the interpretation and application of the African Charter and any other human rights instrument ratified by the states concerned.[26]

Only 34 states of Africa are part of the African Court and have ratified the Protocol establishing the Court.[27]

In 2006, the African Court of Human and Peoples´ Rights complemented the protective mandate of the African Commission. The African Court's material jurisdiction extends to all human rights instruments ratified by relevant states. All states parties to the African Charter have not yet ratified the Protocol establishing the African Court.[28] Considering all the points presented above, it is essential to highlight that the African Court of Human and Peoples´ Rights is a very young court that does not have the significant trajectory of the European and Inter-American Courts. It is relevant to add that the methods of interpreting claims are very different in the African Court from the other two Courts, and it is for these reasons, this research is taking the IACtHR and the ECtHR as objects. Moreover, the cases presented before the African Court differ enormously regarding the subjects of the IACtHR and the ECtHR

[24] Ibid.

[25] Ibid. P. 35.

[26] Ibid.

[27] https://www.african-court.org/wpafc/

[28] Ssenyonjo, Manisuli. "Responding to Human Rights Violations in Africa. Assessing the Role of the African Commission and Court on Human and People´s Rights" (1987-2018). In: *International Human Rights Law Review 7*. Brill Nijhoff. IHRL Review. P.P.1-42. 2018. P. 35.

judgments. This does not mean that the research could be amplified to the African Court as an advanced research step in the future.

It is relevant to establish the thoughts of the Fatsah Ouguergouz court.[29] This author states that the cultural relativism of the African Court is found in the three principal innovations: the rights of solidarity, the duties of the individual, and the designation of *"people"* as a legal subject.[30] This is an interesting perspective, considering that the African Court determines the people as legal subjects with their juridical personalities, rights, and duties.

Furthermore, Ouguergouz states that the philosophy of assimilating without being assimilated and of borrowing only that which was compatible with the profound nature of African civilisation is mainly reflected in the place given to the right to development and a system of individual duties rooted in the traditional conception of African social organisation.[31] This notion is significant to understanding this tribunal's basis and organisation and why it is not in this work. It is a court established on the African continent, which includes the importance of African roots and development.

The author continues by saying that there are notable differences between this tribunal and its counterpart protection models, such as the equal treatment given in the Charter to economic, social, and cultural rights on the one hand and to civil and political rights on the other, and the inclusion of guaranteed individual rights. However, despite the distinctions, there are points of convergence.[32] Another reason for excluding this court from this examination is that, despite its possible convergences with European and American courts, it has many differences. One is this court's equal treatment of political and civil rights and economic, social, and cultural rights. Although the IACtHR and the ECtHR have judgments related to economic, social, and cultural rights, there is a predominance of civil and political rights protection.

Moreover, this author establishes that cultural practices on the continent, such as female circumcision, may be seen as conflicting with physical integrity under Article

[29] Ouguergouz, Fatsah. "The African Charter on Human and Peoples' Rights. A Comprehensive Agenda for Human Dignity in Africa." The Hague/London/New York: In: *Martinus Nijhoff Publishers*. P.P. 47-1016. 2003. ISBN 9041120610.

[30] Ibid. P. 478.

[31] Ibid. P. 601.

[32] Ibid. P. 619.

4 of the African Charter,[33] which states the right to bodily integrity.[34] This is a fascinating view of the author because, about cultural practices, there are differences between what the tradition of specific communities determines and what is in the letter of the Charter. The author states that the right should be interpreted in favour of the individual, in a *"pro homine"* point of view.

Ouguergouz establishes a need to fill in the gaps by referring to the more fully developed universal standard.[35] The author determined that there is a vacuum regarding specific articles of the Charter.

For the author, the African Charter is the first legal instrument to recognise people's right to existence explicitly. It asserts as a right that has previously only existed as a prohibition under the Genocide Convention. In the author's view, the right to existence may require that states come to the aid of a group whose existence, whether physical or cultural, is threatened, regardless of whether genocidal intent is present. The Charter's condemnation is of genocide in a broader sense.[36] Although Africa is not the only continent where genocides have taken place, it is true that in recent history, this continent has had this crime committed, or the intention of committing, on several occasions. That is why this author acknowledges the danger of this crime and the necessity of recognising the right to the existence of different groups or communities. Furthermore, Ouguergouz notes that the Commission has succeeded in creating its jurisdiction in this field out of nothing. The author draws an unmistakable parallel with the Inter-American Commission on Human Rights, whose development pattern also reflects a gradual broadening of its mandate for protection through a courageous interpretation of its Statute.[37] The author establishes a difference between the African and the American Commission, where the first has managed to create a jurisdiction

[33] Organisation of African Unity. *African Charter on People and Human Rights*. Adoption on 1 June 1981. Entered into force 21 October 1986. Article 4: Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

[34] Ouguergouz, Fatsah. "The African Charter on Human and Peoples' Rights. A Comprehensive Agenda for Human Dignity in Africa." The Hague/London/New York: In: *Martinus Nijhoff Publishers*. P.P. 47-1016. 2003. ISBN 9041120610. P. 711.

[35] Ibid. P. 720.

[36] Ibid. P. 801.

[37] Ibid. P. 926.

from a legal vacuum. At the same time, America has strictly determined its basis from the Inter-American Court of Human Rights Statute.

Karen Alter establishes more differences between the European and American Court of Human Rights and the African Court. Unlike the European and Inter-American human rights systems, most African countries have not accepted this court's jurisdiction, which likely contributes to the reluctance of the African Commission to refer explosive cases to the court. The political limitations of the African Union's human rights system have arguably facilitated the expansion of African regional courts into human rights issues. Most of Africa's regional systems work to address regional problems related to poverty, poor governance, and development.[38] This author states what was already mentioned about the difference in the cases that the African Court on People and Human Rights rules related to growth, governance and poverty, not only the subjects but the ones that appeared the most. Another difference is the jurisdiction, because African Countries are still reluctant to submit to the human rights court and decide to refer to other regional court cases regarding human rights. This may be because the African Court on People and Human Rights is still very new and accommodating, but in the future, more countries may rely on the jurisdiction of this court and accept being part of it.

5. B. Inter-American Court of Human Rights

The following two subchapters will establish the characteristics, organisation, and functioning of the IACtHR and the ECtHR. Then, another subchapter will present different authors' perspectives on these courts.

Before the American Convention on Human Rights, the American countries relied on the Charter of the Organisation of American States to protect their rights and fundamental freedoms. Charles Fenwick establishes that the Charter of the Organization of American States established social and artistic standards in social and cultural relations to achieve just and decent living conditions for their people and protect their fundamental rights.[39]

[38] Alter, Karen. *"The New International Courts"*. iCourts Online Working Paper, Nº2. iCourts- The Danish National Research Foundation Centre of Excellence for International Courts. 2013. P. 34.

[39] Fenwick, Charles G. "The Inter-American Regional System". In: *Journal of International Affairs*. Vol 9, Nº 1. Problems and Progress in Latin America. P.P. 93-100. 1955. P. 99,100.

The Inter-American System of Human Rights is a series of international instruments established as a regional system of promoting and protecting human rights. Two organs were created throughout this system to ensure the observance of the rights established in the instruments that integrate the system: the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.[40]

The Inter-American System formally started with the American Declaration of the Rights and Duties of Man in 1948. Additionally, the system has other instruments, such as the American Convention on Human Rights, the American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearances of Persons, and the Convention to Prevent, Sanction, and Eradicate the Violence against Women (Belem do Pará), among other statutes and regulations.[41]

The American Convention on Human Rights is also called Pacto de San José de Costa Rica and established that the Commission and the Court are the competent bodies to know about the affairs related to the compliance with the commitments made by the state parties of this Convention, and regulates the functioning of these organs. The American Convention on Human Rights was subscribed on the 22nd of November 1969 and entered into force on the 18th of July 1978.[42]

The IACtHR was established when the American Convention entered into force. On 22 May 1979, the states' parties of the American Convention chose the first judges of the Court. The first meeting was held on 29 and 30 June 1979 in the Organization of American States headquarters in Washington, D.C. The Court's headquarters are in San José, Costa Rica.[43] This court used the ECtHR, the first regional court of human rights and the first to develop a convention on these, as a model.

The Inter-American Commission on Human Rights promotes the observance and defence of human rights. It serves as an advisory body of the Organization of American States. The Commission has different types of competencies. This organ has political faculties such as onsite visits to the state parties suspected of violating the rights of the Convention and the elaboration of reports about human rights in the state parties. The Commission also has a quasi-judicial capacity for receiving complaints from particular

[40] Inter-American Court of Human Rights. *"ABC de la Corte Interamericana de Derechos Humanos. El qué, cómo, cuándo, dónde y for qué de la Corte Interamericana"*. 2013. P. 4.

[41] Ibid.

[42] Ibid. P. 7.

[43] Ibid.

individuals, NGOs, or other organisations about human rights violations. This institution examines these petitions and adjudicates the cases in which the admissibility requirements are always met.[44] The Commission was created by Resolution III of the Fifth Reunion of the Reunion of Foreign Affairs Ministries, which was held in Santiago, Chile, in 1959.[45]

The Inter-American Court of Human Rights is an autonomous judicial institution aiming to apply and interpret the American Human Rights Convention. The court has the contentious function of resolving contentious cases and the mechanism of supervising judgments. Moreover, this judicial organ has an advisory duty and the function of dictating provisional measures.[46]

The Court is composed of seven judges from the OAS member states. The judges cannot participate in the decisions of cases involving their countries of origin. In interstate cases, a judge can be appointed *ad hoc* based on the nationality of the states involved.[47]

The contentious function of the court includes that this organ has to determine if a state incurred international liability for violating any of the rights established in the American Convention or other human rights treaties applied in the Inter-American system. Through the contentious function, the court monitors and enforces the judgments.[48]

Monitoring the compliance of the court resolutions implies that this requests information from the state about the developed activities and the effects of such compliance within the period established by the court. Also, the court must collect the observations of the commission and the victims or their representatives. After this step, the court has the necessary information to establish if there was compliance with what has been resolved, guide the actions of the state to this end, and comply with the obligation of information to the General Assembly about the state of conformity of the cases that are presented before it. Furthermore, if necessary, the court summons the state and the representatives of the victims to an audience to supervise the

[44] Ibid.

[45] Ibid.

[46] Ibid.

[47] Ibid. P. 8.

[48] Ibid.

implementation of its decisions. The court can hear the opinion of the commission about the subject.[49]

The advisory function of the court responds to questions that formulate the state parties of the OAS or the organ of this one about a) the compatibility of the internal rules and b) the interpretation of the Convention or other treaties concerning the protection of human rights.[50]

The court can also apply Provisional Measures, which this tribunal establishes in cases of extreme gravity and urgency and when necessary to avoid irreparable damage to people.[51]

The court sessions are held annually for as many periods as necessary.

5. C. European Court of Human Rights

The European Commission and European Court of Human Rights were set up in Strasbourg with full judicial powers to investigate and remedy any alleged breach of the rights in the European Convention. The existence of these supranational bodies, in effect, translates the human rights named in the European Convention into positive rights for the inhabitants of Western European states.

Maurice Cranston analyses the beginning of the ECtHR in his text. He states that the Council of Europe, which produced the European Convention on Human Rights in 1950, naming only the traditional *"political and civil rights,"* made considerable progress in enthroning human rights.[52]

The individual can appeal over the heads of his national government to secure redress. This has been possible only because the concept of rights embodied in the European Convention is coherent and rational, whereas that contained in the Universal Declaration is ruinously ambiguous.[53] This author praises the operation of the ECtHR and the Convention. He establishes that the European Convention on Human Rights is

[49] Ibid.

[50] Ibid.P. 10.

[51] Ibid.

[52] Cranston Maurice. "Are there any Human Rights?" In: *Daedalus. Vol. 112, No. 4, Human Rights* (Fall, 1983). P.P. 1-17. 1983.

[53] Ibid. P. 9.

much better at protecting these than the Universal Declaration of Human Rights,[54] which he calls ambiguous. The Universal Declaration is not a binding document like the European Convention, which may be why this author believes the European Human Rights system works so well. The work of the ECtHR to interpret and apply a complete document of human rights, such as the Convention, has demonstrated effectiveness in respecting and fulfilling human rights.

The European Convention on Human Rights established in Article 1 that the contracting State should secure rights and freedoms within its jurisdiction. Fundamentally, the national systems provide redress for breaches of their provisions, and the court exerts its supervisory role subject to the principle of subsidiarity. This was confirmed in Article 13 of the Convention, which requires that contracting states provide an effective remedy for violations of the Convention. The object of Article 13 is to provide a means for individuals to obtain relief at a national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the court.[55]

The text *"Paralelo entre Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos"*[56] It is vital to establish the function and organisation of this tribunal. It also helps to determine the differences and how each of these courts works.

First, the ECtHR's nature and legal regime make it the highest judicial authority guaranteeing human rights and fundamental freedoms in Europe. It is the organ in

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[51] General Assembly of the United Nations. *Universal Declaration on Human Rights*. Resolution 217 A. 10 December 1948. Paris, France.

[55] Council of Europe and European Court of Human *Rights European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 13: "Everyone whose rights and freedoms as outlined in this Convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity."

[56] Fajardo, Ana María. *"Paralelo entre Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos".* In: Implicaciones del derecho en la sociedad. April 2020. DOI: https://www.researchgate.net/publication/343735227_PARALELO_ENTRE_TRIBUNAL_EUROPEO_DE_DERECHOS_HUMANOS_TEDH_Y_CORTE_INTERAMERICANA_DE_DERECHOS_HUMANOS_CIDH#:~:text=%3A10.13140/RG.2.2.36274.63681 (Parallel between the European Court of Human Rights and the Inter-American Court of Human Rights).

charge of ensuring the effective exercise of the rights established in the European Convention on Human Rights. This is the evolution of the Permanent Tribunal of 1959, based in Strasbourg.[57]

It is essential to remember that this is not an Appeal Court (nor the IACtHR) and cannot modify or cancel the decisions of domestic tribunals. Its function is to establish the existence of violations of the rights established in the European Convention on Human Rights and its Protocols.[58]

The responsibility of the states for the non-compliance of the positive obligations of protection by the national authorities justifies the duty of adopting the necessary measures to prevent and suppress the violations committed by individuals.[59] In the case of this work, those individuals are the security forces that depend on the state.

The headquarters of this Court is in Strasbourg, France. The Court comprises 46 independent judges appointed by the 46 signatory states. They last 9 years in their seat and are not re-eligible by the Consultative Assembly of the Council of Europe. Representatives of the 46 National Parliaments integrate into this Assembly. An absolute majority in this organ chose one of the three candidates proposed by the state. These candidates must be jurists of recognised competence. These judges act individually and not in the representation of the state that elected them. They have plain independence, impartiality, and exclusive dedication. [60]

The European Court of Human Rights comprises the Great Chamber with 17 judges, five sections with 9 or 10 judges, the Commission of Admission with three judges, and Unique Judges deciding the manifestly inadmissible requirement. A president, two vice presidents, and the presidents of the five different sections are chosen for three years and can be renewed. Each section´s administrative division is constituted for each specific case of 7 judges, who are the ones who ordinarily know and resolve the matters through a judgment. They decide about admissibility and the merits of the subject.[61]

A particularity is the figure of the National Judge, who is a judge designed for the defendant state and is a part of the Chamber that is in the knowledge of the matter. If

[57] Ibid. P. 101.

[58] Ibid. P. 115.

[59] Ibid.

[60] Ibid.

[61] Ibid.

the first chosen judge cannot assist, the applicant state designates a judge Ad Hoc for this matter.[62]

The Great Chamber comprises 17 judges, including the President of the ECtHR, vice presidents, the Presidents of Sections, National Judges, and judges chosen by lottery, except the magistrates who were part of the chamber that established the judgment. Intervenes could be modified when a chamber is inhibited because the matter is relevant to the Convention's interpretation or a criterion established in previous decisions. Also, the Great Chamber intercedes when one of the parties has requested it, and these have three months to request. The Chamber established a revision of the judgment. This is an exceptional mechanism, not a second instance. There are a few cases that this Chamber has revised.[63]

The Parliamentary Assembly of the Council of Europe establishes the judges. This Council also has the Committee of Ministers and the Secretariat. These judges are chosen from a list of candidates presented by each state member of the Council of Europe. The candidates must be jurists of the highest moral character. They must also meet the required conditions to exercise high judicial functions or be lawyers or scholars of recognised competence.[64]

The lawsuit before the ECtHR has formal and substantive requisites. The violation denounced in the case must be chargeable to the applicant state's public authority (legislative, executive, or judicial). The legitimation is substantiated by the fact that any physical person, non-governmental organisation, or group of individuals considered a victim of an infringement of any of the rights guaranteed by the ECHR has the right to interpose its demand. This violation must be committed by a state that has ratified such Convention. Then, the applicant may present the lawsuit and have to comply with a specific form denouncing the alleged infringement. Furthermore, it could be interstate demands. The petitioner must be the direct and personal victim of the denounced violation. This is a resource with a subsidiary character. Accessing this jurisdiction is an indispensable condition to have exhausted all the recourses offered in each country's domestic justice system.[65]

[62] Ibid. P. 125.

[63] Ibid.

[64] Ibid.

[65] Ibid. P. 130.

Establishing how this tribunal works is essential to understanding the ECtHR cases. This tribunal is organised into five sections, each with a judicial chamber. Each section has a president, a vice president, and several judges. The 46 judges of the ECtHR are selected by the Parliamentary Assembly of the Council of Europe from a list of applicants proposed by the member states. [66]

Applications received by the Court will be allocated to one of these formations:

1. Single Judge: only rules on the admissibility of applications that are inadmissible based on the material submitted by the applicant.
2. Committee: Composed of 3 judges, the committee rules on the admissibility of cases and their merits when the case concerns an issue covered by well-developed case law (the decision must be unanimous).
3. Chamber: Composed of 7 judges, chambers primarily rule on admissibility and merits for cases that raise issues that have yet to be repeatedly ruled on (a majority may decide). Each chamber includes the Section President and the *"national judge"* (the judge with the nationality of the state against which the application is lodged).
4. Grand Chamber: composed of 17 judges, the Grand Chamber hears a small, select number of cases that have been either referred to it (on appeal from a Chamber decision) or relinquished by a Chamber, usually when the case involves a substantial or novel question. Applications never go directly to the Grand Chamber. The Grand Chamber includes the President and Vice-President of the Court, the five Section presidents, and the national judge.[67]

It is essential to determine that the judgments analysed here are those of the Great Chamber and the Chambers. I chose this method because it is crucial to examine what is decided about the merits of the cases to determine the standards.

5. D. Perspectives about the IACtHR and the ECtHR

Introduction

This subchapter discusses different authors' perspectives on these courts and their characteristics, requirements, and opinions on human rights and the right to life. The previous subchapters established the main characteristics and requisites concerning the organisation and functioning of the regional human rights court. These essential

[66] https://ijrcenter.org/european-court-of-human-rights/#Structure

[67] Ibid.

notions were stated regarding the IACtHR and the ECtHR. Furthermore, it was explained why the African Court on Human and Peoples' Rights is not involved in this work. It was vital to determine another part to describe the views of certain actors regarding these courts. It was separate from the practical first part to determine theoretical aspects regarding these tribunals. The order is chronological.

Different Perspectives about the IACtHR and the ECtHR

The authors' different views regarding the IACtHR and the ECtHR are examined.

An engaging article to start this part is the one by Martti Koskenniemi. Concerning the proliferation of international courts, Martti Koskenniemi's and Paivi Leino's text *"Fragmentation of International Law? Postmodern anxieties"*[68] establishes the problems with the different interpretations of law between the International Court of Justice (ICJ) and the ECtHR. These authors state that by discussing the effect of certain territorial restrictions in Turkey's declarations, the ECtHR expressed that its role differed from that of the ICJ. Article 36 of the ICJ Statute permitted *"the attachment of substantive, territorial and temporal restrictions to the optional recognition of the Court's jurisdictional competence"*.[69] It had served as a model for the corresponding provision in the European Convention. Nevertheless, unlike the Strasbourg Court, the ICJ was not tasked with direct supervisory functions concerning a law-making treaty such as the Convention. These authors describe how the ICJ has been bothered by the proliferation of international courts and the non-concordance of its jurisdiction. The ECtHR determined that such a fundamental difference in the respective tribunals' role

[68] Koskenniemi, Martti and Leino, Paivi. "Fragmentation of International Law? Postmodern Anxiety". In: *Leiden Journal of International Law.* Vol. 15. P.P. 553-579. 2002.

[69] United Nations. *Statute of the International Court of Justice*. Adopted in 1948 in Paris, France. Article 36: 1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or treaties and conventions in force. 2. The states parties to the present Statute may at any time declare that they recognise as compulsory ipso facto and without special agreement, about any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a) the interpretation of a treaty; b) any question of international law; c) the existence of any fact which, if established, would constitute a breach of an international obligation; d) the nature or extent of the reparation to be made for the breach of an international obligation. 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states or for a specific time. 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies to the parties to the Statute and the Registrar of the Court.

and purpose, coupled with a practice of unconditional acceptance, provides a compelling basis for distinguishing Convention practice from that of the International Court.[70] The ECtHR determines its own Convention and interprets and applies this to its standards and reasoning, a significant difference from the ICJ. The international public law system is not hierarchical; the ECtHR does not have to respond to the ICJ if it decides to interpret the law differently. Furthermore, the ECtHR has changed the optional clause, and now compulsory jurisdiction for the states is mandatory and is different from the ICJ.

These authors highlight that the new tribunals and implementation bodies represent new forms of bias, dressed in universalist principles, that are not identical to the preferences of public diplomacy that the ICJ was created to administer.[71] The IACtHR and the ECtHR represent these new international courts with their conventions and ways of interpreting them, creating and achieving the evolution of human rights law.

Koskenniemi and Leino acknowledge the essential concept of the proliferation of international courts and the problem between them. They take the different notions and functions of the ICJ and the ECtHR as an example. This is a significant approach to examining differences in a horizontal hierarchy, such as the international courts. The authors explained why the ICJ is not entirely concordant with other courts and how international tribunals can judge differently according to their Conventions or Instruments. This approach is necessary to understand the phenomenon of the proliferation of international courts and the diversity between them.

Another significant author to analyse is Anikó Raisz and her article about the transfer of values of the regional human rights tribunals.[72] She establishes Europe as the mother of several human rights-related thoughts or initiatives, and all–entirely or almost–continent–wide, basically political international organisations protecting human rights. This could serve as an example for other continents. The transfer of European and universal values took place, but – partly according to the different social circumstances – other regional systems also reached excellent and significant development in human

[70] Koskenniemi, Martti and Leino, Paivi. "Fragmentation of International Law? Postmodern Anxiety". In: *Leiden Journal of International Law.* Vol. 15. P.P. 553-579. 2002. P. 567, 568.

[71] Ibid. P. 577.

[72] Raisz, Anikó. "Transfer of Values as to the Regional Human Rights Tribunals". In: *2nd ESIL Research Forum: The Power of International Law in Times of European Integration*, Budapest, Hungary. 2007.

rights protection.[73] Raisz notes that the ECtHR was the first tribunal for human rights and the one that developed them and their protection. Nevertheless, she also observes that the African Court and the IACtHR have evolved in their jurisdiction and have achieved vital progress in protecting human rights.

Raisz establishes that Interaction – or cross-fertilisation between human rights tribunals- is an interesting development of international law.[74] Although Raisz establishes that the ECtHR was the first to develop human rights protection, a convention, and a court, this does not detract from the evolution achieved by the IACtHR, which she finds vital and significant. The fact that regional systems on – admittedly similar, but unquestionably not adequate- different conventional bases use the explicit quotation of each other's jurisprudence to support their judgments is a fascinating and not at all evident phenomenon.[75] For this author, there is an apparent dialogue between these two human rights courts. They quote each other and can maintain an influence despite their differences.

Raisz states that in most cases, the interaction is not deliberately constructed and applied but is current in international forums' decisions about another forum's jurisdiction or a part of that, which is a fascinating phenomenon worth a glance. Judges rarely explain their motives; jurisprudence has the task of finding the logic behind them, and so do the international judges' interactions.[76] In this author's opinion, the interaction between tribunals is not planned but happens when assessing cases. For her, the logic of this dialogue is impossible to determine.

Raisz establishes the transfer of values between the ECtHR and the IACtHR, stating that despite the ECtHR being the pioneer, the IACtHR also made significant developments in human rights. The division of the tasks between the Inter-American Commission and the Inter-American Court followed the concept of Strasbourg. Still, it was, of course, adapted to the unique circumstances of the American continent.[77] It is relevant to highlight that since 1998, the ECtHR has not had a commission, so it works differently from the IACtHR. The author establishes that individual petitions are more used in the ECtHR than in the IACtHR, but the latter has more cases of

[73] Ibid. P. 1.

[74] Ibid. P. 2.

[75] Ibid.

[76] Ibid. P. 2.

[77] Ibid. P. 3.

advisory opinions. In both courts, there are few cases of state versus state.[78] The IACtHR has fewer individual petitions related to the Inter-American Commission on Human Rights, which interposes most cases in front of the court to represent individual, collective, or NGO complaints.

Interim or provisional measures serve as prevention, mainly to prevent violation of Articles or—as the Rules of Procedure of the Inter-American Commission say—to avoid irreparable harm to persons in general. The IACtHR developed the law more on this topic than Europe did. When applying these interim measures, San José can look mainly at the cases against Turkey and Bulgaria in Europe. Unfortunately, the IACtHR itself has many occasions to use this.[79] In Latin America, other types of violations are the focus because, for example, there are numerous cases where special groups are affected, like the matter of Haitians and Dominicans of Haitian origin in the Dominican Republic (since 2000).[80] There are many cases in the IACtHR where there are vulnerable groups that need immediate protection, such as migrants, children or indigenous groups. In the case law of the IACtHR, there are many cases of massacres committed against indigenous groups. Chapter II also examines a case of Haitians who migrate to the Dominican Republic and are treated poorly and in an inhumane manner. The president of the IACtHR can order the provisional measures reinforced later by the seven-member tribunal.[81] The jurisdiction of the International Court of Justice inspired these measures. Still, it can be established that the IACtHR's practice went much further than Europe's or the ICJ's. In the case of Mamatkulov and Askarov V. Turkey[82], the ECtHR even cites (a significant part of) the IACtHR's jurisdiction and the Inter-American Commission's rules to support its position against a state not fulfilling certain obligations.[83] Although this work concentrates on contentious cases, it is interesting what the author establishes about provisional measures that are more

[78] Ibid.

[79] Ibid. P. 4.

[80] Ibid.

[81] Ibid.

[82] ECTHR. Mamatkulov and Askarov V. Turkey. (Application nos. 46827/99 and 46951/99). Judgment February 4, 2005. Par. 49-53

[83] Raisz, Anikó. "Transfer of Values as to the Regional Human Rights Tribunals". In: *2nd ESIL Research Forum: The Power of International Law in Times of European Integration*, Budapest, Hungary. 2007. P. 4.

common in the work of the IACtHR than the ECtHR, even though the IACtHR adopted these measures under the influence of the ECtHR, which in turn was inspired by the International Court of Justice.

Compared to Europe, in the Inter-American system, the *locus standi*, the right to bring a legal case to a court of law or to appear in that court, of the victims is much stronger. They have the right to participate at any stage of the procedure, comment just to be present, or even mention articles of the American Convention that the Inter-American Commission ignored in its report when forwarded to the IACtHR. In Europe, where there is a written and an oral part of the procedure (hearings), but the former is much more accentuated, the victims' position is much weaker.[84] The victims' participation in the IACtHR process is necessary, considering that the Commission interposes the cases, and the direct and indirect victims must be able to establish their rights before the tribunal.

Concerning the remedies, there exists variegation, which the IACtHR uses more than the ECtHR pecuniary reparation, non-pecuniary reparations, moral compensation, fact-finding, social reconciliation, or, more concretely: *"obligaciones de hacer"*, the obligation to do something (e.g. to solve the explosive social situation), building a school for Indigenous children, among others.[85] Europe, representing the concept that the state has to find out how to provide a remedy, stays by declaring the injustice as an adequate moral indemnification; simultaneously, it is more favourable for the victims concerning the costs of the international procedure than the Inter-American system. A revolutionary idea of the IACtHR is the so-called *"project of life",* which pays exceptional attention to the victim and plays a part in determining reparation. The so-called *"project of life"* refers in part to the possible earnings that the person who died could have made if it was still alive, and this corresponds to their relatives. This area is where the solutions and the values connected with them should also be transferred shortly to Europe.[86] The reparations are the next step after the legal consequences, including the responsible's punishment. The IACtHR has established many reparations throughout its case law, including obliging the state to name a street as a victim of a crime.

[84] Ibid. P. 5.

[85] Ibid. P. 5,6.

[86] Ibid. P. 6.

The right to life is a field that San José, due to the unique circumstances, had more opportunity to deal with. As Strasbourg, until the end of the 1980s, did not have to treat the question, it is pretty evident that later it paid attention to what San José did. This reference became two-sided; the two courts refer to each other in this field, but admittedly, the topic is much more elaborated in the jurisdiction of San José, as they have met more variations of the violation of the right to life in recent years.[87] The situation that the author describes directly relates to the many cases of forced disappearances that the IACtHR have to resolve, starting with Velásquez Rodríguez V. Honduras in 1988. To this day, there are more than eighty cases in this category. The ECtHR took the example of the American Court when, ten years later, it started to judge this crime.

The establishment and consolidation of the continuing situation theory is – at least partly – due to interaction. The doctrine of *"continuing violation"* is accepted and applied in the Inter-American system. It means that once the country received the court's jurisdiction, subsequent actions or inactions were subject to review, even if they arose from an event before acceptance.[88] This is an exciting concept transfer from the ECtHR to the IACtHR. Still, it may have troubles with the state and the legitimate legislation of the court regarding events that happened before being part of the Convention. However, the IACtHR has found that the duty of the state to investigate is a continuing obligation, which persists until the remains of the disappeared person are found and the guilty have been prosecuted and punished.[89] As the IACtHR expressed itself, in the case of a continuing or permanent violation, which begins before the acceptance of the Court's jurisdiction and persists even after that acceptance, the tribunal is competent to examine the actions and omissions occurring after the recognition of jurisdiction, as well as their respective effects.[90] This means that the investigation by the state must continue even if the facts took place before the state was part of the Convention, considering the right of indirect victims (relatives of the person) to have an answer about the fate and whereabouts of the direct victim.

[87] Ibid. P. 7.

[88] Ibid.

[89] Ibid.

[90] Ibid. P. 8.

The IACtHR has established that a state can be responsible if it has not fulfilled its obligation to investigate the facts of the case and identify, prosecute, and punish the responsible parties. In the Velásquez Rodríguez V. Honduras case 1988, one of the first cases for the IACtHR, the court established a breach of the American Convention about the general duty to guarantee protected rights. Ever since then, though not radically, it has not hesitated to interpret human rights to some extent in a manner that advances the victim's aspect to that of diplomacy. The general obligation to respect human rights is also present in Article 1 ECHR; they are quasi-parallel dispositions (another clear sign of the transfer of values).[91] One of the similarities between these courts is that they refer to the overall protection of the right to life. The influence of the European Convention in America is well established.

The author establishes what Cançado-Trindade emphasised in the case law of the IACtHR: The provisions of human rights treaties bind not only the governments but, more than that, the states (all its powers, organs and agents). The continuing violation theory is a way of thinking which originates in the European system but was undoubtedly developed in the Inter-American system of human rights, especially in the jurisdiction of the Inter-American Court, and therefore, again, a value transferred from one continent to another.[92] The way of thinking of Candado Trindade is significant to understanding what the tribunals are condemning. It is not only the state responsible for human rights violations, but its whole apparatus. The continuity violation theory is necessary for cases where the government's investigation has not achieved results because of negligence or acquiescence of the state. The IACtHR and the ECtHR have established that the state must continue investigating, finding the responsible, and trying to punish them.

The role of the Inter-American and European Human Rights Tribunals is significant in the general development of international law, especially as to the evolution of human rights protection at a universal level due to the transfer of values between these tribunals. It is hoped that both will adopt further progressive and sometimes revolutionary legal institutions or ways of thinking. It is very positive that in the field of international law, where there is no institutionalised coordination of the international fora, the courts take the initiative and pay attention to the jurisdiction of

[91] Ibid.

[92] Ibid. P. 8,9.

others. The transfer of values has achieved a more unified human rights protection worldwide.[93] The work of the regional human rights tribunals is essential for the development of human rights, and this can be better achieved with a dialogue between the IACtHR and the ECtHR because no superior organ can establish basic principles about these rights. And it is even true when every continent has unique features and circumstances.[94] Each court must develop linked decisions but adjust to each continent's characteristics and situations.

Raisz determines the significant notion of the transfer of values. This refers to adopting standards or a model developed by one court by another tribunal. This is an essential concept for this work where the IACtHR has stated its Convention and tribunal following the model of the ECtHR, but adapting this to its Continent, context and circumstances. Furthermore, the author has compared some aspects of these courts well. I agree with Raisz that although the IACtHR has followed the model of the ECtHR, it has developed its standards and characteristics.

The author, Luis Barrionuevo Arévalo, establishes the benefits and disadvantages of multiplying international courts.[95] He states that conflict arises when a unique body diverges from the general rule, not because of disagreement about the general law, but because a special law applies. In this case, no change is envisaged to the general law; the unique body considers that a special law applies to the issue and acts accordingly. An example of such a body is the ECtHR, which, on several occasions, has departed from the International Court of Justice concerning the validity of reservations considered incompatible with the European Convention on Human Rights.[96] The situation with the proliferation of international courts is that, unlike the national courts, there is no hierarchical order where one court can establish that its statute or convention is more important than the other. This can be a problem, like the case presented by the author for the International Court of Justice and ECtHR, but it is also a benefit. Because of this lack of hierarchy and the horizontality in international law, the IACtHR and the ECtHR can establish a dialogue and quote each other to decide on

[93] Ibid. P. 9,10.

[94] Ibid. P. 9,10.

[95] Barrionuevo Arévalo, Luis. "The Multiplication of International Jurisdictions and the Integrity of International Law." In: *ILSA Journal of International & Comparative Law. Vol. 15 Nº 1.* P.P. 49-60. 2008.

[96] Ibid. P. 56.

cases that help protect and evolve human rights. Furthermore, they can adjust the human rights to each continent's characteristics and, if necessary, apply different criteria without having to respond to the other courts for their decisions. The ECtHR has also dismissed interpretations of international agreements or general international law rules aimed at creating exceptions to the obligations of the contracting states under the European Convention on Human Rights.[97] Concerning this, the author establishes the multiplicity of international courts, which leaves greater latitude for experimentation and exploration of new ideas and can lead to improvements in international law.

These forums deal with numerous and often highly specialised issues that any international court could not handle. Therefore, they complement each other's work and strengthen the system of international law.[98] This is especially significant for the work of the IACtHR and the ECtHR and their constant influence on each other.

Barrionuevo Arévalo highlights, as Koskenniemi and Leino do, the importance of the proliferation of international courts and their advantages and disadvantages. According to these texts, it is possible to determine that the ICJ have issues with the proliferation of courts because they have often ruled differently and are far from this tribunal. In my view, it is necessary to acknowledge that the situation of the human rights tribunals with the ICJ is different. The human rights courts protect only human rights regarding their conventions and the individuals' human rights violations against a determinate state. The ICJ must decide on different situations of law regarding several international instruments, and the cases are only between states. As Raisz has determined, the human rights tribunals have few interstate cases. For this, I believe the multiple international courts specified in different subjects, circumstances, regions, contexts, and situations are of the utmost importance.

About other aspects concerning the IACtHR, it is interesting to examine the text of Robert Goldman: *"History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission of Human Rights".*[99] This author establishes that if saving lives and securing broad reparations to victims are appropriate

[97] Ibid. P. 57.

[98] Ibid. P. 60.

[99] Goldman, Robert K. "History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission of Human Rights". In *Human Rights Quarterly*. *Vol. 31.* P.P. 856-887. 2009.

measurements of the effectiveness of any such supervisory bodies, then arguably no other system has been more successful than the Inter-American system.[100] Here, the author states the efficacy demonstrated by the Inter-American System in preventing the violation of the right to life and the reparations that the court established.

The author explains that when the American Convention on Human Rights entered into force in 1978, a dual system for protecting human rights included the American Declaration on Rights and Duties of Man, which is not binding, and the Charter of the Organisation of American States. These latter instruments are applied in states not part of the Convention. The Commission can only refer cases to the Court directed against states that have ratified the American Convention and have expressly accepted the Court's jurisdiction. In this sense, the American Convention essentially prescribed maximum, not minimum, human rights. Moreover, the framers of the American Convention largely transposed or projected a whole set of values and attitudes toward the law that were not widely entrenched in Latin America. The states that drafted and approved the European Convention were mainly genuine liberal democracies with strong and independent judiciaries. Their purpose in elaborating that convention was to strengthen and preserve existing rights rather than create new ones. The experience of Latin America stands in stark contrast. Despite their nominal commitment to constitutional democracy, many Latin American states had histories of vacillating between authoritarianism and relatively unsuccessful experiments in democracy.[101]

The author presents that the American Convention tried to be a complete instrument of human rights to determine these compliance and set values not embedded in America. The situation on this continent can be explained. Unlike the stable and consolidated judiciaries of Europe, most of the countries of Latin America have a history of vacillating between dictatorships and democracies. Because of this, the idea of the drafters of the Convention was to establish the maximum amount and quality of rights to help the American states to respect human rights.

Goldman quotes Henry Steiner and Philip Alston. These establish that the European Commission and Court have rarely dealt with completely unresponsive or even antagonistic governments or national legal systems or with deep structural problems that led to systematic and serious human rights violations. By contrast, states of

[100] Ibid. P. 857.

[101] Ibid. P. 866,867.

emergency have been standard in Latin America, the domestic judiciary has often been extremely weak or corrupt, and large-scale practices involving torture, disappearances and executions have not been uncommon. Many governments with which the Inter-American Commission and Court have had to work have been ambivalent towards those institutions at best and hostile at worst.[102] This significant difference between the two continents influences their Conventions and Courts.

Goldman highlights the hard work of the Inter-American Commission on Human Rights, overall on-site visits and the drafting of reports about human rights in several countries that had a high impact on the countries' situations of violation of human rights. Furthermore, the author establishes the importance of the settlements the Commission extends, which have been very successful in recent years. These settlements, which the Commission routinely offers to litigants generally after declaring a petition admissible and opening a case, provide an attractive alternative to protracted litigation before the Commission and the Court. Furthermore, they have frequently resulted in highly creative and generous reparation measures for broad categories of victims of human rights abuses. This new emphasis on cases has not been to the detriment of *in-loco* visits (a visit with the participation of at least two commissioners) and the preparation of country reports. These continue to be an essential part of the Commission's work, particularly concerning those countries experiencing armed conflict or serious institutional problems.[103] The Commission's load of work incrementally substantively in the nineties, when several lawsuits about forced disappearances, disproportionate use of force, massacres, police brutality and extrajudicial executions were interposed before this human rights organ. The Commission presented many cases to the IACtHR and arranged extrajudicial settlements to avoid overloading the court's work.

However, *"working"* visits in recent years by the Commissioner and staff member responsible for the country have supplanted, to some degree, the more cumbersome and expensive on-site visit by the entire Commission. It can be expected that future country visits and ensuing reports, instead of examining the *"global"* human rights

[102] Steine, Henry and Alston, Philip. *"International Human Rights in Context: Law, Politics, Morals"*. 2d ed. 2000 Oxford University Press. P. 869.

[103] Goldman, Robert K. "History and Action: The Inter-American Human Rights system and the Role of the Inter-American Commission of Human Rights". In: *Human Rights Quarterly. Vol. 31*. P.P. 856-887. 2009. P. 881.

situation in the country concerned, will be far more focused on addressing and formulating recommendations concerning specific human rights practices.[104]

Goldman establishes the difficulties that the Commission and the IACtHR must face. As a result of the Commission's reform of its regulations in 2001, whereby presumptively all cases are now referred to the Court, that body's thirteen staff lawyers cannot be expected to deal with the fifty-plus current cases and over sixty provisional measures on its docket, much less with the anticipated referral of fifteen to twenty new cases a year from the Commission.[105] The Court and the Commission have an overload of cases to judge, and it is challenging to comply with the large number of cases that these organs of human rights receive. The same situation can be seen in the ECtHR, where one of the biggest problems is that the court cannot resolve so many cases quickly because there are too many for the number of judges. Even if these courts have a way to discriminate which cases get to the last instances, there are still numerous.

The failure of most state parties to the American Convention to adequately implement that instrument's rights and guarantees under domestic law or to fully comply with orders and decisions of the Commission and Court has also adversely affected the functioning and integrity of the system. It is a frequently overlooked fact that the primary responsibility for implementing the American Convention rests with the state's parties themselves. Under the American Convention, state parties not only pledge to secure all persons subject to their jurisdiction, the free exercise of the rights and freedoms recognised in that instrument, but also undertake to accord domestic legal effect to, as well as harmonise their interpretations of domestic rules with those rights and freedoms. They may have to modify or even derogate any domestic legal norm incompatible with their obligations under the American Convention as a corollary. States parties are similarly required to provide effective judicial remedies to all persons claiming violations of these rights and freedoms. It is worth noting that the record of state party compliance with Commission and Court decisions relating to the payment of monetary compensation to victims of human rights violations has improved compared to the period of authoritarian rule.[106] However, this is not as significant as it seems. The democratic states do not comply with every court decision

[104] Ibid.

[105] Ibid. P. 883.

[106] Ibid. P. 883,884.

that establishes that they must, in some instances, undertake a practical investigation concerning the crimes of human rights violations and identify, prosecute and punish the state agents responsible for violating human rights. Most state parties regularly plead *res judicata* (this doctrine prevents a party from re-litigating any claim or defence already litigated) or prescription under domestic law as excuses for failing to comply with orders and decisions.[107] It is worth noting that within the Council of Europe, noncompliance with judgments of the European Court of Human Rights is subject to sanctions, including exclusion from the regional system.[108] This could be resolved if the domestic courts adjust their legislation to the Convention, not only in the letter of their Constitutions but also in the practice of the domestic courts that apply the provisions of the American Convention on Human Rights and condemn the violation of these. In this way, fewer cases need to be interposed before the Commission and the IACtHR. The compliance and efficiency of the domestic courts would be the best remedy to protect human rights. However, it would be a good idea to take the example of the ECtHR and establish sanctions such as excluding a state from the Inter-American System if it consistently ignores the court's rulings and the commission's reports. This would be more powerful if the IACtHR presented an optional jurisdiction, and the states decided to be parties to the court, unlike the compulsory jurisdiction of the ECtHR.

Goldman highlights that the United States, Canada, and various Caribbean Island states are currently the only members that have not yet ratified this instrument. This means that the system established under the American Convention, including supervision by the court, applies only to Latin American states. This situation is hardly ideal for various reasons. From a human rights standpoint, it creates a disadvantage for the inhabitants of non-ratifying countries by effectively denying them access to the court in claims against their respective states. From a political standpoint, it also has negative consequences, particularly for non-signers. By remaining outside the Convention structure, the United States and Canada have increasingly found their credibility challenged in the Organisation's political bodies when they have pressed various Latin American states to live up to their human rights obligations under the

[107] Ibid. P. 884.

[108] Ibid. P. 885.

American Convention.[109] It is a shame that many American states have not yet ratified the Convention. If the United States, Canada, and Caribbean countries adopt the Convention, it would be an excellent step toward achieving regional protection of human rights on the continent. This would serve as a safeguard for their citizens against the possibility of human rights violations. It is also ironic that the United States and Canada have established pressure on Latin American countries regarding human rights obligations when they have decided voluntarily not to be part of the Convention. In my opinion, Goldman significantly determines the advantages and disadvantages of the IACtHR. Furthermore, this author acknowledges one of the main problems of this court and the ECtHR: the overload of cases and the difficulty in deciding promptly. This is why decisions take a lot of time to make. Goldman also highlights the differences between the regional human rights courts regarding the unique circumstances of each continent. This was mentioned above, but, in my view, this author explains the political and legal causes of the possible standards applied by each human rights court.

An article by former judge Candado Trindade of the IACtHR, *"Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law,"*[110] is a thought-provoking text. This author establishes that the international rule of law finds expression not only at the national but also at the international level.[111] The growth of international adjudicative organs transcends peaceful dispute settlement, pointing to the gradual formation of a judicial branch of the international legal system. The author highlights the importance of an international rule of law that has come with the proliferation of international courts after the Second World War. In a globalised, interconnected, and communitarian world, it is necessary not only to protect rights by national law but also by international courts that apply international law to resolve disputes. States must surrender some of their powers when committing to an international law statute or convention. This is not well received by several countries that decide not to be part of this international jurisdiction or be a part of some of the international courts, but not all of them. One example is the United

[109] Ibid. P. 887.

[110] Candado Trindade, Antonio Augusto. "Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law." Part. I. Ed. *Inter-American Juridical Committee of* the *Organisation of American States.* P.P. 233-259. 2010.

[111] Ibid. P. 235.

States, which is part of several international treaties established mainly by the United Nations but not part of the American Convention on Human Rights and the IACtHR. There is a great need for a sustained law-abiding system of international relations (an international rule of law). Judicial settlement bears testimony to the superiority of law over will, pressure, or force. The applicable legal norms preexist the dispute itself.[112] This author highlights that human rights preexist the positive establishment of them in international human rights law. Furthermore, for Candado Trindade, judicial settlements determine the superiority of law over the enforcement of this. According to the author, an international rule of law is necessary. I agree with the author that a supranational rule of law gives confidence to individuals about compliance with international instruments that protect fundamental provisions. However, in my opinion, the horizontality of the international tribunals must be protected because it allows the evolution of international law and human rights.

The IACtHR and the ECtHR have found themselves under the duty to preserve the integrity of the regional conventional system of protection of human rights as a whole. In their shared understanding, it would be inadmissible to subordinate the operation of the respective traditional protection mechanisms to restrictions not expressly authorised by the European and American Conventions, interposed by the states parties in their instruments of acceptance of the two Courts. This would not only immediately affect the efficacy of the operation of the conventional protection mechanism at issue, but, furthermore, it would fatally impede its possibilities of future development.[113] When states accept membership in the American or European Convention, they take responsibility for protecting human rights. If they decide to leave these Conventions or the courts decide to expel them, they must follow the rules of this instrument. If this were not the case, the states could stop complying with the provisions of the Convention in their jurisdiction, which would be dangerous for the protection of human rights. When the Conventions establish a mechanism for leaving, states that have compromised with these must follow.

In the international protection of human rights, there are no *"implicit"* limitations to exercising the protected rights; the limitations outlined in the treaties of protection

[112] Ibid. P. 236.

[113] Ibid. P. 241.

ought to be restrictively interpreted.[114] The implicit limitations may be a problem in the compliance of the obligations of the states concerning human rights because they must understand that they have to do it, but they may avoid it. For this, the author's idea is interesting in acknowledging the necessity of more explicit international enforcement of compliance in protecting human rights. The optional clause of the international tribunals of human rights makes no exception to that: it does not admit limitations other than those expressly contained in the human rights treaties at issue, and, given its capital importance, it could not be at the mercy of limitations not foreseen therein and invoked by the states parties for reasons or vicissitudes of domestic order.[115] The states cannot decide unilaterally that they will not be submitted to the jurisdiction of human rights courts when a case is interposed against them. The limitations they can follow are the ones established in the Convention.

The formulation of the optional clause of the compulsory jurisdiction of the IACtHR in Article 62[116] of the American Convention is not simply illustrative but precise. No state must accept an optional clause, as its name indicates. But if a state party decides to take it, it should do so in the terms expressly stipulated in such a clause. According to Article 62(2) of the Convention, the acceptance by a state party of the contentious jurisdiction of the IACtHR can be made in four modalities, namely: a) unconditionally;

[114] Ibid. P. 242.

[115] Ibid.

[116] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica*, San José of Costa Rica, 7 to 22 November 1969. Article 62. 1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognises as binding, ipso facto, and not requiring special agreement, the of the Court on all matters relating to the interpretation or application of this Convention. 2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court. 3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

b) on the condition of reciprocity; c) for a specified period; and d) for specific cases.[117] The American states have four ways to accept the court's contentious jurisdiction, and if they do so, they can comply with the provisions in these terms. What they must not do is accept unconditionally and later decide to change that and not submit to the court's decisions. These four are the only modalities in which the state has to accept jurisdiction; there are no other. The states cannot impose any conditions or restrictions later.

Regarding the ECtHR, the entry into force of Protocol Nº 11[118] affords another conspicuous example of automatic compulsory jurisdiction.[119] Candado Trindade's statement establishes its great concern about the mandatory jurisdiction of international courts and states' compliance with this. The IACtHR has not yet established a Protocol such as this to ensure compulsory jurisdiction.

The IACtHR and the ECtHR have contributed to erecting contemporary international adjudication into a new universalist dimension beyond the peaceful settlement of international disputes on a strictly inter-state basis. They have thereby enriched contemporary Public International Law.[120] The case law of these courts has enriched international law by creating standards and helping to evolve human rights law and international public law.

Candado Trindade finds that the coexisting international human rights tribunals have succeeded in establishing approximations and convergences in their respective case law despite the distinct factual realities of the two continents on which they operate. The work of the ECtHR and the IACtHR has indeed contributed to creating an international order based on respect for human rights in all circumstances.[121] The

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[117] Candado Trindade, Antonio Augusto. "Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law." Part. I. Ed. *Inter-American Juridical Committee of* the *Organisation of American States.* P.P. 233-259. 2010. P. 244, 245.

[118] Council of Europe and European Court of Human Rights. *Protocol Nº11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on 11 May 1994. Strasbourg, France. Protocol Nº 11 to the European Convention on Human Rights for the Protection of Human Rights and Fundamental Freedoms restructured the control machinery established.

[119] Candado Trindade, Antonio Augusto. "Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law." Part. I. Ed. *Inter-American Juridical Committee of* the *Organisation of American States.* P.P. 233-259. 2010. P. 244, 245.

[120] Ibid. P. 255.

[121] Ibid. P. 256.

author highlights the importance of these two regional courts for human rights, stating that they had to adapt the universal human rights of their Conventions to the characteristics of each Continent, as Robert Goldman determined. The most significant is creating an international public order of human rights and the respect and protection of these in all circumstances. Moreover, the dynamic or evolutive interpretation of the respective human rights Conventions (the intertemporal dimension) has been followed by both the ECtHR and the IACtHR. This outlook is essential for having come at a time when a new international human rights tribunal was established, the African Court on Human and Peoples' Rights.[122] Candado Trindade also highlights the evolution of human rights in the case law of these courts and determines that this is of absolute significance when a new tribunal is created. This international public order of human rights is an influence. The author highlights that the African Court is very new and may benefit from the experience of the American and European Courts.

The European and the Inter-American Courts have contributed to enriching and humanising contemporary Public International Law.[123]

This author establishes that the ECtHR asserted that the European Convention of Human Rights is *"a living instrument"* to be interpreted in light of current living conditions. Such an evolutive interpretation bears witness to the incidence of the temporal dimension in legal interpretation.[124] The same understanding has been advanced in the American continent by the IACtHR, which espoused this evolutive interpretation of the American Convention on Human Rights. Thus, the interpretation pursued by the ECtHR and the IACtHR of the respective human rights treaties is not static, clinging to state consent expressed at the time of their adoption, but rather evolutive, taking into consideration the advances achieved in the corpus of human society in the protection of human rights throughout the years.[125] It was already established that human rights case law is constantly evolving. This means that human rights are interpreted according to the time they apply. The IACtHR has even

[122] Ibid.

[123] Ibid. P. 258.

[124] Candado Trindade, Antonio Augusto. "Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law." Part. II. *Ed. Inter-American Juridical Committee of the Organisation of American States*. P.P. 285-366. 2011. P. 353.

[125] Ibid. P. 354.

determined that the American Declaration on the Rights and Duties of Man[126] must be construed according to the current times. The name itself is not concordant with this period because it does not include women in its title. The Conventions on Human Rights are living instruments that evolved through time and must be interpreted accordingly. The human rights that protect people evolve with them and their necessities.

Candado Trindade establishes essential notions for international human rights law, but the two most significant, in my opinion, are two. First, there must be a global rule of law. This means there must be respect, compliance, and protection of international law and, most importantly, human rights. Many states are reluctant to give up part of their sovereignty to adjudicate under international law. As the author acknowledges, human rights are pre-existent to the positive law. All states parties to the Charter of the United Nations (193 in the current times) are obliged to protect these even if they are not part of any human rights conventions. The other essential notion established by the former judge is that the human rights conventions are living instruments. The ECHR and the American Convention on Human Rights and its interpretation must adapt to the context, circumstances and the specific situation in the determined period in which they are applied. This way, international human rights law will continue evolving and adapting to the new circumstances in a constantly changing globalised world.

Another engaging text to include in this study is the one by Karen Alter about the new international courts.[127] The author says that currently, there are twenty-four permanent international courts. She defines an international court with the following characteristics: 1) a permanent institution, 2) composed of independent judges, and 3) adjudicating disputes between two or more entities, one of which can be a state or international organisation. They 4) work based on predetermined rules of procedure and 5) render legally binding decisions.[128] This work states that such characteristics correspond with the IACtHR and the ECtHR. The predetermined rules are the American Convention on Human Rights and the ECHR. These courts make binding

[126] Organisation of American States. *American Declaration of the Rights and Duties of Man.* Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

[127] Alter, Karen. *"The New International Courts".* iCourts Onlne Working Paper, Nº2. iCourts- The Danish National Research Foundation Centre of Excellence for International Courts. 2013.

[128] Ibid. P. 7.

decisions that are the contentious cases object of this work, but can also determine advisory opinions if a state party asks for them.

Alter establishes that international courts are also independent. They have rules that ensure that judges cannot be removed except for malfeasance and that the working conditions for judges cannot be altered because states are unhappy with legal rulings. Like all judges, the men and women who staff international courts bring their world views and experiences to judging, and their larger political context influences them. However, since international courts are composed of judges from multiple countries, and because each country gets to nominate its candidate of choice, international courts are also independent in that they are virtually impossible to stack. The political environment in which they work may be politically fraught.[129] The states cannot remove a judge because they disagree with the result of the judgment. Furthermore, the independence and impartiality of the judges are ensured because of their different backgrounds and countries. Each judge comes from a different country with diverse political views. Still, the ability of governments to inflict personal retribution is far more limited than most suspect and arguably much less of a factor in international judicial politics than in domestic judicial politics.[130] There is a significant difference between the IACtHR and the ECtHR because judges from American and European countries do not have the same way of thinking. Even inside each court, each judge from a different country on the same continent has their own views and background. According to the author, the idea is that the judges of international courts are impartial because it is not possible to be influenced by political rewards regarding their decisions.

Alter states that the supporters of the international courts are more likely to rally behind a judicial institution that is being critiqued for doing precisely what it has been asked to do. In other words, an international court explicitly authorised to oversee state compliance with the law is likely to receive cases involving state compliance, and an international court and its supporters are usually more willing to defend an exercise of delegated jurisdiction.[131] The author establishes the difference between confidence in international courts and national courts. In the latter, it is possible to critique the judges

[129] Ibid.

[130] Ibid.

[131] Ibid. P. 15.

for their decisions because of political involvement. This is impossible in the international courts because the judgments are from judges of different countries. According to the author, international courts are more prone to achieve state compliance in their judgments because they know this decision has been independent and impartial. Also, they have a political interest in being seen as a state that follows the international jurisdiction to have a better image at a global level and secure economic and political interests. Furthermore, they cannot avoid complying with the decision of an international court to which they have submitted their jurisdiction and be part of it. The delegated jurisdiction is seeing more cases for states than its domestic courts.

The author states that the *"new style"* is international courts with far-reaching compulsory jurisdiction and access for non-state actors, private litigants and/or supranational prosecutorial bodies-- to initiate litigation.[132] The author determines the characteristics of the new international courts that she establishes as the ones that no longer accept only the state as parties but also non-state actors, private litigants, NGOs or international organisations as parties. These are the international courts that were born after the Cold War. Another aspect of these new courts is the compulsory jurisdiction. The ECtHR and the IACtHR receive lawsuits from non-state actors such as individuals or NGOs (the IACHR through the Commission) but can only interpose cases against states, and only these can be parties.

The author establishes that the Organization of American States allow countries to opt into the court's jurisdiction. Still, regional integration, trade systems and the Council of Europe require members to submit to the regional court's compulsory jurisdiction. She establishes a difference between the IACtHR and the ECtHR and their characteristics as new or old courts. The IACtHR mixes old and new courts because a supranational commission interposes in the lawsuits. The ECtHR follows the model of the new courts because supranational and private actors can initiate rights.[133] The IACtHR's option to be part of this has caused it to have far fewer members than the ECtHR, where the Council of Europe requires a mandatory submission. Also, although the ECtHR allows private actors to interpose demands in front of this, this court and the IACtHR still have only states as parties. However, the ECtHR has evolved more

[132] Ibid. P. 17.

[133] Ibid. P. 17,19.

than the IACtHR by letting individuals interpose their demands without coming through the Commission or non-governmental actors, as in the latter.

International courts with human rights jurisdictions follow one of two models associated with the European Court of Human Rights (ECtHR). The first relied on states to consent to the court's compulsory jurisdiction. States could consent for short periods and withdraw their consent if they were unhappy with court rulings. The original ECtHR also had a supranational commission that vetted human rights complaints and served as a court gatekeeper. It is the model copied by the Inter-American Court of Human Rights. Still, the Inter-American Court has made it hard for states to withdraw consent once given, and the Inter-American Commission has been increasingly willing to refer cases to the Inter-American Court. The post-Protocol 11 (1998) ECtHR has compulsory jurisdiction and direct private access.[134] The IACtHR copied the first ECtHR model that existed when it was established (1979), but did not make changes when the European Court did. These changes made by Protocol 11 in 1998 allowed direct private access for lawsuits of non-state actors, gave the court compulsory jurisdiction and eliminated the European Commission. Although the IACtHR did not establish these changes, it was decided that the Commission refer more cases to the Court. Furthermore, from the beginning, it was difficult for the states to withdraw consent from the IACtHR, which did not happen in the ECtHR before the reform. It is necessary to watch how the IACHR develops if it changes the possibility of individuals having direct access to interpose cases before it, and if its jurisdiction changes from optional to compulsory. As the ECtHR did, I believe the decision of a compulsory jurisdiction will be an excellent change for the IACtHR. However, eliminating the Inter-American Commission would be an enormous change for the Inter-American System of Human Rights, especially in all the significant work that this Commission is commended to do.

Moreover, Alter highlights that ECtHR litigation rates increased at the end of the Cold War, especially in 1998 when direct private access to the court became compulsory for all Council of Europe members.[135] This is why the IACHR should make these changes: to increase litigation and add more members.

[134] Ibid. P. 27.

[135] Ibid. P. 37.

Alter determines significant concepts regarding international courts. I believe the most crucial point of this text is the notion that international courts have judges from different countries, allowing for a more impartial and independent approach. In my opinion, the judgments of these courts are more prone to compliance and confidence of the states and individuals because there is no political or economic interference, as it can occur in domestic courts. Furthermore, I believe the IACtHR must change the optional jurisdiction to a compulsory one. This way, all American states will be part of this court, and the individuals under their authority can file their cases about human rights violations before the IACtHR. This will ensure the protection of human rights or the possibility of this in all American states. I believe the opportunity to present individual petitions is also a necessary change in the American Court for a more extensive protection of human rights. However, I think eliminating the Commission, as it happened in the ECtHR, is unnecessary in the IACtHR.

Regarding the IACtHR, this tribunal has extensively established the prohibition of impunity and amnesty in its case law. It is interesting to analyse Christina Cerna's text.[136] She states that in a case interposed by Mexico (Radilla Pacheco V. Mexico), the court found that upon expanding the competence of the military jurisdiction to crimes that are not strictly related to military discipline or with juridical rights characteristic of the military realm, the state had violated the rights of the next of kin to a competent tribunal and to an effective recourse for contesting the exercise of military jurisdiction.[137] This was a case of enforced disappearance, and in the domestic jurisdiction, was judged by military discipline. This is inside the same forces which violated the right to life. This goes against what this court has established about impunity and the necessity of a fair trial, determined in Article 8 of the American Convention on Human Rights. This is the reason why the IACtHR decided in this case that there was no justice for the relatives of the victims, and the state was responsible for violating the right to an effective investigation that derives from Article 4, which

[136] Cerna, Christina M. "Unconstitutionality of Article 57, Section II, Paragraph A) of the Code of Military Justice and Legitimation of the Injured Party and His Family to Present and Appeal for the Protection of Constitutional Rights. Amparo Review Nº 133/2012." In: *The American Journal of International Law.* Vol 107. P.P.199-208. United States, 2013.

[137] IACtHR. Radilla Pacheco V. Mexico. Merits, Reparations, and Costs. Judgment 23 November 2009. Series. C No. 209, paras. 314, 392(5).

protects the right to life. This court is against amnesty laws and judgments of military jurisdiction that do not go through the standard instances of a country's domestic law. The Supreme Court of Mexico noted, in the context of the resolution, first, that by a decree published on February 24, 1999, Mexico had recognised the compulsory jurisdiction of the IACtHR for all cases regarding the interpretation and application of the American Convention. It then determined that identifying the IACtHR's compulsory jurisdiction meant that when Mexico is a party to a case or controversy before the IACtHR, the judgment and all the related considerations constitute *res judicata*. It is exclusively the role of the IACtHR to evaluate every exception formulated by Mexico regarding the scope of the court's competence and the reservations and other exceptions formulated by Mexico to the Court's jurisdiction.[138] Mexico did not comply entirely with the judgment of the IACtHR that established the investigation, trial and punishment of the responsible for the disappearance of Mr. Radilla Pacheco. The country's Supreme Court determined the jurisdiction of the IACtHR. This domestic tribunal stated that Mexico had accepted the court's compulsory jurisdiction, which is optional, unlike the ECtHR, which is compulsory. The mandatory jurisdiction of the IACtHR applies to all cases concerning the provisions of the American Convention on Human Rights. The judgment of the IACtHR had the character of *res judicata*, which means that a matter is judged and cannot be judged again. This court has the prerogative to determine a judgment considering the reservations that Mexico has established in its ratification instrument of the compulsory jurisdiction of this court. This means that Mexico cannot reject the compliance with this regional human rights court's judgment when it has accepted the court's jurisdiction with its reservations.

In addition, the Mexican Supreme Court determined that the IACtHR's judgments are legally binding on all state organs within the sphere of their respective competencies. As regards the judiciary, the operative parts of the judgment and all the criteria by which the case was decided are binding on all Mexican judges.[139] The judgment of the IACtHR is binding for all the states that have agreed to ratify the Convention and be

[138] Cerna, Christina M. "Unconstitutionality of Article 57, Section II, Paragraph A) of the Code of Military Justice and Legitimation of the Injured Party and His Family to Present and Appeal for the Protection of Constitutional Rights. Amparo Review Nº 133/2012." In: *The American Journal of International Law.* Vol 107. P.P.199-208. United States, 2013. P. 202.

[139] Ibid.

part of the court. For this, the Supreme Court of Mexico acknowledges that the judgments of this court are binding for all state organs and judges. The state must comply with the judgment of the IACtHR because it has decided to accept its compulsory jurisdiction, and the court respects this country's reservations. If the state has become part of the court, the authorities must not ignore its judgments. Furthermore, the state cannot judge a case which considers the military as perpetrators by a military court in its domestic law. The criminal court must judge this case. If not, allowing impunity is against the standards of the IACtHR. As for those cases to which Mexico is not a party, the reasoning and jurisprudence of the IACtHR are to serve as guidance for the Mexican judiciary. The Supreme Court added that it was not in its jurisdiction to review a judgment of the IACtHR.[140] The Supreme Court determines a significant concept that in all the cases in which Mexico is not a party, the judiciary of this state should be guided by the reasoning and jurisprudence of the IACtHR. This domestic court recognised the relevance of this regional human rights tribunal and the duty as a state party to protect and guarantee in its judicial order the provisions of the American Convention on Human Rights.

The impact of international human rights law on military jurisdiction in Mexico continues a trend that may be the Inter-American system's most significant contribution to the evolution of the rule of law in the Americas. To cite the most dramatic examples, Argentina, Colombia, and Peru have all seen the jurisdiction of their military courts radically reduced because of decisions of the Inter-American system.[141] This is a significant contribution of the IACtHR. As will be established in Chapter III, this court has fought extensively against the impunity of perpetrators who violate human rights. The IACtHR determines the prohibition of impunity and amnesty laws in its case law. Furthermore, it establishes that the cases of homicides by security forces must be judged by the civil and penal domestic courts and not the military tribunal, as can be seen in this example of Mexico. The author establishes a situation that took place numerous times in this country.

I agree with the arguments presented by Cerna in this text. The IACtHR and the ECtHR have determined extensively in their jurisprudence the necessity of an impartial judgment of the domestic courts that must be carried out by a different organ than the

[140] Ibid.

[141] Ibid. P. 204.

one against which the accusation is made. For this reason, military courts are not allowed to decide on cases where the military is charged. This provides impunity for the perpetrators and the lack of justice for the victims. Furthermore, in my opinion, what the author states about the compliance of the judgments of the IACtHR is significant. There is no appeal of these judgments, and if the state party has accepted its jurisprudence, even with reservations, it must comply with it. I think that the notion that the author acknowledges about the influence that the decisions of this court must have in the domestic jurisdiction of state parties is an essential concept that must be applied to every domestic judgment regarding human rights provisions.

Diana Contreras-Garduño establishes a similarity between the human rights conventions.[142] She believes that, like the European Convention on Human Rights, the American Convention protects civil and political rights such as life, personal liberty, property and freedom of expression. It also provides for the creation of a regional court: the Inter-American Court of Human Rights.[143] This author reiterates that the American Convention on Human Rights has used the ECHR as a model and that civil and political rights protection predominance exists. However, both Conventions determine significant concepts about economic, social, and cultural rights, but there is an apparent pre-eminence over the protection of civil and political provisions. This is another difference from the African Charter on Human Rights, which determines vital provisions for economic, social, and cultural rights.

Contreras-Garduño refers to the duties of the Inter-American Commission on Human Rights. She establishes that the American Convention empowered the Commission to act on petitions and other communications; in other words, to investigate individual claims alleging violations of the Convention's human rights and to pursue friendly settlements or eventually refer those petitions to the Court. In this light, the Commission could act as a filter between the petitioner and the Court. The Commission currently focuses on three main pillars: the individual petition system, monitoring the human rights situation in the member states, and attending to high-priority thematic areas.[144] The Inter-American Commission has functioned effectively

[142] Contreras-Garduño, Diana. "The Inter-American System of Human Rights". In: *The Sage Handbook of Human Rights.* Chapter 33. Ed. Anja Mihr, Mark Gibney. Utrecht University. P.P. 596-614. The Netherlands. 2014.

[143] Ibid. P. 598.

[144] Ibid. P. 599.

and has several obligations and duties that the author describes, plus the on-site visits to the countries to monitor the respect and guarantee of human rights and determine if there are violations of these provisions. The commission publishes the findings of these visits. Furthermore, the commission can designate special rapporteurs who must elaborate reports on different subjects of human rights. One of the main tasks of this organ is to publish these reports. A significant difference between the Inter-American System and the European System on Human Rights is that the latter eliminated the European Commission with similar duties in 1998. It is difficult to imagine the suppression of the Inter-American Commission for this vital work that developed in the Inter-American System and its role as a filter between the petitioner and the court. Moreover, the commission oversees the interposing of claims in front of the court, and there are no direct individual petitions in this tribunal yet.

Regarding the reports of the Commission, the author determines that these instruments issued by the Commission are not judicial decisions or judgments; however, they are binding documents. Having accepted the OAS Charter and the American Declaration, states have agreed to comply with diverse human rights obligations. They have also decided to create and take the Commission's competence to monitor and promote the fulfilment of those obligations.[145] For example, the United States, Canada, and some Caribbean countries not part of the IACtHR are members of the OAS, and the Commission can act on them. Furthermore, the headquarters of the Commission is in Washington, D.C. The Commission's recommendations are, therefore, legitimately binding on the states. Under international law, states' compliance depends mainly on states' will and good faith, as international bodies have no coercive powers. However, international bodies rely on public opinion to exert pressure on states. Of all the Commission's recommendations, states tend to comply with at least one or some of them. If only partial compliance exists, the Commission follows the case until the state has satisfactorily observed all recommendations.[146] The commission is overloaded with work because of all its functions. It is relevant to highlight that this organ's reports are binding for the state parties, and the commission will pursue the complaints of these if the case of violation of human rights is not referred to the court. In this way, and with friendly settlements, avoiding the overload of claims interposed before the

[145] Ibid. P. 602.

[146] Ibid.

court is possible. Compliance with these reports will depend on good faith. The states will be responsible for accepting the OAS Charter and the American Convention on Human Rights. The soft power of public opinion and the necessity for states to appear as guarantors of human rights before the international community will ensure at least partial compliance with these reports. This is often developed by states not only for their interest in human rights protection but also for economic and political concerns at an international level. If there is partial compliance, the commission will not stop and follow the case until its reports are fully compliant.

Concerning the proceedings in the IACtHR, Contreras-Garduño establishes some relevant notions. Although the case is referred by the Commission, along with all related information and evidence, the victim has the right to participate independently in the proceedings. In this light, the victim (through their legal representative) is given two months to present a brief containing pleadings, motions, evidence, requests for specific reparations, declarants and proposed expert witnesses. This brief may include additional allegations or forms of reparations compared to what is in the Commission's report.[147] Unlike the ECtHR, the claims interposed to the IACtHR are made by the commission or states in inter-state cases. Because of this, the proceeding before the court allows the individual's petitioners to participate in the process. They may include evidence and specific forms of reparations, among other possibilities, that were not in the lawsuit interposed by the commission. The court will decide about these in the final judgment.

The IACHR's judgment is not appealable. However, the parties can ask for an interpretation of its meaning and scope. The American Convention establishes the state's obligation to comply with the Inter-American Court's judgments, but explicitly establishes a fixed time for this compliance. Yet, the Court has generally given six months from the date the judgment is issued to the state to comply with its decisions. Since the Convention is also silent about any monitoring compliance mechanism, the court, at its initiative, may request the state to report on the measures adopted to comply with the judgments.[148] There is no explicit system for the court to monitor the judgments and the state parties' compliance. However, the court may ask for reports from the states to determine what they have done to comply with the decisions ruled

[147] Ibid. P. 607.

[148] Ibid. P. 607, 608.

by the court. This is necessary for the court because, as it establishes in its case law, the primordial object is to protect and guarantee human rights. If the states do not comply with their judgments, the possibility of these human rights violations will be repeated. Furthermore, the court's jurisdiction is optional, and if a state has decided to be part of this court, it is bound to comply with established decisions, even if they disagree. The judgments are not subject to appeal in this international court and have the character of *res judicata*. Furthermore, the parties can ask for an explanation about the scope of the meaning of the judgment to understand why the court decided in the way it did.

Since its first judgment on reparations in 1989, the Velásquez Rodríguez case, the Inter-American Court has excelled in producing landmark judgments due to its progressive role in interpreting human rights such as reparations, victim's rights, Indigenous people's rights, transitional justice and amnesty laws, and the vindication of economic, social, and cultural rights, among others.[149] This court has been internationally recognised for the number of reparations it has established for the victims and their relatives. These reparations have resulted in compensation, prosecute and punish those responsible for human rights violations or the order to publicise the truth. However, the IACtHR has established creative reparations, such as naming a street after a victim, building a memorial to remember them, finding the remains of the murdered victim and delivering them to their relatives or developing social programmes in vulnerable communities, among others. It has repeated its role concerning the sanction of impunity and amnesty laws. Transitional justice has also been a significant concern, as several dictatorships have ended and democratic governments have begun. The author also mentions the clearing of economic, social, and cultural rights, which, as was established above, are not the predominant notion of this court but have determined significant concepts over these. This jurisprudential progressivity has been globally celebrated but also criticised as it portrays the Court as an activist. Reparations aim to make the victims' suffering more bearable.[150] These critiques refer to the notion of the court as an activist. This is a strange way to denominate a court that protects human rights because it is evident that its activist role is in the guarantee of these rights. Every human rights court has a little bit of activism

[149] Ibid. P. 608.

[150] Ibid.

in it. Although the reparations are the remedy when the situation cannot go back to being the same as before the violation of the right (as in the right to life), these help the relatives to have closure regarding the breach of human rights. Moreover, reparations are stated for all human rights violations so that they can take many forms. The author provides some critiques of the system. The Commission has not revealed the methodology used to refer some cases to the Court and not others, nor has it revealed why it waits several years before deciding on a given case. Furthermore, the Court's progressive approach might be undermined by the lack of a uniform line when solving cases of a similar nature. In short, the system needs more transparency.[151] The idea that the court does not establish a uniform way of deciding in cases with the same characteristics determines a failure in its functioning. If this court decides on a uniform pattern to settle cases with the same characteristics, such as enforced disappearance, it could resolve these cases promptly. The ECtHR has a system that establishes standards referring to instances with the same characteristics called Pilot Judgments. Transparency in a regional human rights system is needed for the state's and individuals' confidence. The IACtHR and the commission could be more explicit when establishing their methods.

Contreras-Garduño adds that although the lack of full compliance with its judgments could be seen as a factor undermining the value of the Court's progressive interpretation, the Court has set up standards of reparations which have guided national reparation programmes and have been embraced by other international tribunals, such as the European Court of Human Rights and the International Criminal Court.[152] The quality and number of reparations this tribunal has established have been relevant and guided other courts to apply. However, reparations do not substitute for compliance with the judgments. In a possible reform of the IACtHR, developing an effective and mandatory compliance system by state parties will be vital. These must follow with consequences if they do not fulfil the judgment. Furthermore, applying direct individual claims to reduce the commission's work overload would be a good idea in this scenario.

In my opinion, Contreras-Garduño presents a complete examination of the IACtHR, its characteristics and how it functions. Also, it acknowledges the advantages and the

[151] Ibid. P. 611.

[152] Ibid. P. 609.

critiques of this court. I believe that a central notion of the author, with which I agree, is the importance of the role of the Inter-American Commission on Human Rights and the relevant work that this has developed. For this, I think it is necessary to maintain this organ. However, changes are needed in the IACtHR, such as implementing individual petitions and compulsory jurisdiction. I believe that the critiques about the lack of transparency in this court are founded because it is not explicitly determined how this court enforces its judgments. This would be significant for the states to comply with its decisions. Furthermore, I believe that although this court and the ECtHR have a predominance of political and civil rights as an inheritance of the Western ideology, they have developed economic, social and cultural rights in many judgments. This is another sign of the evolution of these courts.

Vanda Lamm establishes that human rights courts differ from international courts that resolve classic interstate disputes.[153] Their tasks include examining matters related to the interpretation and application of regional human rights conventions and other documents concerning human rights and deciding on individual complaints submitted by individuals, groups of individuals, NGOs, or states relating to human rights violations.[154] Vanda Lamm develops this notion in her work about the proliferation of tribunals. It is significant to determine the task of the IACtHR and the ECtHR, considering that these are not national courts or higher appeal instances. These courts must decide a case between states according to the provisions of their respective conventions.

Furthermore, this author establishes that human rights courts interpret conventions and treaties teleologically in an evolutive manner, contributing significantly to forming the international *corpus juris* of human rights.[155] These human rights are established in the conventions, but as was mentioned, they are living instruments. The interpretations of these provisions and the court's standards contribute to the development and evolution of international human rights.

According to this author, human rights courts differ considerably from traditional international courts that resolve inter-state disputes. The human rights courts decide

[153] Lamm, Vanda. "Some Thoughts on the Proliferation of International Courts and Tribunals". In: *Társadalomtudományi Kutatóközpont Jogtudományi Intézet*. P.P. 414-424. Hungary, 2019.

[154] Ibid. P. 416.

[155] Ibid.

disputes of other legal subjects, such as between non-state actors and states. Beyond settling specific legal disputes, these courts have a significant role in developing international law.[156] There has been a proliferation of international courts since the second half of the twentieth century. Many new courts at regional and global levels resolve different matters according to their jurisdiction and object. A significant difference that the regional human rights courts present regarding the older courts is that individuals interpose the claims against the state parties. The IACtHR develops this through the Commission or another supranational body. In the ECtHR, there is a direct way to interpose allegations by individuals, NGOs or other international organs. Legal transplantation is discernible in the establishment and functioning of these courts, so far as the different groups of courts following and adopting specific models are well noticeable. The models of the African and Latin-American regional economic integration organisations were the European Economic Community and the European Union, which also applies to their dispute settlement mechanisms. Most of these organisations follow the European Court of Justice in terms of their structure, operation, procedural rules, and the types of their decisions.[157] Concerning legal transplantation, the author establishes significant ideas about this figure regarding the ECtHR, which was the first and became a model for the subsequent regional human rights courts, such as the IACtHR and the African Court on Human and Peoples' Rights. The author believes the ECtHR is the most successful and efficient.

Different views about the fragmentation of international law were emphasised at the end of the 1990s regarding the growing number of international courts. Given the simultaneous existence and functioning of all international courts, it cannot be excluded that certain norms of international law are interpreted differently.[158] This could be the case with the IACtHR and the ECtHR, which have different articles on which they base their decisions and other standards for deciding a case. Furthermore, the IACtHR was based on the model of the ECtHR but differs from this in several aspects, and that is natural in a situation of legal transplantation where the court begins following a model but may establish its concepts, notions, and characteristics. Each of them applies its different conventions in different continents with diverse features.

[156] Ibid. P. 417.

[157] Ibid. P. 418.

[158] Ibid. P. 419.

Lamm establishes that the different interpretations of international law can be traced back primarily to the absence of hierarchical order among international courts. Regarding human rights, courts can determine a horizontal order, which may quickly arrive at differing conclusions in interpreting certain norms.[159] This will be shown in the third and fourth chapters, which will analyse the courts' standards and determine the similarities and differences. Also, the concept of horizontality between these courts is essential because each can decide differently according to the Convention in which they are based and the jurisdictions where they apply their judgments. It will be interesting to define if these courts have a dialogue or different criteria to rule their decisions, considering that they are separate courts that decide on human rights. The author has an answer to this. She establishes that regional human rights courts pay close attention to one another. The two human rights courts with significant legal practice, that is, the European Court of Human Rights and the Inter-American Court of Human Rights, frequently refer to each other's decisions; what is more, in the legal practice of these two human rights courts, some convergence can be discerned.[160]

Lamm establishes interesting concepts about the relationship between the regional courts of human rights and the national courts that must comply with the provisions of the Conventions. The regional human rights courts exercise compliance with treaties and control over the legislation and legal practice of the states belonging to the given system. These courts directly relate to member states (the on-site visits and requests for documentation, among other tasks) and cooperate with them.[161] The cooperation of the state with the human rights courts does not always comply, for example, with the necessary documents, which can give a suspicious consideration about the actions or omissions of such a state. However, they are in fundamental contact with the contracting states.

Lamm determines essential ideas about the human rights courts and their characteristics. I believe that the central notion is the evolution of international law that can be seen in these courts, where individuals may find protection of human rights. They are not exclusively for the state to interpose their cases. Furthermore, the author acknowledges the legal transplantation concept that it is vital for this work between

[159] Ibid. P. 420.

[160] Ibid.

[161] Ibid. P. 421.

the two courts that are the object of this study. According to this author, there is a dialogue between these tribunals. This concept will be developed after examining the standards in the following chapters. I disagree with this author about the ECtHR being more efficient than the IACtHR. Although the first tribunal has many notable characteristics, such as compulsory jurisdiction and individual petitions, the IACtHR has excelled in several aspects. For example, the reparations that this court applies, the evolution of human rights and the relevant work of the Commission. I believe that the Commission allows a more efficient investigation of the cases. If not, the courts must rely on the government's submissions and documents showing only one side of the conflict. States are often reluctant to disclose information, which can generate a problem when these tribunals examine cases and decide on them.

Summary

After defining the objectives and field of my research, I will start to analyse the main topic: the unique aspects of the right to life in the decisions of the IACtHR and the ECtHR.

Determining the theoretical and dogmatic base of my research will be necessary to establish some essential concepts, such as the substantive and procedural aspects of the right to life and the obligations of the states. Furthermore, it will determine the categories of violation of the right to life that will be vital for the third chapter.

Chapter II: Theoretical Basis

Introduction

In this chapter, several notions and topics will be examined, such as the articles that establish the right to life in the American Convention and the European Convention on Human Rights, the substantive and procedural aspects of this right, the right to life in different instruments, the concept of this right and the positive and negative obligations of the state.

The analysis of these ideas is essential for this work because it presents a dogmatic background for examining the cases. Furthermore, these concepts are vital for studying and comparing the standards. In this way, it would be possible to establish the findings I aim to achieve in this research, and these theoretical notions will guide my examination of them.

1. Definitions and Concepts of the Right to Life

This subchapter will determine the basic concepts regarding the right to life and its evolution. Furthermore, human rights, the right to life, and their establishment in different international instruments will be examined. The specific characteristics of this right will be analysed. Finally, the role of the right to life in IACtHR and the ECtHR will be explored through the views of different authors. In every part, diverse authors present perspectives concerning each subject.

1. A. Basic Concepts about Human Rights and the Right to Life

As many authors and international instruments have established, the right to life is inherent to the person for the mere fact of being a human being. It is attached to the person's intrinsic dignity.

The protection of this right has its textual origins in the United States Constitution and the French Revolution. The right to life has been established and protected by many instruments since the eighteenth century. The Declaration of the Rights of Man and the Citizen of France 1789 in Article 2 states: *"The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression*".[162] Furthermore, Article 4

[162] States General Constituent Assembly. *The Declaration of the Rights of Man and the Citizen.* August 1789, France. Article 2.

establishes: *"Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law."*[163] The Declaration of the Rights of Man and the Citizen came into existence in the summer of 1789, born of an idea of the Constituent Assembly, which was formed by the assembly of the Estates-General to draft a new Constitution and precede it with a declaration of principles.[164] These articles came from the results of the French Revolution and the ideas of the Enlightenment of Rousseau and Montesquieu, among others. Although these articles do not proclaim the protection of the right to life in their letter, it is possible to find the origin of the idea of safeguarding this right. The French Revolution originated in the United States' independence, established in 1776. An essential document for human rights in the United States was the Bill of Rights, ratified by Congress on December 15, 1791. This document has twelve amendments establishing several human rights, such as civil rights and liberties for the individual, like freedom of speech, press or religion, or the property right.[165] The U.S. Constitution states in the Fourteen Amendment Equal Protection and Other Rights: *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*[166] The Senate passed this amendment in June 1866 and ratified it in July 1868. The letter of the U.S. Constitution is more defining concerning protecting the right to life, which is established directly in its letter. This article of the Constitution has its origins in the Declaration of Independence, which establishes, "*We hold these truths to be self-evident: that all men are created equal; that their Creator endows them with certain inalienable rights; that among these are life, liberty and the pursuit of happiness".*[167]

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[163] Ibid. Article 4.

[164] https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen

[165] *United States Bill of Rights*. Ratified on 15 December 1791.

[166] *Constitution of the United States*. Fourteenth Amendment Equal Protection and Other Rights. Section 1 Rights.

[167] *Declaration of Independence of the United States*. Proclaimed by the thirteen states in 1776. Redacted by Thomas Jefferson.

Tomas Paine, who published *"The Rights of Man,"*[168] is a vital author who influenced the United States Constitution. This book was the first to use the phrase *"human rights."* Ed Bated determines that he spread the idea of human rights.[169] Although the concept of human rights was not coined at that moment, his work was necessary for the theory of human rights and the work of subsequent authors and thinkers.

There are some notions of the right to life before the eighteenth century. In the seventeenth century, John Locke established that man was born with a title to perfect freedom and uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man or number of men in the world. According to this author, the man (there is no mention of women in these first notions, but, understandably, it refers to the feminine sex also) had by nature a power to preserve his property, which includes his life, liberty and estate against the injuries and attempts of other men.[170] It is remarkable how this author determines the right to life when there is no concept of human rights. Locke based his ideas on the natural rights that are every person's prerogative for the mere existence of a human being. The notions of this time refer to the man, but today, it is necessary to understand that this right applies to women and everyone in the world.

Other relevant thinkers are those of the Enlightenment, such as Baron de Montesquieu or Jean-Jacques Rousseau. These authors are based on the natural rights, as Locke, and it was determined that everyone was born with certain natural rights that no authority could take away. This was the thinking of the intellectual force behind the French Declaration of the Rights of Man and of the Citizen, but its impact was felt far beyond France.[171] The ideas of the Enlightenment and its philosophers and idealists were spreading worldwide and were the first attempt at a theory of human rights. The central notion was that the person was born with natural rights that belonged to the individual, and nobody could infringe them. The idea was to transform natural rights thinking into positive law, which ended in the Universal Declaration of Human Rights 1948. These authors were way ahead of their time. The theoretical part of the French Declaration,

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[168] Paine, Thomas. *"Rights of Man: Being an Answer to Mr. Burke's Attack on the French Revolution."* 2nd Edition. London, 1791.

[169] Bates, Ed. *"International Human Rights Law".* Ed. Moeckli Daniel, Shah Sangeeta, Sivakumaran Sandesh and Harris David. Oxford University Press. United Kingdom. Fourth Edition 2022.

[170] Ibid. P. 5,6.

[171] Ibid. P. 6.

the United States Constitution, and its Bill of Rights was significant. Still, it has not yet been established as the practical part of executing these rights.

Nevertheless, this conception of human rights was imperfect and did not include everybody. The inferior position of women in society, both generally and in law, stirred women's rights campaigners such as Mary Wollstonecraft. As mentioned, the first human rights documents mentioned men without referring to women. Furthermore, many groups were excluded from these rights at the time, such as enslaved people.

An engaging author, Ed Bates establishes that creating international standards for protecting human rights may be one thing, but their implementation and enforcement are another.[172] This is notable even today, where many countries have adopted international law treaties but do not apply them. The ECtHR and the IACtHR were how the European and Inter-American systems tried to provide security to comply with their human rights conventions.

After the First World War, an attempt was made to establish international law and human rights. The League of Nations (predecessor of the United Nations) and its Charter were created in 1919 and established several human rights, including the right to life. The problem was that it was a law between states, and individuals were not subjects of this law. The League of Nations also created the Permanent Court of Justice (predecessor of the International Court of Justice) in 1922. This allowed individuals to defend their rights against the state, but it was a failed attempt because not many presented their demands. The notion that international bodies could or should influence how the state treated its nationals was not developed at the general level at this stage. Furthermore, human rights violations were accepted as the sole responsibility of the legal government of the territory in question and not matters over which foreign individuals or governments could legitimately act.[173] This is a response to why the Permanent Court of Justice did not work as planned. The League of Nations was born after the disasters and violations of human rights during the First World War. Sadly, it failed to secure world peace when the world entered the Second World War. Nevertheless, it established interesting concepts about human rights.

[172] Ibid. P. 13.

[173] Ibid. P. 15.

The human rights atrocities of the Second World War were a galvanising force that would help to ensure a new approach to international law after 1945 as regards the rights of the individual.[174] After the Second World War, the real revolution over codifying human rights and giving them positive action and execution started. The United Nations was created in 1945, the International Court of Justice was established in the same year, and the Universal Declaration on Human Rights was adopted in 1948. This latter document was not binding, but because of this and the context of the Cold War, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were born in 1966 and were binding documents for the state parties.

A good definition of the right to life is every person's right to preserve and enjoy this existence as an individual.[175] The Australian Government established this in response to the General Assembly of the United Nations Resolution 833.

A thought-provoking text is one of B.G. Ramcharan. He highlights Article 6 of the International Covenant on Civil and Political Rights.[176] In this article, the author establishes that every human has the inherent right to life; this right shall be protected by law, and no one shall be arbitrarily deprived of their life.[177] This article defines the

[174] Ibid. P. 16.

[175] United Nations General Assembly. Response to Resolution 833. GAOR, Tenth Session Annexes (10), 28-1, P. 12.

[176] Ramcharan, B. G. "The Concept and Dimensions of the Right to Life". In: *"The Right to Life in International Law."* Ed. B.G. Ramcharan. International Studies in Human Rights. Martinus Nijhoff Publishers. P.P.1-32. The Netherlands, 1985.

[177] United Nations General Assembly. *International Covenant on Civil and Political Rights*. Adopted 16 November of 1966. Entry into force 23 March 1976. Article 6: 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below

essential characteristics of the right to life as a primordial right and part of the *Ius Cogens*.[178]

This author establishes a catalogue of situations where there is an arbitrary deprivation of the right to life: If an action of the police or of a law-enforcement official which results in death is disproportionate to the requirements of law enforcement in the circumstances of the case, then such a deprivation of life would be arbitrary; Deaths resulting from acts on ground, or by procedures other than those established by law would represent arbitrary deprivations; Deaths resulting from acts done under the provisions of a law the essential purpose of which is incompatible with respect for human rights would be arbitrary; An act done capriciously, by a law enforcement official, or which depended on the will of the actor alone, and which results in dead, would be arbitrary; Deaths resulting from acts done without any reasonable cause would be arbitrary; If the means, circumstances or physical force attendant an arrest exceeded the reasonable requirements for affecting arrest, and death follows, then it would be arbitrary.[179] This catalogue of arbitrary deprivation of the right to life is complete and covers all the categories of violation of the right to life presented in this work.

Ramcharan also establishes that the right to life should be enshrined in every national constitution.[180] This aligns with the ECHR and the American Convention on Human Rights, which establish that their provisions should be adequate to the domestic laws of the state parties.

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eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

[178] United Nations. *Vienna Convention on the Law of Treaties*. Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. Article 53. Treaties conflicting with a peremptory norm of general international law ("Ius Cogens"). A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a norm from which no derogation if permitted and which can be modified only by a subsequent norm of general international law having the same character.

[179] Ramcharan, B. G. "The Concept and Dimensions of the Right to Life". In: *"The Right to Life in International Law."* Ed. B.G. Ramcharan. International Studies in Human Rights. Martinus Nijhoff Publishers. P.P.1-32. The Netherlands, 1985. P. 20.

[180] Ibid. P. 29.

Another interesting author, Rhona K. M. Smith,[181] establishes that the period since the formation of the United Nations in 1945 has witnessed an unprecedented expansion in the internationally recognised rights of all people with acceptance of a human rights dimension to the quest for international peace and security. By the dawn of the twenty-first century, the United Nations had styled itself as a protector of the internationally proclaimed rights of all. This has been achieved through states developing and embracing new forms of international law.[182] The United Nations emerged in 1945 as a global organisation establishing peace and security worldwide. This has led to the protection of human rights for all people, which has been achieved by the proliferation of international courts and instruments in several forms. The new forms of international law include human rights tribunals and conventions, where the state parties give up some of their powers to participate in them, submit to their decisions and provisions, and protect human rights.

Maurice Cranston establishes some interesting notions about human rights. He says that human rights are a relatively new name for what was formerly called *"the rights of man."*[183] In the 1940s, Eleanor Roosevelt promoted the expression *"human rights"* when she discovered, through her work in the United Nations, that men's rights, including women's rights, were not understood in some parts of the world.[184] This was significant progress from the mind of Eleanor Roosevelt, who realised that women were not included in the titles of the human rights documents. The first wave of feminism had occurred before, but women's rights were still poorly complied with. Roosevelt understood that men and women were unequal. She determined that the title could confuse the respect and protection of these rights regarding women, and she wanted them to be respected by everyone. Furthermore, Hannah Arendt developed a whole human rights thesis before the Second World War and got ahead of this concept. Moreover, Cranston determines that a human right is something that nobody, anywhere, may be deprived of without a grave affront to justice. There are specific actions that are never permissible, certain freedoms that should never be invaded, and

[181] Smith, Rhona K. M. *"International Human Rights Law"* 10th Edition. Ed. by Oxford University Press, Oxford, United Kingdom. 2022.

[182] Ibid. P. 1.

[183] Cranston, Maurice. "Are there any Human Rights?" In: *Daedalus. Vol. 112, No. 4,* Human Rights (Fall, 1983). P.P. 1-17. 1983. P. 1.

[184] Ibid.

certain sacred things.[185] This is a good definition of human rights, and the right to life is included in this category. Fulfilling this right is more critical because other human rights are meaningless if this primordial right is infringed.

1. B. Definitions of the Right to Life

It is essential to define life to investigate crimes against it.

An engaging author, Costa Rodriguez,[186] determines that according to the dictionary of the Royal Spanish Academy, *"Vida"* (life in Spanish) comes from the Latin Vita.[187] The more accurate conception could be that it is the space that happens from the birth of a person, animal, or vegetal until it is deceased. In a pure naturalistic concept, it is safe to say that the right to life is the right to one's own physiological and biological existence.[188]

The Merriam-Webster dictionary defines life as a: distinguishing a vital and functional being from a dead body; b: a principle or force underlying animate beings' distinctive quality.[189]

Certain peculiarities of this right must be taken into account to understand the crime against the right to life, such as 1) is the ontological basis of all other rights; 2) the violation of this right is irreversible, it is impossible to give back the life to a human being, and this implies the disappearance of the titular of this right; 3) the own definition life generates conflicts between ethical, moral and religious concepts, what gives rise to debates about abortion or euthanasia.[190]

The posture defended by the former judge of the Inter-American Court, Cançado Trindade, is the one that sustains that in the matter of human rights, one must apply the principle of the importance of the most favourable norm to the victims in a way

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[185] Ibid. P. 12.

[186] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano*, N. 9, January-March. P.P.74-112. 2005. P. 79.

[187] Real Academia Española. Real Diccionario de la Lengua Española: Vida. https://dle.rae.es/vida?m=form

[188] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano*, N. 9, January-March. P.P.74-112. 2005. P. 79.

[189] https://www.merriam-webster.com/dictionary/life

[190] Ibid.

that, in case of conflict of laws it must prevail the more beneficial norm for the human being.[191]

For this work, it is vital to recognise the existence of a right to the juridical protection of life that is acknowledged as a human right both at a national and international level. This means that all humans are the recipients of this right for the mere fact of being human.

1. C. Right to Life in International Instruments

This part determines the right to life and how it is presented in different international law instruments.

The Universal Declaration of Human Rights, adopted in 1948, was the first instrument to protect human rights. Article III states, *"Everyone has the right to life, liberty, and security of person."*[192] It is essential to highlight that this article shows how indivisible human rights are in general, and most of these rights, life, liberty, and security, are generally violated together. This declaration was not binding; the International Covenant on Civil and Political Rights was established,[193] which gives a mandatory character to protect this right. This Convention determines the right to life in Article 6: *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*[194] This was the first binding protection of this right at an international level because this right had previously been established in the ECHR. However, this Convention was only comprehended by the European state parties. The concept of the right to life of the International Covenant on Civil and Political Rights, based on the Universal Declaration of Human Rights, is complete and thorough about the inherence of this right and the obligation to protect it. Furthermore, it determines that nobody can be deprived of their life arbitrarily. That is the situation that is presented in this research.

Furthermore, multiple conventions, treaties, or declarations establish the right to life. The base of these instruments is the prohibition of arbitrary deprivation of a person's

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[191] Cancado Trindade, Antonio. *"A Proteção Internacional dos direitos humanos – Fundamentos Jurídicos e Instrumentos Básicos."* Ed. Saraiva. 1996. P. 50

[192] United Nations General Assembly. *Universal Declaration of Human Rights.* Adopted on 10 December 1948 (General Assembly resolution 217 A). Paris, France.

[193] United Nations General Assembly. *International Covenant on Civil and Political Rights.* Adopted 16 November of 1966. Entry into force 23 March 1976.

[194] Ibid. Article 6.

life. The radical change in the protection of the right to life that supposes understanding this right in an integral, universal, and indivisible way rises from the protective instruments of the Vienna Convention of 1993: The Inter-American Convention about Forced Disappearance of Persons and the Inter-American Convention to prevent, sanction, and eradicate the violence against women, also named *"Convention of Belém do Pará."*[195] Currently, human rights are seen as inseparable from each other.

Elizabeth Wicks is an engaging author for this subchapter. She determines the right to life in several international instruments.[196] She establishes that the right to life under the ECHR is not just about the state not killing its citizens but rather about a broader requirement that human life be respected by the avoidance of death where possible and the investigation of its cause where not possible. Also, the author considers the right to life a preexisting concept in its establishment as a right to protection in this Convention.[197] This author develops the concept of life in the ECHR and establishes that, in contrast with other perspectives that will be determined below, Article 2 refers not only to the prohibition of being killed arbitrarily but to the concept that life should be respected by law. This is in the substantive aspect of the letter of the Article. Furthermore, the author states that the idea of this concept in this Convention is that there is a prevention of the right to life. In cases where this is not achieved, an adequate investigation is necessary to determine the responsibility for violating this right. This is the procedural aspect of this right. The procedural and substantive will be explained in detail below. Furthermore, an interesting notion is that life as a concept and fact preexist to making this right positive in the Convention.

Wicks determines that the focus seems to be less upon life versus death than on protecting everyone from actions that put their life at risk and thus fail to respect it adequately. Hence, although refusing to give a conclusive answer to the question of when the protection of life begins and not yet having had the opportunity to decide when it ends, the Court's approach to Article 2 has indicated a particular focus on the

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[195] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano,* N. 9, January-March. P.P.74-112. 2005. P.79.

[196] Wicks, Elizabeth. "The Meaning of "Life": Dignity and the Right to Life in International Human Rights Treaties". In: *Human Rights Law Review. Vol. 12, No. 2*. Ed. Oxford University Press. P.P.199-220. 2012. P. 202.

[197] Ibid.

nature of the right and the concept protected within it.[198] This author highlights that according to the ECtHR, there is a violation of the right to life even if the death was not achieved, but there was an attempt against this right, or it could be a consequence of the actions of people who knew what they were doing. Life is not only about avoiding death. The right to life includes several aspects of this.

The IACtHR interpretation of the right to life goes far beyond issues of killing to encompass a requirement of sufficient respect for human life. Under the American Convention on Human Rights, this appears to incorporate a basic standard of living, including access to essential food, shelter, and medical care. *"Life"* in this context is not a mere absence of death but something far more meaningful, enabling individuals to enjoy a dignified existence.[199] This court had problems because it defined the protection of the right to life in Article 4 of the American Convention on Human Rights from conception. This is a tricky term because it can generate abortion debates. However, Wicks highlights that this Convention tried to define where life begins and ends. Still, interpreting this article in its case law, the IACtHR has determined that this life is not only the absence of death. Life goes beyond this concept to ensure a dignified existence for the human being and provide a basic standard of living.

Furthermore, the African Charter states: *"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right*."[200] It can immediately be seen that this manifestation of the right to life refers explicitly to concepts that are implied in the other human rights documents: the inviolability of a human being and the need for respect for life. This approach is supplemented by explicit recognition in Article 5 of a *"right to the respect of the dignity inherent in a human being"*.[201] Taken together, these two Articles make very clear that human life has an exceptional value and that dignity requires legal protection, and so it is not surprising that the application of the right to life by the African Commission on Human and Peoples' Rights has focused

[198] Ibid.

[199] Ibid. P. 204.

[200] African Union. *African Charter on Human and Peoples' Rights*. Entered into force on 21 October 1986. Nairobi, Kenya. Article 4.

[201] Ibid. Article 5.

upon some of the positive obligations essential to a full realisation of this right.[202] Although this court will not be part of the comparison of this work, it is relevant to determine the protection of the right to life in its Charter. Article 4 of the Charter, which protects the right to life, establishes the inviolability of the person and the protection of their life and integrity. Furthermore, it repeats what the other human rights conventions have established about the prohibition of being arbitrarily killed. Wicks establishes a relation between protecting the right to life and protecting the dignity inherent to human beings in this Charter. The respect for the right to life and the inviolability of the person are vital for this court. That is why the African Commission acted positively to realise this right. It is essential to determine that in a Continent characterised by extreme poverty, the positive obligations of the right to life that tend to ensure a dignified existence are so important.

1. D. Specific Aspects of the Right to Life

This section presents specific aspects that characterise the right to life.

An interesting author, Renata Cenedesi Bom Costa Rodríguez, establishes dignity as an essential attribute of the human condition, independent of sex, race, religion, nationality, social position, or any other specificity.[203] The importance of the dignity of the human person was established and developed by Hannah Arendt when this author determined the relevance of human rights even before these were named as such. Arendt focuses on several problems related to human rights. However, its political theory is centred around the issues that had their roots in the failure of the rights of the people to ensure human dignity.[204]

Costa Rodríguez aims to establish why extending the juridical protection of life is necessary, starting with the judgments ruled by the IACtHR. It is essential to highlight that Costa Rodríguez wants to prove that the jurisprudence of the IACtHR has

[202] Wicks, Elizabeth. "The Meaning of "Life": Dignity and the Right to Life in International Human Rights Treaties". In: *Human Rights Law Review. Vol. 12, No. 2*. Ed. Oxford University Press. P.P.199-220. 2012. P. 202.

[203] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano,* N. 9, January-March. P.P.74-112. 2005. P. 76.

[204] Isaac, Jeffrey C. "A new guarantee on earth: Hanna Arendt on Human Dignity and the Politics of Human Rights." In: *The American Political Science Review. Indiana University. Vol. 90, Nº1*. Bloomington. March. P.P.61-73. 1996. P. 63.

amplified the concept of the right to life. This represents the rescue and the reaffirmation of the principle of indivisibility of human rights and the person's dignity. These two principles could be considered the axis of transformation of this right. The idea is to offer an amplified concept of the right to life that includes civil and political rights, such as economic, social and cultural rights.[205]

I agree with the author about the importance of the person's dignity in fulfilling this human right. Moreover, human rights are coherent, and it is necessary to comply with civil, political, economic, social, and cultural rights to fulfil the right to life.

Another author who establishes the importance of dignity is Ramona Nicoleta Predescu.[206] She determines that human dignity is an absolute principle that does not allow for derogations, and this implies that the human being cannot be treated as an instrument. Besides being a fundamental right, human dignity is the foundation underlying fundamental rights.[207] This author states the inviolability of human dignity and its character as *Ius Cogens*. Furthermore, it refers to human dignity as the foundation for human rights. This concurs with what has been established as human dignity inherent to the right to life.

Elizabeth Wicks adds interesting notions about human dignity. She says that beyond the obvious point that human dignity has been recognised as underlying the entire ambit of international human rights protection, the concept has also been linked explicitly with enforcing a right to life. Both national and international courts have been prepared to interpret life as requiring the facilitation of dignity.[208] This is another author who links respect for human life with the inherent dignity of the person. This author mentioned before that the IACtHR has established dignified life as a characteristic of this right in its case law. According to Wicks, the interpretation of life

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[205] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano*, N. 9, January-March. P.P.74-112. 2005. P.78.

[206] Predescu, Ramona Nicoleta. "Human Dignity in Criminal Proceedings. Relevant Decisions in the European Court of Human Rights Case Law and the Inter-American Court of Human Rights." In: *International Conference of Law, European Studies and International Relations IX*. Ed. The Central and Eastern European Library. P.P. 166-175. Romania, 2021.

[207] Ibid. P. 168.

[208] Wicks, Elizabeth. "The Meaning of "Life": Dignity and the Right to Life in International Human Rights Treaties". In: *Human Rights Law Review. Vol. 12, No. 2*. Ed. Oxford University Press. P.P.199-220. 2012. P. 206.

requires the facilitation of dignity. This dignified life is closely related to economic, social and cultural rights and an adequate standard of living. This author states that the right to life includes not being killed arbitrarily and also the right to live with the necessities required to achieve an adequate living standard.

Wicks establishes two relevant notions to conclude. First, a narrow interpretation of the right to life, which focuses almost exclusively on the avoidance of death, will overlook the true meaning of life. Second, a state cannot permanently save a life. Still, it can be required continuously to seek to act and to refrain from acting in a manner that accords the appropriate respect for the dignity inherent in all human life.[209] This author has exhaustively determined the relation between dignity and the right to life. She establishes that the right to life does not involve exclusively the avoidance of death but all other aspects that constitute life. This notion regards the protection and security of economic, social, and cultural rights to guarantee the dignity of human beings. Furthermore, Wicks states that the right to life is not absolute, and there are certain situations when it is possible to take the life of a person, as will be shown in Chapter III. However, the states must act in a way that guarantees the inherent dignity of human beings. The conventions of the IACtHR and the ECtHR do not establish the importance of the intrinsic dignity of the human being in their letter, but this can be established in their case law. This can be seen concerning the right to life and the prohibition of torture, ill-treatment or punishment, among the protection of other human rights. Moreover, it was necessary to establish these concepts, although this work concentrates on the arbitrary deprivation of the right to life.

Furthermore, Costa Rodríguez proposes to analyse the role of IACtHR in protecting the right to life.[210] It is possible to determine that for the authors examined here, the right to life is intrinsically united to the dignity of every human being. I follow Predescu, Wicks, Arendt and Costa Rodríguez's ideas about the importance of dignity in the issue of the right to life.

[209] Ibid. P. 217,218.

[210] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano,* N. 9, January-March. P.P.74-112. 2005. P. 78.

According to Massini Correas' explanation[211], the right to life must be interpreted as the right to inviolability, and it has its fundamental or rational justification in the principle of dignity. The primordial sense of this right is to prevent the state from arbitrarily killing someone indirectly, which is, for this, an obligation of omission of the state. This traditional concept has evolved due to the actual tendency, which includes the positive obligation, rescuing the principle of human dignity as part of the right to life.[212]

It is relevant to establish the ideas of the text of Rodolfo Figueroa García-Huidoboro about the five different conceptions of the right to life.[213] The author states that it is possible to identify five conceptions of the right to life: 1) One sustains that the right to life consists of the right to live or to live with dignity. 2) Other suggests that this right consists of the right to live well or live with dignity. 3) A third proposes understanding that the right to life consists of the right to receive everything that is minimally necessary so as not to die immediately. 4) This conception proposes to understand the right to life simply as the right not to be killed. 5) A fifth posture subscribes to the idea that this right consists of not being killed arbitrarily.[214]

The author states the significance of the right not to be killed arbitrarily. This conception parts from the base that the object of the right to life is not life as a phenomenal reality but the conduct of third parties that kill arbitrarily another person. This conception of the right to life distinguishes the right to life from life.[215]

I'm afraid I have to disagree with this author, who establishes that the only conception which is significant is not being killed arbitrarily because the other conceptions are also part of the right to life. However, the work of this author is helpful for this study, which will concentrate on the arbitrary killing of a person.

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[211] Massini, Carlos I Correas. "El Derecho a la vida en la sistemática de los Derechos humanos." In: *Problemas Actuales sobre Derechos humanos. Una Propuesta filosófica.* Coord. Javier Saldaña. UNAM. México, 2000.

[212] Ibid. P. 161

[213] García-Huidoboro, Rodolfo Figueroa. "Concepto de Derecho a la Vida". In: *Magazine Ius et Praxis*. University of Talca. Nº 1. P.P. 261-300. Talca, Chile. 2014.

[214] Ibid. P. 262.

[215] Ibid. P. 263.

García-Huidoboro establishes that there are several reasons for the distinction between the right to life and the life and understanding that the object of the right to life is not the life itself:

1. To determine the object of the right to life, it is necessary to begin with a general consideration. The right is something that implies a juridical relation with other subjects. The object of a right cannot be a thing or an entity because the right will be structured as a dyadic relation between the titular and the thing. The dyadic ties do not have juridical relevance because they do not regulate third parties' conduct.
2. Another reason to discard the idea that the object of the right to life would be life is that someone can lose their life as a phenomenal reality (or biological support) without their right to life having been violated. In effect, a person can die without being killed arbitrarily. The contrary to this is that all the deaths occurred by homicide.
3. The development of constitutional jurisprudence compared to the right to life.[216]

Although García Huidoboro establishes the different conceptions of the right to life, he determines that the fifth is the only one to comprehend the right. The author replies that for him, the only way to understand the right to life is as the right that people do not get killed arbitrarily. He establishes as a synthesis that the right to life means a) the primary obligation of not killing another person arbitrarily and b) positive secondary obligations to prevent somebody from being killed arbitrarily. Several obligations must be determined; c) eventually, positive obligations are directed to satisfy and comply with the right that should be chosen.[217]

I must clarify that the author has valuable arguments about the different conceptions of the right to life. Still, I must interpret these as he understands them, and I often disagree with their statements. Because of this, I will concentrate on the fifth conception about not being arbitrarily deprived of life.

I selected several authors for this section to show the opposite sides regarding the dignity linked to the right to life. Costa Rodríguez, whose line of thought I follow, believes that the intrinsic dignity of human beings is interlinked with a person's right to life. Although García Huidoboro establishes conceptions with the idea that the first and second conceptions of the right to life are linked to dignity, he criticised this

[216] Ibid. P. 264.

[217] Ibid. P. 299,300.

conception. He concluded that the only accurate conception of the right to life is not to be killed arbitrarily. I believe it is essential to know all perspectives and ideas; for that, it is interesting to examine authors who do not have the same line of thought.

Another thought-provoking author for this subchapter is Jordan J. Paust, who establishes notions about the right to life in human rights law and the law of war.[218] He determines that it is correct and widely expected that the human right to life, including the right to enjoy life, is an important, fundamental, customary, and non-derogable human right that is also part of customary norms *Ius Cogens*. Thus, when the right to life is applicable, no derogation is permitted merely based on a general claim that a public emergency creates a need to violate the right to life.[219] The author establishes that the right to life is not absolute, as Wicks did. There are certain specific circumstances where infringing this right is possible. These circumstances must be delimited in international human rights instruments with the most careful scrutiny and accuracy. The author determines that the right to life is fundamental, customary, and part of *Ius Cogens*. This right cannot be derogated in any situation. Still, there may be exceptions to the compliance of this right in cases of justified lethal force or a public emergency like wars or armed conflicts.

Paust establishes that the right to life is necessarily conditioned by the word *"arbitrarily,"* demonstrating that it is relative. Its proper application will depend upon contextual analysis concerning whether or not a particular death is arbitrary under the circumstances.[220] The word arbitrarily is in Article 4 of the American Convention on Human Rights and Article 2 of the ECHR, which establishes the right to life and that nobody can be arbitrarily deprived. This word also appears in almost every document establishing and protecting this right. According to the author, this means that the nonarbitrary deprivation of life is admissible. This is true, but these nonarbitrary deprivations must be strictly construed and determined in the instruments that protect the right to life. The situation is a little more complicated in the case of a war, where it is presented as a scenario where it is difficult to determine the arbitrary deprivation of life.

[218] Paust, Jordan J. "The Right to Life in Human Rights Law and the Law of War". In: *Saskatchewan Law Review. Vol. 65, No.2*. P.P. 411-426. United States, 2002.

[219] Ibid. P. 412,413.

[220] Ibid. P. 415.

The author continues by saying that non-derogability means that even in times of war or other public emergencies, persons cannot be arbitrarily killed. It does not mean that no person can rightly be killed. Further, under this standard, it may be that when *"non-lethal measures"* of warfare are readily available, the use of lethal measures might constitute arbitrary deprivation of life, but this would have to be tested circumstantially.[221] As mentioned, war is a complex scenario that determines the arbitrary deprivation of life. Lethal measures used in war may cause an arbitrary or non-arbitrary deprivation of life, but these have to be judged according to each case and its circumstances. For example, a case of self-defence in a war is not an arbitrary deprivation. For this, it is necessary to consider the principle of proportionality that applies to the specific context and try to limit the consequences of the war by avoiding unnecessary loss of lives and overall civilian lives. A person cannot be arbitrarily killed, but as the author notes, an individual can be rightly killed according to the law applied.

Paust determines that, as in the case of human rights law, there is no absolute prohibition on killing other human beings in the laws of war. Indeed, warfare clearly can involve the lawful killing of particular human beings in specific contexts. Perhaps the most critical general prohibitions are the customary norms applicable in all forms of armed conflict and requiring: (1) that detained persons must not be intentionally killed under any circumstances except after conviction of a crime in a fair trial, (2) that civilians who do not take a direct part in hostilities must not be the object of an attack, and (3) that violence must not involve excessive death, injury or suffering.[222] The author establishes that the right to life is not absolute in the law of war either. Usually, in the case of wars, there are specific situations that may allow the lawful killing of individuals. The Geneva Conventions determine specific rules about warfare. This work is not about the law of war, so I will not explore this subject deeply. However, the prohibitions established by the author of customary law are worth mentioning. The first is related to prisoners of war who must not be killed before a fair trial. The second refers to protecting civilian lives in the case of war. The civilians must not be objects of attack, and they must be protected from the war in the necessary and possible ways. Third, the violence must not involve excessive death, injury or suffering. This is related

[221] Ibid. P. 416.

[222] Ibid. P. 419,421.

to what Wicks and Predescu established about the inherent dignity of human beings. The scenario of war is filled with violence, but if it is not necessary to kill people or cause them harm or suffering, this must be avoided. These situations are determined according to the circumstances and the possibilities of the international organs or states investigating acts of warfare. Furthermore, these prohibitions directly relate to protecting and respecting human rights.

The author concludes by stating that a general principle is the customary law of *"military necessity"*. At the extremes on a continuum of theoretical meanings, such a principle does not require violence or targeting to be *"absolute necessity"*, nor does it allow any violence that might benefit the war effort or provide a military *"advantage"*. Human rights are relevant to the adequate interpretation of the laws of war. They can apply in times of armed conflict independently of the reach of applicable laws of war.[223] The deaths in war must be specifically directed to a military necessity. Combatants may kill enemies who are armed or whose lives are incidentally unavoidable by the armed conflicts of the war. However, they cannot deprive civilians of their lives who did not take part in the hostilities or people who do not benefit from the war. The author takes the concept of absolute necessity applied by the ECtHR in the exceptions to the right to life and differentiates this from the law of war by stating that violence or targeting does not have to follow this standard. Furthermore, the author establishes the importance of human rights in warfare. He determines that it is necessary to have an adequate interpretation of the laws of war and that human rights must apply in times of armed conflict, together with these laws. Applying human rights in armed conflicts would cause a more humanitarian approach to warfare and, hopefully, the protection and respect of these rights in the circumstances. The ECtHR has established in its case law that the obligation to investigate the violation of the right to life (procedural aspect) must never be interrupted by armed conflict or in the aftermath of war. However, it can be more challenging to develop.

1. E. The Right to Life in the Practice of the IACtHR and the ECtHR

This part determines the right to life in the IACtHR and the ECtHR practice. Furthermore, it examines how these tribunals interpret and apply the Conventions regarding this fundamental right.

[223] Ibid. P. 424,425.

Costa Rodríguez recognises human beings' intrinsic dignity, which is linked to the right to life. This author also relates Article 4 with Article 9 of the American Convention on Human Rights, establishing the prohibition of arbitrary arrest, detention, or exile.[224] Several cases are associated with the arbitrary use of force or torture. Costa Rodríguez determines that for all human rights to be effective, they have to comply with the right to life, and it is a positive obligation of all states to ensure this.[225]

The book *"American Convention: Life, Personal Integrity, Personal Liberty, Due Process and Judicial Recourse"* by Cecilia Medina Quiroga[226] establishes that: "the reach and content of protecting the right to life are complex. This relates to the debate about guaranteeing this right, and finding a conciliation between different positions is challenging."[227]

The subject of the right to life has a rich literature about several aspects of this right. Examining these other texts is essential. In this way, creating a holistic view of the right to life is possible before analysing the court cases. Establishing the idea about the evolution and development of the right to life in this chapter is only a form of introduction because the general views of the right to life differ from the subject of this research.

Medina Quiroga is another primary author I chose for this research because her work is dedicated to understanding Article 4 of the American Convention, which protects the right to life and its interpretation. Her text is interesting from the perspective that concerns the obligation of the state to investigate the violation of the right to life (due process) and the different forms of reparation of the right to life that are a very relevant aspect of this human right.

A sub-section of the Case Bulacio V. Argentina of the IACtHR determines: *"The active protection of the right to life and the other rights established in the American Convention, it is distinguished in the State's duty of guarantee the free and full exercise*

[224] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano*, N. 9, January-March. P.P.74-112. 2005. P. 80.

[225] Ibid.

[226] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P.P. 59-136. 2005.

[227] Ibid. P. 65.

of the rights of all the people under the jurisdiction of the State and requires that this adopt the necessary measures to punish the deprivation of the life and other violations to human rights, as well as, to prevent the infringement of certain of these rights by part of the security forces or of third parties that act under its acquiescence."[228]

Some essential notions about the evolution of the right to life violated by security forces in the ECtHR are established in the book *"The Police and International Human Rights Law"*, edited by Ralf Alleweldt and Guido Fickensher.[229] These editors are the authors of the first chapter about the police and how they are a key factor in human rights protection. They say that government authorities, including police forces, are created to provide security and protect the rights of citizens. Police officers must often act quickly and decisively to ensure that individual rights and the rule of law are respected. Each time the police interfere lawfully to protect citizens' lives and physical integrity, they contribute to the well-being and security of the citizens and the protection of human rights. To fulfil this task, police forces have special powers, including the power to use force and coercion if necessary.[230] This is a relevant idea concerning the powers that the police use to act if they interfere with citizens' unlawful behaviour, but they must not abuse these powers. It is necessary to highlight that when these authors talk about police officers, this can be applied to every security force that arbitrarily deprives human beings of life and depends on the state.

The authors continue by stating that the ECtHR has found violations of the right to life and the prohibition of torture in numerous countries all over Europe.[231] As established above in this work, these are the cases being examined in this research, and they reach Article 2 of the ECHR (Right to Life) and Article 3 (Prohibition of Torture).

In cases where the police use physical force or firearms, the issue of command responsibility may arise. Human rights have a procedural side. If there is a complaint or suspicion that police have abused their powers, human rights require such cases to be investigated effectively. This requirement has been developed by international human rights bodies during the last decades, in particular in the case law of the ECtHR

[228] IACtHR. Case Bulacio V. Argentina. Merits, Reparations and Costs. Judgment 18 September 2003. Series C No. 100.

[229] Alleweldt, Ralf; Fickensher, Guido. *"The Police and International Human Rights"*. Edit: Springer. DSF: German foundation for peace and research. Switzerland, 2018.

[230] Ibid. P. 1.

[231] Ibid.

on the right to life and the prohibition of torture.[232] It is essential to highlight that the effective investigation behind violating the right to life is one of the ECtHR's most outstanding aspects regarding condemning the accused country. The judgments are very interesting to study to realise how this tribunal condemns the lack of an effective investigation into violating this human right. According to international law, it is necessary to establish that lethal force is the last resort.

The second chapter of the book of Alleweldt and Fickensher documents a relevant topic for this research: policing and human rights. The author of this chapter is Ralph Crawshaw.[233] The primary purposes of policing are to prevent and investigate crime, maintain and restore public order, if necessary, and provide aid and assistance in emergencies. Police are state officials who exercise powers on behalf of the state to perform their functions, which is one of the purposes of human rights.[234] It is essential to highlight that this research does not try to establish that all the security forces, including police forces in Europe and America, are working in a way that means violating the lives of human beings. On the contrary, the security forces that use police brutality are an exception that is the object of this research. The cases of forced disappearances are different; there is an organised state apparatus and security forces that are dedicated to disappearing people and committing homicide to create a generalised state of horror in the country that is developing this practice.

In this chapter, Crawshaw establishes some ideas about the people detained by the police. The risk of human rights violations during detention is exceptionally high during the first hours of police custody. Throughout this period, detainees are most vulnerable, and the police suffer the most significant pressure to obtain confessions from detainees.[235] Despite the pressure of the police forces, a person in the custody of the state must always be treated with the inherent dignity of a human being. The person in custody of the state and its treatment have been a concern in the ECtHR and the IACtHR case law.

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[232] Ibid. P. 3.

[233] Crawshaw, Ralph. "Chapter 2: Police and Human Rights: Fundamental Questions." In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018.

[234] Ibid. P. 8.

[235] Ibid.

Another author who provides essential aspects about the ECtHR is Luzius Wildhaber.[236] The author establishes that the principal and overriding aim of the system set up by the ECHR is to protect the rights and freedoms of every contracting state effectively. That means that the relevant structures and procedures are in place to allow individual citizens to vindicate those rights and assert those freedoms.[237] The work of the human rights regional courts is to examine these complaints made by individuals against countries where their human rights have been violated, and there has not been a correspondent judgment for the responsible or an effective investigation of the crime.

Wildhaber establishes the evolutive interpretation: It is the genius of the Convention that it is indeed a dynamic and living instrument. It has shown a capacity to evolve in light of social and technological developments that its drafters could never have imagined. The Convention has shown that it is capable of growing with society. It evolves through the interpretation of the court.[238]

The ECtHR is understandably wary of extending its case law on positive obligations. First, one has to be convinced that morals have evolved and that knowledge is reflected in the law and practice of most contracting states. The court will then interpret the terms of the Convention in light of that evolution.[239]

The author's exciting approach to establishing the evolution of the court in a globalised world that is constantly changing due to technology and political and economic circumstances adds to the evolution of human rights as an essential perspective. The notion of the ECHR and the American Convention on Human Rights as living instruments is necessary. The significant evolution these courts achieve is related to their case law, how they interpret the Conventions, and the standards they apply.

The author highlights that the separation of powers is a crucial element in the Convention system as one of the fundamental pillars of the rule of law. At the same time, it is a principle that has to apply, admittedly in a different way, to the functioning of the Strasbourg Court. There is no room for even the perception of external

[236] Wildhaber, Luzius. "The European Court of Human Rights in action". In: *Ritsumeikan Law Review.* P. 83-92. Nº1, 2004.

[237] Ibid. P. 83.

[238] Ibid. P .84.

[239] Ibid. P. 87.

interference or any lack of independence of the court.[240] The author establishes the necessity of an independent court from the states involved in the cases. The notion for the state parties that the court is independent and impartial is essential for them to comply with the judgments. This is achieved by the judges' different countries and backgrounds, among other reasons.

Wildhaber also discusses the notion of human dignity, which lies at the heart of the Convention. The court held that a person is imprisoned in conditions compatible with respect for human dignity. The manner and execution of the measure should not subject them to distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.[241] The author repeats what has been established about treating persons under the state's custody with dignity and refers to the importance of this, as Costa Rodríguez and Hanna Arendt have done. The case law of the human rights court gives special importance to the respect for the dignity of people regarding the prohibition of torture, punishment or ill-treatment.

Another engaging author, Pastor Ridruejo, establishes that the principle of proportionality applied by the ECtHR is occasionally used to describe the Convention's conformity with specific interferences, intrusions, and limitations of the national authorities in the enjoyment of determined rights and freedoms.[242] The interference is considered legitimate if it constitutes a necessary measure in a democratic society for specific purposes. The tribunal demands the requisites that show the existence of a reasonable relation of proportionality between the measures taken and the purpose pursued.[243]

There is a hierarchy of legal tutelage assets. Establishing that the right to life is the primary right to protect is necessary. When a material asset and human life are in danger, it is more important to protect this last right, even if that means losing the material asset to save a life.

In this subchapter, several authors present their perspectives on the right to life and its application in the IACtHR and the ECtHR. Furthermore, various characteristics of this

[240] Ibid.

[241] Ibid. P. 88.

[242] Pastor Ridruejo, José Antonio. “La Reciente Jurisprudencia del Tribunal Europeo de Derechos Humanos: Temas Escogidos”. In: *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz.* P.P.240-276. 2007.

[243] Ibid. P. 253.

right are identified. I believe that the authors' diverse views and the established notions enhance our understanding of a holistic perspective on the right to life and its interpretation by the human rights tribunals.

2. Relevant Articles of the Conventions of Human Rights

2. A. Introduction

It is necessary to analyse the relevant articles of the human rights conventions. These are related to the protection of the right to life in the American Convention on Human Rights and the European Convention on Human Rights. These articles establish the substantive aspect of these rights but also generate a procedural obligation to investigate these infringements. Furthermore, the articles against torture, inhuman and degrading treatment or punishment are relevant in both conventions for this research. Articles 2 of the European Convention on Human Rights and 4 of the American Convention on Human Rights, which protect the right to life, will be analysed. Then, there will be some perspectives from different authors on the interpretation and application of these in the standards of the regional human rights courts.

2. B. The Examination of the Relevant Articles

This section examines the Conventions articles regarding the right to life. Furthermore, it is essential to analyse the articles concerning the prohibition of torture that are connected with the categories of violation of the right to life by security forces.

This subchapter explains how Article 4 of the American Convention on Human Rights is applied in the judgments. This is vital because this article and Article 2 of the European Convention on Human Rights will be sources for determining standards and comparing both tribunals.

It is significant to compare these tribunals to highlight the difference between the articles protecting the right to life in the American Convention on Human Rights and the European Convention on Human Rights. Article 4 of the first-mentioned instrument establishes the protection of the right to life, but the following five paragraphs are about the applicability of the death penalty. Furthermore, Article 2 of the European Convention states: "*No one shall be deprived of his life intentionally save in the execution of a court sentence following his conviction of a crime for which*

this penalty is provided by law."[244] These articles have become old, considering that what has been established about the death penalty has lost vigour because there are Additional Protocols in both Courts that prohibit the death penalty.

Article 4 of the American Convention on Human Rights establishes the right to life: *"1. Every person has the right to have their life respected. This right shall be protected by law and, generally, from conception. No one shall be arbitrarily deprived of their life.*

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes, under a final judgment rendered by a competent court and under a law establishing such punishment enacted before the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offences or related common crimes.

5. Capital punishment shall not be imposed upon persons who, when the crime was committed, were under 18 or over 70 years of age, nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending a decision by the competent authority."[245]

The first subsection establishes that the right consists of not being arbitrarily deprived of life, that this right belongs to every human being, and that this right is protected by law. The following five subsections establish the death penalty. The editors of this Convention were mostly against the death penalty, but there was no conciliation with the states at the time of writing the Convention. For that, the primary idea is to eliminate the state's opportunities to deprive people of their lives as much as possible.

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[244] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 2.

[245] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 4.

Significantly, the author Medina Quiroga establishes that this article must be interpreted with respect for the right to life and an understanding of the state's obligations—both positive and negative—to guarantee the execution of actions that allow the effective enjoyment of the right.[246]

It is necessary to establish that Protocol A-53 to the American Convention on Human Rights relative to the Abolishment of the Death Penalty exists. This document was established in Asunción, Paraguay, on 6 August 1990 and came into force for each state after ratification. To this day, eight states have ratified the Protocol.[247]

Medina Quiroga establishes that subsection 1 of Article 4 consecrates every person's right to life; because of this, nobody can arbitrarily be deprived of their life. The death penalty is a way of taking the life of a person, even if they have committed crimes, and I believe that is against the right to life that the same article determined. The death penalty has been prohibited in several countries in the last few years. For example, it is allowed in certain states of the United States that are not part of the American Convention on Human Rights. However, it is part of the Organization of American States. The headquarters of the Commission on Human Rights is in Washington D.C. Furthermore, I believe that the death penalty in the case of a person who had committed a crime is a kind of *"eye for an eye"* of the Hammurabi Code that is an ancient law that, although it was beneficial in ancient times, has become obsolete nowadays.

The right to life is not absolute because there exist situations in which it is possible to deprive a person of their life without violating Article 4.1 of the Convention. A possibility is the deprivation of life by legitimate defence, owned or of a third party. The circumstances that lead to a legitimate defence are not specifically in the letter of Article 4 of the American Convention. However, it does appear in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR, which the IACtHR quoted repeatedly. Another possibility of the deprivation of life is by the security forces as a

[246] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P.P. 59-136. 2005. P. 76.

[247] General Assembly of the Organisation of American States. *A-53 Protocol to the American Convention on Human Rights to Abolish the Death Penalty.* 6 August 1990, Asunción, Paraguay. https://www.oas.org/juridico/english/treaties/a-53.html

result of the legal use of force in the persecution of legitimate purposes.[248] This is a hazardous concept because sometimes the security forces exceed their function and abuse their strength, causing the deaths of people. This research is about these cases when the security forces commit homicide without absolute necessity and violate the obligation of the state to protect the right to life arbitrarily.

According to Medina Quiroga, it opens a new field for the state's action related to formulating adequate procedure norms to control their agents and establishing an independent and impartial organ that proceeds with the control and regular application of these measures without discrimination.[249] The investigation of violating the right to life must be independent and unbiased. This means that the investigators must be people who are from another branch or have nothing to do with the event of the homicide by security forces. If this does not comply, the investigation is void because it does not show confidence in the possibility of the people responsible being judged and sentenced.

Medina Quiroga highlights that the IACtHR has determined the importance of punishing the perpetrators for violating the right to life and all human rights. The IACtHR established that *"a violation remains unpunished in a state if the victim is not restored to the fullness of their rights."*[250] The duty of guarantee is the free and plain exercise of the people's rights and fundamental freedoms subject to its jurisdiction.

The most frequent form of impunity is the passivity of the domestic tribunal to which it belongs in deciding a case of an alleged violation of the right to life. However, the most evident form is produced by the amnesty laws.

When death is the result that is not necessarily wanted by force, it corresponds to the superior organ examining the facts and considering what is established in the American Convention. In this way, it will be decided if it is an affectation of a human right compatible with the Convention. Firstly, it is necessary to examine if there was a norm that authorised the use of the force of the respective agent and if the force was used to achieve a permitted purpose by the law. Secondly, if the measure that results in the

[248] Ibid. Par. 78.

[249] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P.P. 59-136. 2005. P. 80.

[250] Ibid. P. 81.

deprivation of life is *"necessary in a democratic society"*. It is vital to examine if the measure was conducive and proportional, and if another alternative existed to achieve the objective.[251] International law establishes the use of lethal force as a last resort. Therefore, the security forces must always try less harmful means to apprehend an offender.

Article 2 of the ECHR guarantees *"everyone´s right to life"*, which shall *"be protected by the law".* The article states that *"no one should be intentionally deprived of his (or her) life*". The exception *"save in the execution of a sentence of a court following his (or her) conviction of a crime for which this penalty is provided by law"*.[252] This goes back to the 1950s and can be classified as outdated since Article 1 of Protocol No. 6 to the Convention and Articles 1 and 2 of Protocol No. 13 to the Convention have abolished the death penalty even during war.[253] This was mentioned above and is the same in the American Convention on Human Rights and Article 4. It is relevant to say that the second part of Article 2 of the ECHR establishes: *"Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than necessary..."* The article then lists the possible motives for allowing the use of force that can lead to the death of one or more persons. These are: *(a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action*

[251] Ibid. P. 82.

[252] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 2.

[253] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms. Protocol Nº 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty.* 28 April 1983, Strasbourg, France. Article 1: Abolition of the death penalty. The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Protocol Nº 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances. 3 May 2002. Vilnius, Lithuania. Article 1: Abolition of the death penalty. The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2: Prohibition of reservations. No reservation may be made under Article 57 of the Convention with respect to the provisions of this Protocol.

lawfully taken for the purpose of quelling a riot or insurrection.[254] This part of the text is essential to determining the differences in the standards applied to resolve certain cases related to the violation of the right to life by the security forces in Europe and America. The American Convention does not have a similar part.

I believe Article 2 of the ECHR is more complete than Article 4 of the American Convention on Human Rights, without this having to do with each court's work. However, Article 2 enumerates the occasions when violation of the right to life is allowed, and this is a significant issue in deciding the question of the condemnation of an accused person. Moreover, this is why the IACtHR must be directed to the Basic Principles and Code of Conduct for Law Enforcement Officials of the OHCHR, which establishes the situations in which the use of force is allowed and can result in the death of a person.

Furthermore, Article 3 of the European Convention on Human Rights relates to Article 2, which protects the right to life. This one establishes: *"No one shall be subjected to torture or inhuman or degrading treatment or punishment."*[255] It establishes the prohibition of torture. This article demonstrates the basis of the prohibition of inhuman treatment. Many cases of violation of the right to life have been caused by illegal detentions or torture of people, which has led to their death. This article is vital for this work considering the relation between torture and inhuman treatment and the death of the person in the specific case. The same prohibition of torture is established in the American Convention on Human Rights in its Article 5, Right to Personal Integrity.

2. C. Importance of the Case Law related to the examined Articles

In this part, judgments about violating the right to life are analysed. In this way, it is possible to glimpse how the human rights courts interpret and apply the articles mentioned above.

Several interesting cases in the IACtHR discuss the right to life. The first case of enforced disappearance was the above-mentioned Velásquez Rodríguez V. Honduras, judgment of 29 July 1988. The Inter-American Commission of Human Rights interposed this case before the Court on 24 April 1986. The requirement established

[254] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 2.

[255] Ibid. Article 3.

that there was a violation of Article 4 (Right to Life), Article 5 (Right to Personal Integrity) and Article 7 (Right to Liberty). Honduras was condemned for violating the abovementioned American Convention on Human Rights articles. The state was also criticised for not guaranteeing the duty of preventing any violation of the rights established in the Convention.[256] It is necessary to highlight that both obligations of the state are shown here: the positive, which includes the inviolability of the right to life, and the negative.

Another critical case of the IACtHR is Panel Blanca (Paniagua Morales and Others) because it expands the concept of the victim.[257] Before this judgment, the victim was considered only the person who had been killed, tortured or disappeared, among other crimes. This decision expands the concept of the victim to the relatives of the direct victim of the crime. The court condemned the state to pay compensation to the siblings of the person who disappeared because of moral damage that includes the anguish and suffering of the relatives for not knowing the destiny and whereabouts of the direct victim. These were the indirect victims that, according to the court, did not need to show that there was an affective relation, since the consanguinity was enough.[258]

The IACtHR has had a vast opportunity to examine the subject of protecting the right to life because until not long ago, the petitions before the Inter-American Commission for the violation of this right, together with the references to the right to personal integrity, constituted a significant majority of the cases that were processed there.[259]

Regarding the ECtHR, the case law of this tribunal has continuously emphasised that Article 2 ranks as one of the most fundamental provisions in the Convention. Even during a *"time of emergency threatening the nation",* no derogation from the obligation under Article 2 shall be made. This is documented in Article 15 of the

[256] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano*, N. 9, January-March. P.P.74-112. 2005. Par. 80.

[257] Ibid. Par. 85.

[258] Ibid.

[259] Grossman, C. Palabras del Presidente de la Comisión Interamericana de Derechos Humanos, decano Claudio Grossman, en la sesión inaugural del 95º Período Ordinario de Sesiones de la CIDH. In: J. E. Méndez y F. Cox (eds.), *El futuro del sistema interamericano de protección de los derechos humanos, IIDH*. Costa Rica, 1988. P.P. 155-166. P. 157.

European Convention.[260],[261] The same can be applied to Article 3 concerning the prohibition against torture.

This concerns how the ECtHR has developed the right to life in its jurisprudence. Most European Tribunal cases about violations of the right to life by security forces show the punishment for a deficient and inadequate investigation of the breach. This means that this tribunal establishes the guilt of the authorities that have to punish the perpetrators of the crime. However, this tribunal is characterised by not condemning, in many cases, the substantive aspect of this right, which means the actual death of the person. In its case law, the ECtHR has continuously emphasised that Article 2 of the ECHR is one of the Convention's most fundamental provisions.[262]

An engaging text about Article 2 of the ECHR is Robert Esser's *"The Police and the Right to Life."*[263] This is Chapter Four, from the book *"The Police and International Human Rights",* which is relevant to this research.

Esser focuses on the wording and scope of protection granted by Article 2 about the preventive perspective of police action.[264] This is a peculiar decision of the author, considering that most cases concerning the ECtHR's right to life are condemned for the lack of an effective investigation in their procedural aspect, instead of the substantive element of the loss of life.

Esser establishes restrictions on the right to life, which can be justified even under human rights standards. The death of a person described by the Convention as a *"deprivation of life"* does not, under specific and narrowly defined circumstances,

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[260] Crawshaw, Ralph. "Chapter 2: Police and Human Rights: Fundamental Questions." In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. P. 45.

[261] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 15.2: No derogation from Article 2, except for deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1), and seven shall be made under this provision.

[262] ECtHR. Case of McCann and Others V. United Kingdom. (Application no. 18984/91). Strasbourg. Judgment 27 September 1995.

[263] Esser, Robert. "Chapter 4: The Police and the Right to Life." In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018.

[264] Ibid. P. 45.

amount to a violation of the Convention that was mentioned before, and these circumstances are the ones established in Article 2.2.[265] This is different from the American Convention on Human Rights, which, in Article 4 (Right to Life), does not clarify where it is lawful to commit homicide by security forces. Also, the deprivation of life established in Article 2.2 of the ECHR is determined with careful scrutiny and is limited to these conditions. Any action outside this sphere will be an arbitrary and illegal deprivation of life.

Esser states that concerning the extent of protection, the right to life has to be interpreted regardless of social or economic background, age or disease. Article 2 prohibits any killing. Concerning the protection of life by police intervention, one has to consider that every killing that is attributable (as it is established in Article 1 of the Convention) to a contracting state is regarded as interference with the right to life. This event is held for accidental killings by police forces.[266] [267] Even in the case of unintentional killings, the ECtHR must determine the absolute necessity of the member of the security forces who perpetrated the crime and if it is under one of the exceptions of Article 2.2. Furthermore, unintentional killing is directly related to the planning and control of the operation, which must be according to the circumstances and try to avoid the loss of lives.

The author establishes that the reasons justifying the deprivation of the right to life, as regulated by Article 2 subsection 2, provide abstract *"minimum"* guidelines for their daily work. The Convention mentions the defence of any person from unlawful violence. According to the jurisprudence of the ECtHR, the situation has to be assessed *ex-ante*. The principle of proportionality must be considered seriously. The court has not yet clearly referred to the issue of whether the killing of a person to protect material

[265] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 2.

[266] Esser, Robert. "Chapter 4: The Police and the Right to Life." In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. P. 46.

[267] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 1: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

goods can be justified under Article 2 subsection 2.[268] The answer is obvious: protecting the right to life comes before any material good. As mentioned above, in the hierarchy of tutelage assets, the right to life comes first before any other right, including property. Furthermore, the principles of proportionality and absolute necessity are crucial to determining the justification of the use of force and the intended or unintended death of a person as a result. These principles will be examined in Chapter III. The defence of a person from unlawful violence is one of the possibilities that Article 2.2. establishes the use of force, but this must be done according to these principles.

Another justification mentioned in Article 2 sub 2 of the Convention is the enforcement of a *"lawful arrest or the prevention of escape of a person that is lawfully detained"*. An intentional killing has to be seen in apparent contradiction with this norm. The last justification in the provision is an *"action lawfully taken to quell a riot or insurrection"*, one of the most highly debated reasons for justification. The ECtHR has made it clear that force must always be necessary for all of those justifications of *"limitations"* of the right to life. Therefore, whenever a state refers to some action that may conflict with the right to life, state officials must ensure that no less severe means suffice in the concrete situation. Here, it again highlights the importance of the principle of proportionality for the court.[269] It is essential to establish the significance of these exceptions of Article 2 of the ECHR because when the ECtHR decides on a case, it has to apply them with criteria and proofs to not wrongly condemn or let free a person who committed a crime. Although these exceptions are not in Article 4 of the American Convention on Human Rights, the IACtHR has contemplated the principle of proportionality and absolute necessity in its judgments. Article 2.2. determines that it is possible to use force for a person who is lawfully detained and is escaping or to achieve a lawful arrest; in the case law of the court, it is established that it is necessary to use less extreme means to arrest the person. Also, if this person does not represent a danger to different people's lives, it is best that the individual escape and not take their life. An insurrection or riot is a complicated situation where the security forces

[268] Ibid. Article 2.

[269] Esser, Robert. "Chapter 4: The Police and the Right to Life." In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. P. 48.

are under a lot of pressure, and it is difficult to manage their actions. However, according to the court, they may apply force but always consider the possibility of avoiding the unnecessary loss of lives. Furthermore, the IACtHR has established in its case law that in a riot, it is vital that the security forces respond with proportional force to the one they are facing.

Esser states some aspects of police operations. Measures against any escalation have to be considered while planning a police operation. It is essential to highlight that, over the years, the ECtHR's jurisprudence has shaped the principle of proportionality into a so-called principle of necessity. Consequently, a strict and compelling test of necessity has to be applied during the planning and execution stages of a police action.[270] The planning, operation, and deployment of force and the principle of absolute necessity are essential standards in the ECtHR's case law.

The author highlights the principle of proportionality in the necessity of the use of force. This principle derives from the text of Article 2 subsection 2 when it says, "*use of force which is no more than necessary"*. Then, Esser analyses one case of the ECtHR related to the principle of proportionality. Considering that the facts of these cases will be explained in Chapter 2, only the court's decision will be described in this section.

In McCann V. United Kingdom, the judgment of 27 September 1995 of the ECtHR, it was found a violation of Article 2 of the Convention about the killing of three terrorists: it did not constitute a use of force that was necessary, as prescribed by Article 2 subchapter 2. It was found that the violation of this Article was not strictly proportionate to the objectives to be achieved regarding the planning and control of the operation by the authorities.[271]

Another engaging author, Stephen Skinner[272] determines that in the case of McCann, the ECtHR underlined the right´s importance (as one of the most fundamental provisions in the Convention), stressed its essential nature (it enshrines a fundamental

[270] Ibid.

[271] ECtHR. Case of McCann and Others V. United Kingdom. (Application no. 18984/91). Strasbourg. Judgment 27 September 1995. Par. 12.

[272] Skinner, Stephen. *"Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy".* Oxford, Hart Publishing, 2019. Bloomsbury Collections. Web. 10 October 2023

value) and situated it in a foundational and interpretive context (the democratic societies making up the Council of Europe).[273]

In this sub-chapter, the case of McCann is highlighted as it is considered the first case about the condemnation of the security forces for violating the right to life. This case was about three suspects in an act of terrorism who were killed by security forces. The ECtHR understood that it was not necessary to kill them because the suspects could have been arrested earlier without losing their lives.

Furthermore, this part examined Article 2 of the ECHR, which establishes not just the protection of the right to life but also states situations where the death of a human being can be justified, like the legitimate defence, among other examples.

This research is based on the IACtHR's and ECtHR's decisions and the norms of the American and European Conventions to determine situations and judgments in which the security forces do not observe the state's positive and negative obligations. If the police arrest a person, this is a vulnerable moment since the person loses contact with the outside world, and their other fundamental rights, such as physical integrity, may be at risk.

In this section, Article 2 (Right to Life) and Article 3 (Prohibition of Torture) of the ECHR and Articles 4 (Right to Life) and 5 (Right to Human Treatment) of the American Convention on Human Rights are examined. This allows to determine how these human rights tribunals interpret and apply these articles. These courts aim to protect and guarantee the right to life and human dignity. They achieve this by analysing and using these articles.

3. Substantive and Procedural Aspects of the Right to Life

3. A. Introduction

It is significant to establish that the cases regarding the violation of a right have three aspects. The first is the substantive aspect of the right to life: the loss of life. The second is the procedural element of an effective investigation into violating this right. The third is the legal consequences of such an investigation that can lead to the sanction and punishment of those responsible and the reparations of the direct and indirect victims of the crime.

[273] Ibid. P. 41.

Furthermore, the IACtHR generally established the violation of the substantive and procedural aspects together. The ECtHR separates the examination of the substantive element of the right to life and its procedural duty.

This section contains several examples of security forces agents using force. Sometimes, these agents' actions or omissions can provoke deaths. It is important to highlight these cases to encourage these forces to be more careful regarding their situation in the future. The state must establish stricter laws and regulations regarding the use of force and the possibility of violating the right to life.

Furthermore, these forces indeed have to act under much pressure, but they must be prepared and avoid any deaths or use of force that is not necessary. This last part is vital to understanding when the security forces are obliged to use force to protect their own lives or the lives of other persons and when these agents abuse force, killing someone who might not be killed. This last situation is the one that gets to the tribunals and is examined most of the time.

This sub-chapter will establish some conceptions about the substantive and procedural aspects of the right to life in the domain of the protection of the fundamental rights of the human person,

3. B. Substantive Aspect of the Right to Life

This section determines the substantive aspect of the right to life. Diverse authors have acknowledged different notions about human rights' substantive element, particularly the right to life. Furthermore, this section examines this aspect as established in the IACtHR and the ECtHR, the interpretation of the articles regarding the right to life in the Conventions, and some specific notions about the substantive aspect of this right.

A thought-provoking author, Candado Trindade,[274] establishes that by the principle of effectiveness, widely supported by the IACtHR and the ECtHR case law, states parties to human rights treaties should secure the conventional provisions and the proper effects at the level of their respective domestic legal orders. Such a principle applies not only to substantive norms of human rights treaties (that is, those which provide for the protected rights) but also to procedural norms, particularly those relating to the right of individual petition and the acceptance of the contentious jurisdiction of the

[274] Candado Trindade Antonio Augusto. "Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law." Part. I. Ed. *Inter-American Juridical Committee of the Organisation of American States.* P.P. 233-259. 2010.

international judicial organs of protection. Such conventional norms, essential to the efficacy of the system of global security, ought to be interpreted and applied in such a way as to render their safeguards truly practical and effective, bearing in mind the unique character of the human rights treaties and their collective implementation.[275] This author defines the substantive and procedural aspects of human rights and establishes the necessity for interpreting the provisions to achieve these safeguards and protect human rights with a unique character. The author determines that both aspects are necessary to protect human rights.

Robert Goldman identifies the American Declaration of the Rights and Duties of Man as one of the origins of the American Convention on Human Rights.[276] This instrument asserts that man's fundamental rights *"are not derived from the fact that he is a national of a certain state but are based upon attributes of his human personality."*[277] The Declaration establishes this notion because it determines the human being as the object of human rights without considering whether it is a national of certain parties. All persons are equal before the law. This is essential for the substantive aspect of the right to life, which must protect all persons against the violation of this right. The substantive element of the right to life refers to the victim's loss of life.

Goldman states that the American Convention on Human Rights, with its substantive guarantees and institutional machinery, is perhaps the most ambitious and far-reaching instrument ever developed by an international body. It considerably widens the scope and content of the 1948 American Declaration by including more elaborate and specific civil and political rights. Unlike its European and United Nations counterparts, the American Convention incorporates the rights guaranteed and their means of protection.[278] This author highlights the American Convention on Human Rights as

[275] Ibid. P. 241, 242.

[276] Goldman, Robert K. "History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission of Human Rights". In: *Human Rights Quarterly. Vol. 31.* P.P. 856-887. 2009.

[277] Organisation of American States. *American Declaration on the Rights and Duties of Man.* Res. XXX, adopted 2 May 1948, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, O.A.S. Doc. OEA/Ser.L.V//II.82, doc.6 rev.1, at 17. 1992.

[278] Goldman, Robert K. "History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission of Human Rights". In: *Human Rights Quarterly. Vol. 31.* P.P. 856-887. 2009. P. 865, 866.

the most complete instrument for defending human rights, considering its substantive aspects regarding rights and how the institutional element works. Also, Goldman determines an integral part of the Convention that includes guaranteed rights and ways to protect these. The rights guaranteed and the ways to preserve them refer to the substantive aspect of the right to life. It is significant to establish that the American Convention tried to be complete because rights were not recognised in the American countries, and this instrument aimed to provide protection. However, its model was the ECHR.

Furthermore, Rhona K.M. Smith establishes the International Minimum Standard of Treatment concerning the substantive rights of foreigners in another country. Adherents to this school of thought believe that all states must observe a minimum universal standard of treatment in their management of foreigners. This minimum standard is applied irrespective of the treatment accorded to a state's nationals.[279] This standard was established before international recognition of the corpus of law known today as human rights. Two notions are significant in this standard. One is that every foreign person in a country must be treated with the respect inherent to human beings, and their human rights must be protected and respected. The second worrying notion is that it does not matter if the nationals are treated poorly while the foreigners are treated with respect for their dignity and human rights. I understand that this minimum standard of treatment was necessary to delineate, considering that in the past, the nationals of a state had human rights that were not recognised for foreigners. On that account, these standards must be respected by every person under the jurisdiction of a state and not only by the nationals of that country. However, it is necessary that the nationals also are treated with dignity and that their human rights are respected and protected. Luckily, the author clarifies that in contemporary international human rights law, these rights apply equally to all individuals without distinction and can usually be enforced against one state of nationality or residence.[280] The present work includes examples of foreign courts' judgments denouncing the violation of human rights related to another country, like Armani da Silva V. United Kingdom in the ECtHR or Gelman V. Uruguay in the IACtHR.

[279] Smith Rhona K. M. *"International Human Rights Law"* 10th Edition. Ed. by Oxford University Press, Oxford, United Kingdom. 2022. P. 13.

[280] Ibid. P. 14.

An interesting author, B.G. Ramcharan, establishes that international law developed initially as a body of norms concerning and for the benefit of states and governments. Protecting the individual's rights was of secondary concern in its early history. However, in modern times, there has been a rising global insistence that states, governments, institutions, and laws exist to serve the people, and there is a persistent universal outcry for the human rights and fundamental freedoms of the individual to be respected and assured.[281] This author highlights the long evolution of international law, which recognises the importance of individual rights and freedoms and the necessity of protecting human rights. This author establishes how states were the only subjects of this in the first development of international law. Later, with the proliferation of human rights after the Second World War, the individual was recognised as a holder of their fundamental rights and freedoms.

Furthermore, this author recognises Article 4 of the American Convention on Human Rights and Article 2 of the ECHR as protective of the right to life. However, he determines that the right to life is a norm of international customary law or a general principle of international law that transcends particular proper statements in specific international conventions.[282] Ramcharan states the nature of the right to life as a right that transcends international conventions and must be respected independently of its establishment as a provision in these.

Ramcharan determines that the provisions of the European Convention on Human Rights have sometimes provided the basis for assertions that a restrictive ambit should be given to the concept of the right to life in traditional international law, turning mainly around protection against international or arbitrary deprivation of human rights by government agents. The author highlights that it is not life but the right to life, which is to be protected by law. This legal concept implies that no one may be deprived of their life except on the condition prescribed by law.[283] This author determines the substantive aspect of the right to life that states must protect. This includes the prohibition of the arbitrary deprivation of this right (he mentions all the human rights) by state agents, which is the object of this research. The right to life, not life itself, is

[281] Ramcharan B. G. "The Concept and Dimensions of the Right to Life". In: "*The Right to Life in International Law.*" Ed. B.G. Ramcharan. International Studies in Human Rights. Martinus Nijhoff Publishers. P.P. 1- 32. The Netherlands, 1985. P. 1.

[282] Ibid. P. 3.

[283] Ibid. P. 4.

protected, which generates a legal concept. These notions can be applied to the IACtHR as well. This legal concept is established in the ECHR. As was examined above, Article 2 states the specific situations in which security agents may use force and cause the death of a person.

This author determines that the rationale of the right-to-life concept may thus be said to be protecting every human being from all possible threats. The right seeks to protect each individual from the state against unwarranted deprivations of life, whether by state authorities or other persons within society.[284] This means that the security forces are responsible for protecting people in general, respecting human rights, and restraining arbitrary deprivation of life.

Ramcharan highlights that the right to life is the primordial right. It ranks highest among all rights. However, it is not an absolute right. The deprivation of life during armed conflicts may be lawful, subject to specific conditions.[285] This concept of the author is essential to understand the substantive aspect of the right to life, its protection and the possibility of its infringement in certain circumstances. He states the case of armed conflicts or war where the right to life may be violated in exceptional circumstances, such as when two armies are fighting against each other. Other situations are, for example, the ones established in Article 2.2 of the ECHR, which includes self-defence, which is also recognised in the Code of Conduct for the Use of Force for Law Enforcement Officers of the OHCHR, that the IACtHR applies. The right to life is the primary and principal right, but is not absolute because it can be taken away in certain conditions and situations. However, these circumstances infringe on the right to life and must be determined explicitly in the instruments that protect this. If this is not the case, it would be an arbitrary deprivation of the right to life. The procedural aspect will be revised later, but it is relevant to establish that this must comply in the cases of armed conflict when there is doubt about what happened and an effective and impartial investigation is necessary.

Ramcharan continues analysing the right to life and determines that this right, as he said before, is not absolute. Certain carefully controlled exceptions are permitted. However, as defined in international law and subject to these carefully controlled exceptions, the right is part of *Ius Cogens*. One result is that the categories of

[284] Ibid. P. 7.

[285] Ibid. P. 12.

exceptions must be considered closed and that even where exceptions are recognised, international law must carefully control them. Certain violations of the right to life would also, on any account, qualify as breaches of *Ius Cogens* norms. Genocide, war crimes and crimes against humanity are prominent examples.[286] The right to life is not absolute. However, human rights documents carefully determine the circumstances in which this right can be infringed. One example is the ECHR and its Article 2.2. Furthermore, he establishes again that it is part of *Ius Cogens*, which means that the exceptions to these rights are determined. International law must be cautious and diligent in controlling these exceptional circumstances to prevent the violation of this essential right. This author acknowledges certain crimes that violate the right to life and are never allowed, such as genocide, crimes against humanity or war crimes. These crimes must never be part of the carefully determined exceptions to the right to life stated in human rights instruments.

According to this author there are explicit principles for the exceptions in which the right to life is not absolute: a) The categories of exceptions are closed and no derogation of the right to life is permissible outside of the permitted categories; b) Strict compliance of these categories is essential for the control of such deprivations; c) The principle of proportionality applies to every category of permissible deprivation; d) The permissible deprivations are governed by subsidiary rules contained in instruments such as the UN Code of Conduct for Law Enforcement Officials; e) Within each country there should be in existence an effective system of checks and controls with regard to each category of permissible deprivations and minimum control system should be in place within each country to assure adequate guarantees of the right to life; f) The duty upon a government is not only to respond to situations in which excesses may be committed and to take all possible measures to safeguard against such excesses; g) Whitin every country there should be an elaborate and detailed system for controlling the use of force by police and by other law enforcement officials; h) Within each country the law should provide for individual criminal and civil responsibility for violations of the right to life committed by government agents.[287] This exhaustive compilation of requirements for adequately controlling the exceptions to the right to life concurs with the ECtHR and the IACtHR

[286] Ibid. P. 15.

[287] Ibid. P. 21.

jurisprudence. Even the latter uses the UN Code of Conduct for Law Enforcement Officials as an instrument. Furthermore, these principles are necessary to guarantee that although the right to life is not absolute, it will have correct respect and protection from the countries, and the exceptions to this right will be controlled by the most careful scrutiny. The principle of proportionality is in the case law of both studied courts, and it is essential to determine the responsibility of the state parties. Also, the author refers to the deprivation of the right to life by government agents, which is the object of the present work. The principle h) refers not to the substantive aspect of the right to life but to the legal consequences to which the person responsible for violating human rights must be subjected.

Recognising the right to life as *a Ius cogens* implies the rule of non-derogation to all states. As a norm of *Ius Cogens*, the right to life must never be derogated from any circumstances. The ECHR establishes in its Article 15[288] that a person cannot be deprived of their life in time of public emergency except for deaths resulting from lawful acts of war. Article 27 of the American Convention on Human Rights[289] states

[288] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 15: Derogation in time of emergency. 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

[289] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 27: Suspension of Guarantees- 1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin. 2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the

that this right is not suspended during war or other public emergencies threatening the nation's life.[290] Ramcharan follows the line of thought established by Paust regarding the law of war. As a norm of *Ius Cogens*, the right to life cannot be derogated in international or domestic law. Furthermore, Ramcharan highlights the articles of the human rights conventions that establish that this right must not be suspended even in the case of war or armed conflict, considering the unique circumstances as lawful acts of war. If another attacks a person in a war, this can kill them in self-defence. Furthermore, in their articles, the courts establish other rights that must be respected during times of war, such as the prohibition of torture, slavery or deprivation of liberty, among others. This always considers the circumstances of the emergency and whether there is a reason why this right was violated. It is a complicated ambit to the protection of this right. Still, it is necessary to maintain this in the provisions of the conventions to secure the right to life of every human being and ensure that there are no unnecessary losses of lives in a war or armed conflict. Also, the aim is to protect civilian lives.

Another engaging text is Stephen Skinner's book *Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy*. Case narratives address the world of action. They include the applicants' and states' competing versions of events, which involve selecting relevant evidence and making connections among facts and conduct in consequentialist terms of causation and responsibility.[291] This author explains how, in human rights courts, there are always two versions of the violation of the right to life: the applicant's version and the version of the state accused. The tribunals decide according to the proof presented and their conclusion, considering the Convention. They apply the standards they think are more appropriate in their decisions.

Regarding the ECtHR, in the first decision on lethal force under Article 2 in the 1995 McCann judgment, the ECtHR developed an extensive body of case law on the right to life in the context of lethal and potentially lethal force in domestic policing and law

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Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

[290] Ramcharan B. G. "The Concept and Dimensions of the Right to Life". In: "*The Right to Life in International Law.*" Ed. B.G. Ramcharan. International Studies in Human Rights. Martinus Nijhoff Publishers. P.P.1-32. The Netherlands, 1985. P. 15.

[291] Goldman, Robert K. "History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission of Human Rights". In: *Human Rights Quarterly. Vol. 31*. P.P. 856-887. 2009. P. 865, 866.

enforcement operations. Through the judgments, the ECtHR has interpreted the right to life in the European Convention to involve two principal dimensions, one substantive and the other procedural. These two dimensions indicate how the ECtHR has enlarged the scope of Article 2 beyond its basic wording and established the minimum standards that those rights entail.[292] Skinner determines both aspects of the right to life examined in this work. Because of these two dimensions, the ECtHR and the IACtHR have achieved an expansion of the right to life and permitted the evolution of this in international law. Another interesting aspect the author highlights is that the courts go beyond the Convention letter to determine essential standards for this right. For example, the procedural aspect is not in the letter of the Convention, as is the substantive element. Still, the tribunals have established this aspect based on interpreting the Convention's letter.

The substantive dimension concerns three aspects: 1. State agents' resort to force in the specific incident; 2. The domestic legal, regulatory, and administrative framework for state agents´ action; 3. The broader issues precede and surround the operation in question. As the framework through which the ECtHR has applied the right to life in substantive terms, these aspects provide the grounds for an applicant to base a claim.[293] These aspects of the substantive facet of the right to life are relevant to determining when it has been violated and defining its meaning. These three aspects are essential. The first is the use of force by state agents, which is vital to determine if it was applied with proportionality and absolute necessity. Again, international law establishes this as a last recourse. The second element of the substantive aspect is the necessary domestic framework for the action of state agents. This is related to the obligation of the state to adjust its domestic law to the human rights conventions. The third aspect refers to the control and planning of the operation when the force is deployed. This operation must be carefully organised, and there is no place for negligence.

Skinner brings up McCann's judgment because it is considered the angular stone, which means the beginning of the ECtHR's decisions about the violation of the right to life in general. This court has constantly reiterated that Article 2 enshrines a

[292] Skinner, Stephen. *"Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy".* Ed. Oxford, Hart Publishing, 2019. Bloomsbury Collections. Web. 10 October 2023. P. 60.

[293] Ibid. P. 70.

fundamental value of democratic societies to emphasise the right´s importance and, for that reason, has *"strictly construed"* its provisions to restrict the permissible exceptions in Article 2.2.[294] [295] This author underlines the careful and strict scrutiny with which the exceptions to violating the right to life have been construed in Article 2.2. Furthermore, this standard, which Article 2 established about protecting the right to life in a democratic society as a fundamental value, is one of the most used by the ECtHR in its judgments and enshrines the essential purpose of this tribunal and its Convention.

The emphasis on the importance of the right to life in a democratic society has enabled the ECtHR to enlarge its conception of what is relevant to its narrative in forensic and temporal terms by extending its analysis to the prior and parallel elements of state planning and control.[296] The IACtHR has done something similar in its case law, extending the concept of the right to life and establishing the fundamental necessity for this to be protected regarding Article 4 of the American Convention. Furthermore, this latter court has established the importance of the planning and control of the operations of deployment of force as well as the vital capacitation of the state agents basing these standards in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR. However, the ECtHR has developed extensive and detailed requirements regarding the investigation of the deprivation of the right to life by security agents. Also, the European Court has developed extensively in its case law the importance of well-planned operations and the necessity of controlling them.

Although the right to life about the uses of lethal and potentially lethal force is said to enshrine a fundamental value of European democratic societies, the protection of

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[294] Ibid. P. 71.

[295] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 2. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.

[296] Skinner, Stephen. *"Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy".* Ed. Oxford, Hart Publishing, 2019. Bloomsbury Collections. Web. 10 October 2023. P. 83.

which is an essential provision of the European Convention, Article 2 explicitly provides for a proportionate balance between collective interests and concerns.[297] It is necessary to highlight that, to my understanding and different from this author, what is a fundamental value in democratic societies is the protection of the right to life. The use of force, or potential use, has its meaning as a fundamental value only if it is to save the life of a human being.

The ECtHR has found a breach of Article 2 where state agents have resorted to force in circumstances where the possibility of making allowances for mistake, human error or stress is questionable and where the degree of force used is disproportionate to an aim falling within Article 2.2. Whereas the ECHR does take mistakes and stress into account, it opens the possibility of bringing in killings that were not objectively necessary within the ambit of Article 2.2. exception. This reduces the high level of protection that the right to life in Article 2, in principle, requires and introduces the problematic dimension of making allowances for putative defensive action.[298] The ECtHR has considered unpredictable human conduct in the actions of state agents who may kill based on fear or error. This tribunal decides these cases according to the ECHR, the proof, the principles of proportionality and absolute necessity, and its conclusions based on the specific circumstances. However, as the author established, the error in unpredictable human conduct must not allow the arbitrary use of force to go unpunished when there is a violation of the right to life. The possibility of a mistake in the security agents' actions must be carefully examined to determine if this was a self-defence action valid at the moment or an arbitrary deprivation of the right to life.

Another thought-provoking author is David Harris, who determines that in the broader ECHR schema, lawful arrest in terms of Article 5 (Right to Liberty and Security) requires the aim of bringing the arrestee before a court for trial.[299] Depriving people of their liberty must be done according to the letter of the Convention and only in the situations referred to there. Otherwise, it would be arbitrary and illegal detention and deprivation of an individual's liberty. This relates to the right to a fair trial recognised in Article 6 of the ECHR and Article 8 of the American Convention on Human Rights.

[297] Ibid. P. 84.

[298] Ibid. P. 85.

[299] Harris, David, "The Right to Life under the European Convention on Human Rights". In: *Maastricht Journal of European and Comparative Law.* P.P.122-136. 1994. P. 128.

The ECtHR confirmed the factual and temporal expansion of the scope of its analysis under Article 2, allowing it to extend its narrative of causality and responsibility into various aspects of state planning and control, including, in some cases, the interconnection between this substantive aspect and the domestic legal and regulatory framework. This approach has continued in numerous subsequent decisions, which have gradually indicated the range of factors that the ECtHR is prepared to scrutinise and that will be required for state planning and control to satisfy Article 2.[300] Once again, it highlights the necessity of correct and exhaustive planning and control of the operation when the force is deployed. For this, not only the agents of security forces who commit the homicide but also the circumstances surrounding that operation and how it was planned and developed by its superiors are what the human rights courts judge.

Furthermore, Juliet Chevallier-Watts establishes engaging notions about the substantive aspect of the right to life.[301] The author determines that the ECtHR emphasised the need to balance the State's duty to protect its populace, its agents, and the lives of the suspects.[302] In addition to the perceived absolute necessity, the security forces must have the belief that they are acting within the sphere of the exceptions of Article 2.2 when there is a deprivation of the right to life. In this way, they can protect the lives of people involved in the dangerous situation and their own lives. However, if there is a better method to detain the suspects that does not imply the killing of them, it is necessary to resort to less extreme measures. These possibilities are seen in Chapter III regarding the apprehension of the suspects before they commit the crime or negotiation, among others. For this, planning and controlling the operation of force deployment must be practical and avoid the unnecessary loss of lives. The IACtHR follows these same standards in its case law.

Ramona Nicoleta Predescu establishes interesting notions about human dignity in both human rights tribunals. Article 5 of the American Convention on Human Rights, referring to the right to humane treatment, states that all persons deprived of their liberty should be treated with respect for the inherent dignity of the human being. The

[300] Ibid.

[301] Chevallier-Watts, Juliet. "A Rock and Hard Place: Has the European Court of Human Rights Permitted Discrepancies to evolve in their scrutiny of Right to Life cases?". In: *International Journal of Human Rights. Vol. 14. No. 2.* P.P. 300-318. 2010.

[302] Ibid. P. 304.

interpretation of this article by the Inter-American Court of Human Rights is favourable to recognising a right to dignity assigned to the human being.[303] Regarding the IACtHR, this author states that this court has interpreted the provisions referring to human dignity as an inherent right of the human being. As mentioned, a person's dignity is linked with the inherent right to life. In this case, the author refers to the right to be treated with dignity concerning the right to humane treatment and the prohibition of torture, ill-treatment and punishment. This article was mentioned in subchapter two because it is related to the cases of violation of the right to life by the state's security forces.

The author continues by stating that Candado Trindade, as judge of the IACtHR, has established the right to live with dignity and to the security and integrity of the person. This evolutive approach used by the Costa Rican Court is not found concerning the ECtHR. The Strasbourg Court takes human dignity into account in its decisions, but it does not share this opinion according to which the right to life of the human being also means a right to live with dignity.[304] In its interpretation of Article 2, the ECtHR is not as prone as the IACtHR to determine a person's dignity as a characteristic of the right to life. Although the European tribunal recognises this right, it does not establish that the right to life is to live with dignity. The tribunals have different interpretations of this concept.

Predescu states that even if human dignity is not a part of the European Convention on Human Rights, its role is determinative in the European Court of Human Rights practice. Human dignity was the basis of the ECtHR decisions, especially when the Court found a violation of Article 3 of the ECHR, which refers to the prohibition of torture.[305] There is a concordance between the two tribunals about the inherent dignity of the person regarding the prohibition of torture, ill-treatment and punishment. In its case law, the IACtHR and the ECtHR have established that a person in state custody must be treated with dignity and humanely. These tribunals differ in the inherent

[303] Predescu, Ramona Nicoleta. "Human Dignity in Criminal Proceedings. Relevant Decisions in the Case Law of the European Court of Human Rights and the Inter-American Court of Human Rights." In: *International Conference of Law, European Studies and International Relations IX*. Ed. The Central and Eastern European Library. P.P. 166-175. Romania, 2021. P. 168.

[304] Ibid. P. 169.

[305] Ibid. P. 172.

dignity referring to the right to life, but concur in being treated with dignity against the prohibition of torture and other inhumane treatment.

3. C. Procedural Aspect of the Right to Life

Regarding the procedural aspect of the right to life, it is necessary to clarify that when a violation of human rights by security forces is mentioned in this work, it refers to a state breach because these forces are involved. The cases in these courts have states as the accused, so they are responsible for homicides committed by the security forces. The procedural dimension of the right to life concerns the effective investigation of the perpetrators of its violation.

It is necessary to determine that every category of violation of the right to life that I established in this work, together with the situation of homicides of police forces and the responsibility of the state for these, are connected with the violation of the right to a fair trial. This is because the kidnapping or homicide of persons in the cases object of this work are illegal and arbitrary, as the perpetrators violate several rights of the Conventions, and one of them is not being taken before a judge, as established in these instruments. It is possible to detain a person, but to be legal, this detention must comply with the requirements stated in the Convention. Article 6 of the ECHR[306] and Article

[306] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 6: Right to a fair trial. 1. In determining his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in exceptional circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

8 of the American Convention on Human Rights[307] determine the requisites for a detention to be legal and ensure that every person has the right to a fair trial, be heard by a judge, have a presumption of innocence and have a defence, among other fundamental characteristics to respect human rights and impulse the development of these.

B.G. Ramcharan's engaging text establishes that the protection of the right to life by law requires adequate and effective remedies for violations of the right to life. Penal sanctions must be imposed for taking life arbitrarily, and civil remedies should also be available against those responsible for perpetrating such acts.[308] The author establishes not only the procedural duty of the right to life that refers to an immediate, impartial, and effective investigation of the infringement of this right, but also to the next step, which is legal consequences. These apply to the penal sanctions and civil remedies for

[307] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 8: Right to a Fair Trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; f. the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

[308] Ramcharan B. G. "The Concept and Dimensions of the Right to Life". In: "*The Right to Life in International Law.*" Ed. B.G. Ramcharan. International Studies in Human Rights. Martinus Nijhoff Publishers. P.P. 1-32. The Netherlands, 1985. P. 19.

the arbitrary deprivation of the right to life. This means that the persons responsible for the crime must be punished according to the law, and there must be reparations for the victim or relatives of the victims if the victim is dead. It is relevant to highlight that the author refers to the protection of the right to life by law in the letter of the ECHR in Article 2 and Article 4 of the American Convention on Human Rights.

For this part, it is relevant to establish some concepts from the above-mentioned book by Stephen Skinner, *"Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy".*[309] The ECtHR has developed the procedural dimension based on the same declaration about the importance of the right to life in the ECHR and the democratic societies making up the Council of Europe. To make protection of that right practical and effective, the ECtHR has similarly interpreted the scope of Article 2 as going beyond its original terms by reading into a duty of the state to investigate a suspicious death, especially from incidents in which lethal or life-threatening force has been used. The concept of a democratic society is a factor underpinning and delimiting the importance and reach of the right to life.[310] The author highlights the obligation of an effective, adequate, and impartial investigation, which results from Article 2, as a procedural aspect of this right. As mentioned above, this part is not in the letter of Article 2, but the ECtHR established this essential aspect of the right to life by interpreting the Convention. The same can be applied to the IACtHR and Article 4. Furthermore, Skinner highlights the importance of respecting and protecting human rights in a democratic society.

The procedural dimension of the Article has a dual significance, as an end in itself and a means to an end. The duty to investigate has been developed into a key part of the ECtHR´s narrative about what a high contracting party has done in response to an incident of lethal or potentially lethal force, establishing necessary standards for state investigations and forming a distinct ground for liability under Article 2. Yet, at the same time, the procedural dimension is also concerned with the extent to which the state´s investigation is sufficiently reliable for the ECtHR to use its findings as the source of information and forensic interpretation underpinning its assessment of the

[309] Skinner, Stephen. *"Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy".* Ed. Oxford, Hart Publishing. Bloomsbury Collections. 10 October 2023.

[310] Ibid. P. 96.

substantive aspects of Article 2.[311] The ECtHR establishes extensively in its case law that the obligation to investigate is an obligation of means and behaviour and not of end. The IACtHR does the same. The investigation must be adequate, impartial, and complete to comply with a formal crime investigation's necessary steps and requisites. Still, it may not be possible to identify the person responsible for the crime. The court will consider this to determine if the state is responsible for violating the procedural aspect, regardless of the result they achieved in this investigation. For this, the ECtHR case law is exhaustive regarding the characteristics and requirements of such an investigation.

The author states that the ECtHR has developed the procedural dimension since the McCann case encompasses a range of criteria. After this case, the ECtHR´s outline of the duty to investigate was relatively limited but identified the importance of independence and publicity, as well as the requirement that the investigation be capable of determining whether or not the force used was justified. The importance of the duty to investigate shows that the ECtHR emphasises the principle of accountability and the practical need for evidence-gathering by the state.[312] It is mentioned the case McCann V. United Kingdom, which is the key case for violating the right to life by security forces, and this right in general in the ECtHR, because it was the first and the one that defined the infringement of this right with its substantive and procedural aspects. The author establishes that the importance of the investigation, according to the human rights courts (the IACHR is not named, but this applies to that tribunal also), is whether the use of force was justified in the circumstances presented. It is not the duty of the regional human rights court to determine whether state agents are guilty. That is the work of the domestic tribunals. The human rights courts must decide if the investigation was effective, impartial and exhaustive and if it was determined that the use of force was absolutely necessary. According to this, they will decide whether the state is responsible.

The ECtHR was left with limited investigatory capability since the removal of the Commission from the ECtHR procedure in the 1998 reform. Due to resource restrictions, it needed to be able to rely on information provided by state parties even though they were not its only source of information. In particular, the ECtHR relies on

[311] Ibid. P. 97.

[312] Ibid. P. 103.

factual evidence established and confirmed by domestic courts. The duty to investigate has thus continued to be important not only as a mechanism for supporting justice and seeking to make Article 2 effective at the state level but also as the means for trying to ensure that state processes are good enough for the court to rely on. This could involve a potentially problematic circularity in that the ECtHR has to determine a state´s compliance with human rights standards essentially based on evidence predominantly in the control of and provided by the state. The procedural standards set by the ECtHR are intended to give an inherent guarantee of quality and reliability.[313] There have been many cases where the state, knowing that security forces perpetrated the violation of the right to life, has denied the disclosure of essential documents for an effective investigation. This happens when the case gets to the court, but before, there was no investigation or a poor investigation without including the victim's relatives.

In the post-1998 period of the full-time ECtHR, the duty to investigate is thus a crucial part of the accountability process under Article 2, constituting both a means and an end in the legal protection of the right to life. In that sense, as an independent ground for state liability, it represents a significant extension of the right to life due to the need for practical and effective protection of that right and its importance in a democratic society, as well as a crucial foundation for the ECtHR ability to address the substantive dimensions of Article 2.[314] The author refers to separating the substantive and procedural aspects that the ECtHR applies. After the elimination of the European Commission on Human Rights, the procedural aspect of the right became vital for the ECtHR because it had to determine if there had been a violation of human rights without the information that the Commission could provide, such as on-site visits, testimonies or other sources. Furthermore, it is very suspicious when a state does not want to disclose significant documents to the court, and that is taken as proof. Also, the substantive aspect is linked to the procedural because, with this investigation, it is possible to determine if this first element was violated.

The Grand Chamber's confirmation of a duty to investigate under Article 2 in McCann, focusing on adequate protection and requiring high contracting parties to support the evidence-gathering process in Article 2 cases, had also been influenced by other practical issues arising within the Council of Europe—these involved investigatory

[313] Ibid. P. 105.

[314] Ibid. P. 106.

problems in cases against Turkey, which had been hampered by insufficient evidence.[315] There was a systematic pattern of extrajudicial executions and forced disappearances in Turkey that the ECtHR did not acknowledge at the time of the judgments for these cases.

The procedural dimension of Article 2, as applied to cases of lethal and potentially lethal force in the domestic policing and law enforcement context, has been developed by the ECtHR to involve several elements. In terms of outcomes, a deficiency in any one of these elements, assessed by the ECtHR as undermining the duty to investigate, can lead to a finding that it has been breached. Skinner establishes some requisites of an effective investigation. First, its adequacy. The adequacy limb of the effectiveness of an inquiry reflects the fundamental importance of evidence-gathering in supporting the construction of an account of events that can accurately represent what occurred.[316] The second limb of effectiveness concerns independence in principle and practice. This requires an investigation into legal structure and hierarchy, as well as actual activity and operational ability, to be carried out by an authority separate from those involved in the accident.[317] The first two essential elements in the investigation must be effectiveness and impartiality, which both human rights courts have highlighted in their jurisprudence.

The third requisite is transparency and scrutiny. Thus, as with other elements of Article 2 protection, the ECtHR views this critical aspect of the procedural dimension of the right to life as a crucial aspect of state accountability under the rule of law and justice for victims and their families. However, it must still be considered balanced in the context of competing priorities in a democratic society.[318] The third requisite established by Skinner is transparency and scrutiny. These concerns are the scrutiny that the people must have in the investigation concerning the level of transparency that the inquiry has. The people must be assured of an effective and impartial investigation that must be subjected to their scrutiny. Furthermore, this is related to the accountability and responsibility of the state in investigating the crime. The victim's relatives (indirect victims) must be part of the investigation and called whenever

[315] Ibid.

[316] Ibid. P. 107.

[317] Ibid. P. 113.

[318] Ibid. P. 115, 117.

necessary to provide proof. This is relevant for the people's confidence in the rule of law in a democratic society.

The fourth and last requisite is temporal aspects. Due to the importance of Article 2 in democratic institutions and the need to ensure its adequate protection, the ECtHR has developed the procedural dimension to evaluate state conduct after the events in question, extending the temporal application of the right to life to subsequent investigatory issues. The ECtHR has also held that it is the state´s responsibility to initiate the process of investigating the death and has linked that responsibility with questions of temporality in investigations. In evaluating the degree to which a state fulfils that responsibility and effectively protects the right to life through the procedural dimension of Article 2, the ECtHR has focused on two related temporal questions. These are the importance of when an investigation starts and how long it lasts, holding that it must be commenced and undertaken by the state without excessive delay, that is, "*a requirement of promptness and reasonable expedition"*.[319] There are cases where the temporal aspect of the investigation is essential because, for example, in the case of enforced disappearance, Ertak V. Turkey, six years passed without an effective investigation and without contacting the applicant, who was a relative of the victim. Moreover, there are cases where the state handles the investigation poorly, closing and opening the case many times. This is harmful to achieving an adequate investigation. The requirement of prompt response of the state when starting an investigation when they know about the crime is one of the most quoted standards in the case law of the ECtHR. Furthermore, the state must start the investigation *ex officio* when it finds out about the commission of a crime, especially if the state's security forces perpetrate it.

It is relevant to establish that all these characteristics of the investigation that the author determines concerning the ECtHR are also applied in the case law of the IACtHR. These characteristics of the investigations are required by both the court's demands from the state parties and their procedural duty of the right to life.

Furthermore, according to the ECtHR case law, the investigation must allow sufficient public scrutiny, which will vary according to the matter. Still, it must be accessible to the victim's relatives. Besides, the investigation must be done with reasonable promptness and speed. The prompt response of the authorities is essential to

[319] Ibid. P. 118.

maintaining the citizens' trust in the credibility of the rule of law and to avoid any appearance of tolerance of illicit acts.[320]

This text of Skinner has vital importance in determining the standards of the ECtHR in violating the right to life by security forces in its procedural aspect, considering that this tribunal has condemned this aspect in the majority of the judgments. This will be shown in the third chapter of this thesis when the cases are analysed. The ECtHR takes the effective and correct investigation very seriously, which means the procedural aspect of the right to life of Article 2.

Another chapter I want to highlight in the book "*The Police and International Human Rights"*[321] is number six, which is about effectively investigating alleged human rights abuses and combating impunity. The author is Graham Smith.

The role of the police in combating impunity is pivotal because the coercive powers available to the police to enforce the law render officers prone to violate human rights and because their duty to investigate crime, either by their authority or at the direction of a prosecutor or magistrate, serves to protect human rights. Fundamentally, impunity is a law enforcement problem, and the police are vulnerable to allegations that they have negatively violated human rights or failed to protect them. According to the author, under these circumstances, the police investigation of forces inevitably leaves the police open to the accusation that a culture of impunity protects officers from the rule of law.[322] Police officers may establish that they did not commit a crime because they were doing their work. This connects the two courts' object of this work because the IACtHR has extensively established its rejection of impunity and amnesty laws.

Protection of human rights presumes the existence of a regulatory framework, including legislation, regulations and institutional capacity, which puts into practical effect the principles established in the jurisprudence of the international courts.[323] A

[320] ECtHR Imakayeva V. Russia. (Application no. 7615/02). Judgment 9 November 2006.

[321] Smith, Graham. "Chapter 6: Effective Investigation of Alleged Police Human Rights Abuse: Combating Impunity." In: *The Police and International Human Rights*. Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018.

[322] ECtHR Shavadze V. Georgia. (Application No. 72080/12). Judgment 19 November 2020. Par. 85.

[323] Smith, Graham. "Chapter 6: Effective Investigation of Alleged Police Human Rights Abuse: Combating Impunity." In: *The Police and International Human Rights*. Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. P. 85.

raft of international instruments, monitoring bodies[324] and state-funded and voluntary agencies[325] have issued guidance on how standards should be complied with.[326] This discourse prioritises the importance of investigation and criminal prosecution in bringing offenders to justice and points to the central role police officers play as human rights protectors. The Basic Principles and Code of Conduct on the Use of Force for Law Enforcement Officials of the OHCHR is one of the instruments mentioned by the author that is applied extensively in the cases in which security forces are involved in the IACtHR. Furthermore, a legal, administrative, and institutional framework for domestic practice and courts is essential to condemn the crime perpetrated by security forces before the case has to be interposed by the regional human rights courts. Suppose the domestic courts do not adequately legislate human rights conventions and appropriately investigate and condemn the case. In that event, this case will reach the human rights courts after exhausting domestic instances.

The ECtHR started in the last years of the twentieth century to punish the lack of an effective investigation and the procedural aspect of the right to life in almost all judgments. This can be seen in decisions in which compliance with the procedural obligation to investigate under Article 2 was associated with standards of effectiveness, independence, adequacy, thoroughness, public scrutiny and the complainant's participation in proceedings. The court clarified that the obligation to investigate also applied to allegations against non-state perpetrators and was not dependent on the complaint being made by a public member; mere knowledge on the part of the authorities was sufficient to trigger the duty.[327] The state may be responsible for a crime even if it does take place with its knowledge and acquiescence, but fails to provide an adequate investigation. The standards named by the author are the ones that

[324] For example, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), www.cpt.coe.int; Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), http://www.ohchr.org/EN/ HRBodies/OPCAT/Pages/Brief.aspx.

[325] For example, the Organization for Security and Cooperation in Europe (OSCE), www.osce.org, and Amnesty International, www.amnesty.org, respectively.

[326] Smith, Graham. "Chapter 6: Effective Investigation of Alleged Police Human Rights Abuse: Combating Impunity." In: *The Police and International Human Rights. Edit: Springer. Alleweldt, Ralf; Fickensher, Guido*. DSF: German foundation for peace and research. Switzerland, 2018. P. 86.

[327] Ibid.

Skinner established before to achieve an effective and impartial investigation according to the procedural duty of the right to life. Furthermore, it is vital to clarify that the investigation does not start with the initiative of the next of kin but when the state knows of the existence of a crime. The state cannot leave the initiative to the next of kin and must start the investigation immediately after learning that a crime has been committed.

Graham Smith states that in Tunç V. Turkey, Judgment of 2015, it was established that there was no lack of independence in the investigation and no violation of the right to life and Article 2. Meanwhile, in the case of Ramsahai, the Grand Chamber used the language of standards to establish independence as a requisite of effectiveness. The author says that Tunç´s V. Turkey judgment represents a retreat from a requirement that applied for nearly eight years. The court used to state that an investigation into an alleged violation of Article 2 must be carried out by institutional and hierarchically separate investigators from potential violators. Similarly, independent management and direction arrangements must be in place.[328] [329] There is an exception in the case of Tunç V. Turkey regarding the evolution of the ECtHR's work. The ECtHR has been ruling on the necessity of an independent and effective investigation of Article 2 regarding the violation of the right to life by security forces. This evolution of judgments remained from the beginning of the 2000s.

It is essential to highlight impunity. The principles of the right to justice require the state to punish perpetrators of human rights abuses, including allowing victims to be involved in proceedings.[330] Impunity has been signalled, mainly in the IACtHR, as the lack of an effective investigation into the crimes perpetrated by security forces. This determines the lack of justice for the direct and indirect victims and the state's exemption from responsibility. The direct or indirect victims must always be part of the proceedings.

The right to reparation requires states to provide individual victims access to remedies, including restitution, compensation, and rehabilitation. It also requires state recognition of the collective harm impunity causes communities. There is some

[328] ECtHR. Tunç V. Turkey. (Application no. 53802/11). Judgment 13 June 2017

[329] ECtHR. Ramsahai and Other V. Netherlands. (Application no. 52391/99). Judgment 10 November 2005.

[330] Ibid.

overlap between collective reparation, the need to protect against impunity recurring, and principles relating to the right to reparation.[331] After the legal consequences for the responsible, including punishment for the crime, penal sanctions and civil responsibilities, it is necessary to establish reparations for the victim. If it is a violation of the right to life, the person cannot be brought back to life. Still, it is possible to establish reparations for the indirect victims, such as compensation and acknowledgement of the crime, among other kinds of reparations, like the judgment *per se*. Furthermore, the community must know what happened, so the sentence must be publicised. The state must comply with these and be accountable for its responsibility in the events.

Since the Ramsahai V. Netherlands in 2007, there has been limited progress by the Council of Europe member states towards compliance with the practical investigation requirements. Some factors are the need for more will on the part of politicians who may have called on the services of the police in the past, anticipate having to do so in the future, or wish to avoid antagonising powerful police chiefs or representative bodies. Also, underdeveloped civil society organisations, including insufficiently independent media and non-governmental organisations, should be taken seriously by the government. Furthermore, limited resources for institutional and capacity-building programs are required to improve the regulation of law enforcement, for example, establishing new bodies, improving communication between law enforcement departments, and protecting against collusion.[332] The author establishes several problems since 2007 in achieving an effective investigation for homicides committed by security forces. Nevertheless, it is necessary that the human rights courts acknowledge the procedural duty of an adequate and impartial inquiry in their case law and that the states comply with this. The state must find a solution for the limited resources and improve the vital communication between law enforcement departments. Furthermore, there cannot be a lack of or poor investigation because of political issues or the lack of ability to face influential players of the security forces. If

[331] United Nations. *Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (UN Doc. E/CN.4/2005/102/Add.1).

[332] Smith, Graham. "Chapter 6: Effective Investigation of Alleged Police Human Rights Abuse: Combating Impunity." In: *The Police and International Human Rights. Edit: Springer. Alleweldt, Ralf; Fickensher, Guido*. DSF: German foundation for peace and research. Switzerland, 2018. P. 98.

this does not occur, the state will be responsible for not complying with the right to life procedural aspect.

Whether a state or non-state actor evades accountability for the wrongs they have committed, impunity *de facto* essentially relates to problems associated with ensuring that public officials are responsible for the criminal process and disciplinary proceedings in cases where the evidence points to individual or institutional failures that do not meet the criminal threshold and lawfully perform their duties.[333] The state may have difficulties in ensuring an adequate investigation. The author highlights that there may be institutional failures, but the state must comply with its obligations under the Convention. The case law of the ECtHR establishes the requisites of an effective investigation, and the state must carry out this even if it is impossible to find the person responsible for the crimes for several reasons. The author establishes that it generates impunity if the state does not comply. Furthermore, the states of the human rights courts have accepted their instruments for protecting human rights and have assumed responsibility for violating these in their substantive and procedural aspects. As the investigation is an obligation of means and behaviour, the state must provide this by all means and make it adequate and exhaustive, even if it cannot punish or find the responsible. The courts will consider this when deciding the responsibility of the state parties.

Regarding the IACtHR case law, it has been established that the investigation, process, and sanction must be naturally undertaken *"with seriousness and not just as a simple formality condemned in advance to be fruitless."*[334] An independent and impartial organ with sufficient resources must conduct an efficient investigation and ensure the process is completed within a reasonable time.[335] These are the same procedural duties and the necessity of effective and impartial investigation standards regarding the ECtHR, which has been established.

Article 4 of the American Convention on Human Rights and its interpretation must clarify some investigative obligations. In both courts studied, a procedural obligation

[333] Ibid. P. 88.

[334] IACtHR. Case Velásquez Rodríguez V. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4.

[335] IACtHR. Case Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs. Judgment 25 November 2003. Series C No. 10. Concurrent vote of Judge Sergio García Ramírez. Par. 35.

is to identify if the state did not comply with the responsibility to investigate, process, and sanction and who can be recognised as victims of the breach of this obligation.

Although the convention's articles reference the substantive obligation of the right to life to respect this right by law, the procedural duty can be established from its interpretation. After an investigation determines that the state is guilty, the court must develop and establish legal consequences and reparations.

Another interesting aspect of the procedural limb is the one proposed by Eva Brems.[336] This author establishes that in numerous fields of the ECtHR case law, this court added a procedural layer to the scope of substantive Convention rights by deriving state obligations (that will be examined in the following section) of a procedural nature from substantive ECHR provisions. This development has occurred under most Convention rights with varying degrees of detail and consistency.[337] This is related to what was stated before about the procedural duty that comes from the interpretation of the articles of the ECHR, which only establishes the substantive aspect. The author determines several rights in this Convention that involve procedural elements. However, for this work, it is necessary to concentrate on the one that applies to Articles 2 (Right to Life) and 3 (Prohibition of Torture).

These procedural obligations may apply *ex-ante* as well as *ex post facto*. *Ex ante* obligations relate to the procedure allegedly leading to the individual's decision to violate the Convention. *Ex-post* obligations may concern the need for and quality of an investigation into an alleged human rights violation or the availability and quality of remedies for those who claim to have suffered a human rights violation. [338] The *ex-ante* obligations regarding security forces' violations of the right to life refer to the necessity for these agents to know the duties and responsibilities they have to fulfil and the rights that should not be violated. Furthermore, the *ex-post* obligations concern the investigation, the criminal's legal consequences, and the victims' reparations.

Brems determines that the most crucial procedural right is the right to procedure. This applies in particular to *ex-post* procedures like an investigation into alleged human

[336] Brems, Eva. "Procedural Protection. An examination of Procedural Safeguards read into Substantive Convention Rights". In: *Shaping Rights in the ECHR. The role of the European Court of Human Rights in Determining the Scope of Human Rights*. Ed: Eva Brems and Janneke Gerards. Cambridge University Press. P.P. 137-161. United Kingdom, 2013.

[337] Ibid. P. 138.

[338] Ibid.

rights violations and the availability of remedies for those who claim to have suffered a human rights violation. The procedural obligation under Article 2 concerns the positive obligation to investigate problematic deaths. The procedural obligation is detachable from the substantive one in that it can bind the states even when the death to which an investigation refers took place before the Convention became binding on the state concerned.[339] The ECtHR and IACtHR have established a breach of procedural duty regarding the lack of an effective and impartial investigation of the violation of human rights. These courts have provided reparations for the victims or relatives of those who have violated the right to life. If possible, the idea is to re-establish the situation before infringing the right, which cannot happen in violation of the right to life. Furthermore, the procedural duty can oblige the state to be judged even if the substantive aspect (the loss of life) was infringed before the Convention entered into force.

The procedural aspect must be practical, impartial, participative, and developed with promptness and reasonable expedition. Furthermore, the motivations for the decision must be established, and relevant information and expertise must be assessed. The state must be accountable in this procedural aspect. The procedural obligations of Article 2 must be subjected to public scrutiny.[340] These characteristics of the procedural element have been determined before and will be examined in dept in Chapter III. There are necessary specifications. Impartial refers to the investigation that must be carried out by people different from those involved in the alleged crime when a security force perpetrated it. Participative refers to the participation of relatives and loved ones in the judicial procedure. The procedural aspect and the judgment must be subjected to public scrutiny so the people know what happened in each case. The promptness in the investigation is crucial to obtain the necessary evidence and carry out an effective and expedited inquiry.

While procedural obligations are autonomous in that procedural shortcomings may not be the sole basis for finding a violation of a substantive right, they are also instrumental in identifying and defining procedural obligations designed to improve the protection of the substantive right. Procedural shortcomings may explain why the court cannot determine if there was a violation of the substantive element. Furthermore, the court

[339] Ibid. P. 140,141.

[340] Ibid. P. 149-158.

may draw substantive inferences from observing the procedural obligation.[341] These two aspects of the right to life are connected. It is possible to determine the substantive element violated based on an investigation. Furthermore, procedural aspects arise from the substantive limb of the right to life established in the human rights Conventions. For this connection, if the procedural aspect is not well developed, it could influence the non-determination of a breach of the substantive element.

Juliet Chevallier-Watts establishes relevant notions about the procedural aspects of the right to life in the ECtHR.[342] She determines that Article 2 requires a High Contracting Party to carry out an effective investigation into any lethal force death.[343] The author defines a standard about the right to life that is repeated in the case law of the ECtHR. These standards will be analysed in Chapter III. It is necessary to establish that any death caused by lethal force by the state's security agents, according to the interpretation of Article 2, generates *ipso facto* the obligation of an investigation by the state into this crime.

The author established that the court has noted that a state's duty to secure the right to life requires it to put in place adequate criminal law provisions to deter the commission of offences and ensure that efficient law enforcement machinery is introduced and maintained to prevent, suppress, and punish breaches of such provisions.[344] This author determines that the court has stated the necessity of adequate provisions of the Convention on a domestic legal framework. It is essential to the notion that it is not only necessary to establish this legal framework but also to enforce and execute it. In this way, the state prevents the occurrence of violations of the right to life, but if these happen, it also sanctions and punishes the infringements of the provisions of the Convention.

Chevallier-Watts highlights that the court emphasises four key components of an effective investigation: being given official sanction, independence, openness, and

[341] Ibid. P. 159.

[342] Chevallier-Watts, Juliet. "Effective investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on the State?". In: *The European Journal of International Law. Vol. 21. No.3.* EJIL. P.P. 701-721. 2010.

[343] Ibid. P. 704.

[344] Ibid. P. 707.

expediency.[345] These characteristics have been established and explained above in Skinner's text analysis.

The author determines that the Court's requirement that authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident already imposes stringent requirements which can be adjusted on a case-by-case basis, considering facts and circumstances specific to the death. Nevertheless, the Court has not dispelled the idea that an authority may be obliged to revive an investigation.[346] The task of the human rights courts regarding the investigation into the responsibility of the state for death caused by security forces must not be an impossible burden for the state. Suppose this has secured the procedural aspect and taken all necessary steps to ensure an impartial and effective investigation. In that case, it is enough to determine compliance with the procedural aspect of the right to life. The inquiry will differ in each case according to the specific circumstances. However, suppose the state has failed to comply with the investigation requirements. In that case, the courts can demand that this be reopened and developed according to the requisites established by the tribunals in their case law.

The author concludes by establishing that the procedural duty under Article 2 is one of the few measures that can pressure states to ensure future accountability while considering sovereign authority and individual rights under the Convention. The Court has rigorously applied the requirements of the investigation, achieving a balance in the burden on the state and a practical and effective method of securing the right to life in most circumstances. However, although the burdens on the Court may be significant, the very purpose of the institution must not be forgotten. This is to provide effective remedies for violations of the right to life. In doing so, the Court can pressure states to comply with the fundamental rights of the Convention without political bias.[347] The court must achieve equilibrium between the liberal democracies of the states and the protection of individual human rights. This has been difficult to accomplish, and that implies the effectiveness of an investigation by the authorities into the deprivation of life caused by state security forces. Furthermore, the ECtHR has evolved regarding this procedural aspect of Article 2 since the case of McCann V. United Kingdom in

[345] Ibid. P. 711.

[346] Ibid. P. 712.

[347] Ibid. P. 721.

1995, where it was first pronounced. Since then, the court has found different instances for applying this aspect of the right to life, from armed conflict to extrajudicial executions and forced disappearances, among other examples. The court has successively achieved a balance between the burden of the state to investigate crimes committed by state agents and ensuring the right to life through a practical and impartial investigation. Chevallier-Watts remembers the purpose of the court by establishing that this is to provide effective remedies concerning the violation of the right to life. In this way, the court can pressure the states to comply with its procedural duty and substantive aspect under the convention without political or economic interference. The states must comply with the provisions of the ECHR. The court effectively provided judgments that did not impose an unrealistic burden upon them and respected the rule of law and specific liberal democracies.

In another text, Chevallier-Watts determines essential notions about the procedural aspect of the right to life. She states that the ECtHR applies more rigorous scrutiny to military lethal force cases than to police lethal force cases, where, in the latter, the Court has a *"tendency to find that the police have not failed in their Convention duties."*[348] This is a tricky problem for the ECtHR, but it is understandably a generalisation of cases by the author. However, it is possible to determine from this court's case law that it tends to condemn more cases for the action of military agents than for deprivation of life caused by police forces, as can be seen in Chapter III with the judgments examined. Article 2 establishes a principle of absolute necessity for the exceptions to the right to life. For the deprivation of life not to be arbitrary, there must be an absolute necessity when the security forces are deploying force.

The author's notion of flexibility in police forces' lack of condemnation regarding the deprivation of life is explained by the ECtHR's case law. Regarding police action, the court has established that necessary implies action short of allowing activities to progress to a state of danger to secure evidence for a successful prosecution. The Court has stated that the decision is a response to the evolving circumstances of the crime.[349]

It is essential to determine that this court has determined the state's responsibility in

[348] Chevallier-Watts, Juliet. "A Rock and Hard Place: Has the European Court of Human Rights Permitted Discrepancies to evolve in their scrutiny of Right to Life cases?". In: *International Journal of Human Rights. Vol. 14. No. 2.* P.P. 300-318. 2010. P. 300.

[349] Ibid. P. 308,309.

the case of deprivation of life by police forces. According to the author, this occurs in fewer judgments than in condemning military forces for the same crime. She determines that one reason could be that the suspect cannot be detained until they have been caught with actions directed to execute the crime. This ensures a possible successful prosecution. Although the police forces are aware of the suspect and the possibility of the crime, according to the court, they usually wait until there is a tentative to commit this. Furthermore, as case law is constantly evolving and adapting through time, the ECtHR can decide differently in cases that happen in different contexts and periods. The crime also presents changing circumstances.

Another difference that Chevallier-Watts establishes regarding the military and police use of lethal force and the diverse judgments of the Court is the following. Suppose, indeed, the Court does impose a higher burden on military lethal force cases. In that case, it is perhaps because such incidents are not as commonplace, and the perception of the force involved with military operations is invariably more significant than that expected of a police operation; after all, it is the duty of the police to arrest and charge suspects with offences, whereas the duty of the military is not always to arrest, but to remove the threat of the perpetrators.[350] The author determines a difference between police force operations, which are standard daily, and military deployment, which does not happen often. Furthermore, the purpose of the police is to arrest and charge the suspects, which is different from the aim of the military. This must eliminate the threat of perpetrators. This would explain the author's argument about the more brutal judgments against the army and softer ones regarding the police officers in the deployment of force and the outcome of deprivation of life. It is a significant notion because the police forces are deployed daily and in every necessary circumstance in a democratic society. At the same time, the military has specific scenarios where it must act, such as terrorism or armed conflicts, among others.

Another distinction that the author states is that police are enforcers of legislation and, therefore, act on behalf of the public and the State. In contrast, the military may be perceived as acting with greater autonomy than the police, with access to greater firepower. Therefore, the risk of loss of life is more significant. According to the author, police operations for force deployment differ from those of military operations. The latter has more firepower and may have the perception of acting with more

[350] Ibid. P. 311.

autonomy than the police. The purpose of police forces is to protect individuals and enforce legislation on behalf of the public and the state. This is a difference in how force deployment is developed in the operations of these two branches of security forces. This can also answer the notion established by the author of the different approaches to judging cases by the ECtHR, where military and police forces are involved. Generally, military operations are more dangerous because they demand a greater use of force, which could cause more deprivations of lives. Several newer signatories are very different from others due to political tensions, geography, regional educational standards, diversity of ethnicity and technological infrastructure. If this is so, then it is not inappropriate to assess military lethal force cases with more rigour than police deadly force cases. The Court may place some High Contracting Parties at a distinct disadvantage merely due to factors that are an inherent part of that State.[351] Chevallier-Watts also mentions that there are new state parties where military deployment is standard. The court must determine the conditions of each country when assessing a judgment so as not to create an unfair disadvantage for some state parties. Each case of military deployment of force and the outcome of loss of lives must be examined according to the specific circumstances of each country.

The author concludes with a reflection. The Court must reconcile this dual obligation to protect national security while respecting human rights. Therefore, the challenge facing the Court today is to translate the notion of politics and State sovereignty into a process of scrutiny that reflects the current climate and balances the authority of the governments with the concept of rights and freedoms.[352] After the events of 9 September 2001 and several terrorist attacks in Europe, there was an enforcement of the idea of the relevant role of security forces, and these took some liberties in their actions. However, as Chevallier-Watts establishes, the ECtHR must judge the cases considering the protection of national security in concordance with the respect and guarantees of human rights. The possibility of attempts to the security of the state does not allow the authorities to deploy lethal force indiscriminately. According to the author, the court must achieve a balance between state sovereignty and its characteristics and circumstances and the protection of human rights, which is the essential purpose of the ECHR. This does not mean that security forces must retreat

[351] Ibid. P. 313,314.

[352] Ibid. P. 316.

when there is a menace to the state's security. However, force deployment must be developed in compliance with the due respect and protection of human rights in every situation and moment.

According to Alastair Mowbray,[353] the ECtHR has elaborated extensive guidelines on the need for practical investigations, encompassing diverse components from the scope of autopsies to the involvement of victims' families within a relatively short period. This judicial creativity is a worthy reflection of the importance of the right to life.[354] This author highlights the tribunal's creativity in developing several components of the right to life in its jurisprudence. It is interesting the evolution that this court had regarding the investigation of homicides perpetrated by security forces that led to the establishment of the autopsy as a requirement. The involvement of the relatives in the investigation is an essential standard in both courts. The tribunal's creativity regarding the IACtHR has also been mentioned. The right to life needs all the protection possible, and the tribunals must try to guarantee this in the best way possible. This shows the importance of this right.

Regarding the IACtHR, Medina Quiroga highlights that this court implies that the state must proceed *ex officio* to investigate, process and sanction. This obligation is its juridical duty that must be fulfilled by the agent to whom the violence can be attributed, even with particulars. This obligation must be fulfilled regularly, inescapably and without discrimination. All the abovementioned issues regarding the commitment of investigation, process, and sanction bring, as a consequence, incompatibility with the Convention and the phenomenon of impunity.[355] This author establishes the concept of impunity. This notion explains why this cannot be allowed in states that are part of the conventions on human rights because they are obliged to carry out an effective and impartial investigation *ex officio* regarding a crime committed by the state's security forces. Medina Quiroga adds something about the IACtHR that is not mentioned in

[353] Mowbray, Alastair. "Art. 2 Right to Life". In: *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*. P.P. 7-40. Fortland, Oregon. 2004.

[354] Ibid. P. 39.

[355] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P. 59-136. 2005. P. 103.

the ECtHR: this investigation must be fulfilled without discrimination. The word inescapably provides the vital procedural duty that the state must comply with.

Furthermore, the obligation can be considered to belong to the rights to life and personal integrity, which are interlinked. If this obligation is not complied with, it violates these rights.[356] This author establishes that this procedural duty also applies to the right to personal integrity. Also, it determines that the amnesty laws or other laws of that kind are not admissible for the human rights courts where the procedural duty of the right to life, or right to personal integrity, is mandatory for the state parties to comply. Furthermore, the author establishes that this procedural aspect of an effective investigation is applied even when the death has been unintentional, which has been established in the ECtHR case law. Even if it was not the outcome expected by the state security forces agents, the investigation must be carried out to secure confidence in the rule of law and comply with the provisions of the conventions in its procedural aspect.

There is a necessity for a serious investigation, previous to the judicial procedure, to determine the circumstances of the deaths at the hands of third parties to decide if there is a base for the state to exercise its punitive faculty and demand the guarantees of independence and impartiality to the non-judicial organs that take the first tasks of the investigation.[357] An investigation into the crime must first be conducted. This must be carried out by impartial organs that have not been related to the crime in question. If third parties perpetrated the homicide and the security forces are not involved, this investigation will determine it, and the state will not be held responsible. An exhaustive and practical investigation of the events before the judicial procedure is necessary for that to occur.

Medina Quiroga mentions the Case Blake V. Guatemala, the judgment of January 24, 1998, where the court decided it was incompetent. This was because the IACtHR established that it was unqualified to know about violating the right to life. After all, the body of the victim was found, and it was accredited that the death and the kidnapping of Mr. Blake were previous to the date of acknowledgement of the

[356] Ibid. P. 100.

[357] Ibid. P. 101.

contentious competence of the IACtHR by the State of Guatemala.[358] This is a problem for both human rights courts, which cannot apply their conventions if the events occurred before the states accepted their jurisdiction.

This judgment examines the problem of the lack of investigation into the possible rights of the relatives of Mr. Blake. There was a right for the relatives of Mr. Blake to the effective investigation of the disappearance and death by the authorities of Guatemala. Also, this includes the compensation for damages.[359] The problem of lack of competence does not signify that an effective investigation must be carried out if it was not done before, or if it was developed contrary to the convention's requirements. Although the events happened before the Convention entered into force and the court is incompetent, revising the case to determine how the investigation was developed is necessary. In the case that there was no investigation, as in this case of the enforced disappearance of Mr. Blake, there must be an inquiry. This must establish the corresponding responsibilities, legal consequences and the reparations for the indirect victims.

Medina Quiroga states that the Court could have been in a difficult position due to the jurisdiction to examine the death of the victim, whose relatives were alleged to be the indirect victims. This problem of lack of jurisdiction does not explain that this has been extended to other cases where the court had competence, abandoning the idea of the investigation obligation.[360] The author establishes that if the court has competence, it must never deny an effective and impartial investigation for the direct and indirect victims of the crime, which is the procedural duty of the right to life that must be complied with. It is significant to establish that, in the Blake case, the concept of indirect victims had not yet been established.

In the case of Paniagua Morales and Others, Judgment of March 8, 1998, the ruling declared the right to life of the victims because it was proven that they were agents of the state who deprived several persons of their lives. However, this example examines the lack of investigation concerning the facts of the case, denounced by the

[358] IACtHR. Case Blake V. Guatemala. Merits, Reparations and Costs. Judgment 24 January 1998. Series C No. 36.

[359] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P. 59-136. 2005. P. 110.

[360] Ibid. P. 111.

Commission under Article 8 of the Convention.[361] Blake's case was a few months before Paniagua Morales; therefore, the court did not consider the concept of indirect victims, which was born with this judgment. These indirect victims are the relatives and loved ones of the direct victims. The direct victims may have lost their lives, but the procedural and substantive obligation of the right to life continues for the indirect victims of a crime. The author establishes the relation between the right to life and the right to a fair trial established in Article 8 of the Convention. No person can be arbitrarily deprived of their liberty except in the exceptions established in the Convention, and they always have the right to be heard by an impartial judge. It also applies in every case the presumption of innocence.

In the judgment Garrido and Baigorra V. Argentina, 1996, it was determined that *"Argentina has the juridical obligation of investigating the facts that led to the disappearance (...) and to submit the process and sanction their authors, partners,*

[361] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 8: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature. 2. Every person accused of a criminal offence has the right to be presumed innocent if his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. the right of the accused to be assisted without charge by a translator or interpreter if he does not understand or does not speak the language of the tribunal or court; b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defence; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his choosing and to communicate freely and privately with his counsel; e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides if the accused does not defend himself personally or engage his counsel within the period established by law; f. the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. the right not to be compelled to be a witness against himself or to plead guilty; and h. the right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion. 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the exact cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

and all the people who had participated in the events." [362] In this case, it is documented that the obligation of guarantee is different from the obligation of repair, establishing that the victim of a violation of human rights can renounce the due compensation, and the state does not have to pay. However, suppose the particular forgives the author of the breach. In that case, this does not exempt the state from the obligation of sanction, except in the case of a prosecutable crime at the individual's request.[363] The author establishes the obligation of the state to investigate and punish those responsible for a crime. Furthermore, the IACtHR has determined in its case law that it is necessary to distinguish the participation of each actor in the crime, such as the material author, facilitators or necessary participants, among other figures. It is also established that if the victim does not want the compensation as reparation, they can renounce that, but the state must punish the person responsible for the crime either way.

Another aspect that must be clarified is the nature of the obligation to investigate. For Medina Quiroga, knowing the truth is an integral part of reparation. According to this, the responsibility to investigate has two purposes: to prevent and to satisfy through prevention.[364] The IACtHR establishes in its case law that the obligation to prevent is also of means and behaviour as the obligation to investigate. For Medina Quiroga, the responsibility to investigate includes the obligation to prevent as a purpose. The aim is to prevent the violation of human rights before it happens, but if it occurs, the state must investigate. The investigation will establish a precedent, and it aims to prevent these situations from occurring again. Furthermore, the author demonstrates the truth as a form of reparation mentioned before, as it is the judgment.

This author determines that an indispensable attribute of the state is that the guarantee of the right includes reparation. The right to life demands that the state have mechanisms and manners of reparation if violated. The reparation typically will consist of monetary compensation, but other modalities may be required.[365] The IACtHR ordered a financial reparation for the relatives of the deceased victim, which is usually

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[362] IACtHR. Case Garrido y Baigorria Vs. Argentina. Merits, Reparation and Costs. Judgment 2 February 1996. Series C No. 26.

[363] Ibid.

[364] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P.P. 59-136. 2005. P. 114.

[365] Ibid. P. 115.

established at a later stage in the background ruling. Despite the compensation, the court may order other possible reparations, such as typifying the crime of disappearance in a country's domestic legal system. The truth is also considered a form of reparation. Another form of reparation is to find the remains of the victim and deliver them to the relatives.[366] Other ways include establishing a memorial for people who lost their lives. The reparations may take different forms depending on the circumstances of each case.

The summary about what has been mentioned from the perspective of the author is that the obligation to protect the right to life demands of the state a set of dissuasive actions, of prevention, of control of deprivation of life in the hands of third parties and reparation of violations to this right. The states must obey the central objective of the obligation of guarantee and take care of the best possible form to decrease the possibility of the infractions to the right to life and, when they even occur, of taking the necessary measures so that the infraction is not immune and to compensate for the moral and material damage suffered by the victim.[367] This author's central notion is preventing violations of the right to life. This prevention includes all the means at the disposal of the state. If this crime does occur, there is a procedural obligation to investigate and punish the party responsible. Furthermore, in this last scenario, reparations are needed, whatever form these take. The state must compensate for the material damage (pecuniary) and the non-material damage (non-pecuniary), such as the indirect victims' suffering for not knowing their loved ones' destiny and whereabouts.

In conclusion, since the IACtHR began issuing judgments related to the violation of the right to life, there has been a development in various aspects. The first is the concept of the victim. As it was explained in the case of Paniagua Morales, the idea of the victim was not just the person who died or disappeared, but also there were indirect victims, such as the relatives of the direct victim. Another development was that no more amnesty was accepted in the court. Suppose the domestic law gave impunity to a criminal who violated the right to life, and the case went to the court after careful consideration and investigation. In that case, the IACtHR decides whether the state is responsible without considering the possibility of an amnesty or impunity. Another

[366] Ibid. P. 115.

[367] Ibid. P. 118.

improvement has been the reparation to the victim or the relatives. The evolution of cases has shown that the court has taken this situation seriously, stating several ways of reparations for the harm in its judgments. Moreover, the court can only take cases that have gone through every step of the domestic law. Nevertheless, it is reasonable to assume that the investigation of the state parties has been effective and impartial and that the state investigates, processes and sanctions *ex officio*. If this does not happen, the court will punish the state for not investigating effectively.

The importance of an effective investigation for the ECtHR has been well established in the procedural aspect of violating the right to life. Also, the procedural elements include impartial and independent investigation, and these can be causes for condemning the state. Moreover, the fight against impunity is significant because if it is not established, the perpetrators may remain free of punishment. For this, an effective and impartial investigation of each state of the work of the security forces in their actions concerning human rights is needed. The figure of impunity is complex because each state may have their own rules about pardon or amnesty to certain criminals, as has happened in many countries of Latin America.

Effective investigation and how the courts rule about these crimes is vital. There are many requisites for an effective investigation, and the security forces have to fulfil all of these for the court to establish that it has been impartial and efficient. Documenting some procedural issues is fundamental to this research. The ECtHR often determines patterns related to the lack of an efficient procedural investigation and infringing celerity parameter tracking. The Tribunal elaborates on these patterns in interpreting Article 2 of the European Convention on Human Rights.

There are many cases in which it is determined that there has been a violation concerning the procedural obligation of an efficient investigation. These cases have not followed the requisites of celerity demanded by the state.

3. D. Procedural and Substantive Aspects Regarding the Domestic Courts

This section determines the procedural and substantive aspects of human rights concerning the domestic courts of the state parties of the regional human rights tribunals and what the authors call a *"process-based review"* of the procedural aspect. This part relates the procedural and substantive aspects of human rights regarding the IACtHR and the ECtHR to the work and prerogatives of the domestic courts.

An engaging author to analyse in this subchapter is Robert Spano.[368] He establishes that the substantive embedding of Convention principles by the Strasbourg Court has been a functional process aimed at progressively creating necessary foundations for the realisation of the Convention's overarching institutional structure to trigger the full engagement of the State's Parties with their obligations under Article 1 of the Convention as the primary guarantors of human rights and freedoms subject to the supervision of the Strasbourg Court.[369] This author establishes the substantive process of the court directed to the engagement of the state parties and the compliance with the provisions of human rights. This means these countries should adopt and adapt their domestic laws to the ECHR. They aim to comply with the provisions of this instrument and the obligations under Article 1 as guarantors of human rights and fundamental freedoms. This article states the enjoyment of the rights of the Convention in the jurisdiction of the state parties. Furthermore, under conventional control, the state parties are the first to judge human rights violations. If they fail to do so, the case will get to the ECtHR after exhausting all domestic remedies.

The pilot judgment procedure is a reform measure intended to strengthen the embedded nature of Convention principles in cases where systemic flaws in national law and practice are found.[370] The pilot judgment procedure is a technique for identifying the structural problems underlying repetitive cases in many countries. This procedure is very effective for the ECtHR in promptly assessing cases with the same characteristics. This does not occur in the IACtHR, and implementing this procedure would be a good idea to provide a more efficient and quicker response. Another procedure that the ECtHR presents is the margin of appreciation that balances individual rights with national interests and resolves any potential conflict. These procedures are destined to ensure the effective compliance of the substantive aspect of human rights by state parties.

Spano determines that to give life to the Convention's fundamental values, the Court needed to build an elaborate edifice of human rights, both at the substantive and methodological levels. Nonetheless, the Court must never forget that under Article 1

[368] Spano Robert. "The Future of the European Court of Human Rights- Subsidiarity Process- Based Review and the Rule of Law". In: *Human Rights Law Review. Nº 18*. P.P. 473-494. Oxford, United Kingdom. 2018.

[369] Ibid. P. 475.

[370] Ibid. P. 477.

of the Convention, the States Parties are the primary providers and guarantors of Convention rights.[371] It was essential for the Conventions to establish a complete catalogue of human rights that were seen as a compulsory set of rights that must be complied with at the moment of their establishment. After the evolution of the regional human rights courts, and with this, the international law of human rights, these are seen as vital for the state parties to comply with and ensure for individuals. Although the courts have evolved and developed human rights, the aim is for the state parties of the Conventions to apply these in their domestic courts and resolve cases of violations of the provisions. Sadly, many cases get to the regional human rights courts because the state parties have not protected human rights.

Robert Spano also established interesting notions about the procedural aspect of human rights. He establishes that the Court's historical shift from the substantive embedding phase towards the current period, the procedural embedding phase, is both empirically correct and normatively justified and that, looking to the future, this shift may be beneficial for the Convention system's sustained effectiveness for human rights protections across Europe.[372] The author determines that there was a face of embedding substantive aspects in the past, and today, there has been a shift to implanting procedural elements. As mentioned above, these aspects are connected. However, this author's notion is interesting because it explains that the ECtHR was concerned with determining human rights and is now more prone to enforcing them through the procedural facet.

Spano says that process-based review is not limited to procedural issues in the traditional sense, as distinguished from matters of legal substance. In other words, it does not limit the Strasbourg Court from continuing to fulfil its fundamental role of analysing substantive outcomes at the domestic level.[373] This author applies procedural and substantive aspects to revising domestic court judgments. Nevertheless, he determines that embedding the procedural element does not mean stopping the examination of the substantive limb of decisions in domestic courts. This author aims to define two stages of the ECtHR: one that was concerned in the past with recognising the substantive aspect of human rights and the compliance of these by state parties.

[371] Ibid.

[372] Ibid. P. 480.

[373] Ibid.

The other is to ensure the process review of the domestic judgments without forgetting the obligation to protect the substantive element.

This author establishes several characteristics of embedding the procedural aspect, such as the exhaustion of domestic remedies and the provision, or in the general principles part, of objective interpretational criteria that can guide national decision-makers in applying the Convention at ground level.[374] This author establishes the difficulties and critiques the ECtHR's concerns about the interference in domestic law. It is necessary to remember that when a state is part of the convention and the court, it has to lose some of its powers and sovereignty to allow the court's judgments to be compliant, which can be against the state's interests. Furthermore, many states that criticise this are reluctant to change their domestic legislation to adapt to the ECHR. For this reason, these states are unwilling to allow the revision of the domestic justice in the court. The court has tried to remedy this by exhausting domestic remedies. In this way, when individuals have violated human rights, they have to go to every instance of domestic law to get a sentence before interposing in the ECtHR. This same situation can be seen in the IACtHR. However, there is a significant difference between these courts. The ECtHR has compulsory jurisdiction, so every state of the Council of Europe is part of the court, even if it does not agree. The IACtHR has optional authority, and many states, such as the United States or Canada, have refused to be part of this court and convention.

Furthermore, this situation can explain the objective interpretational criteria the ECtHR has given the state parties to decide in cases relative to violating the Convention's provisions. According to the author, this incentivises national judges to engage with embedded principles to undertake complicated assessments of the legality, legitimate aims, and necessity under the limitation clauses of qualified Convention provisions.[375] It is also relevant to determine that not every case interposed before the regional human rights courts has found the state responsible for violating human rights. Being part of the courts is not *per se* a condemnation. These are subsidiary tribunals whose aim is the protection of human rights. If the domestic courts have decided according to the Conventions, there is no reason for the courts to condemn the state.

[374] Ibid. P. 486,487.

[375] Ibid. P. 487.

Spano states that the Convention requires that where States Parties restrict Convention rights that allow for limitations, this must be shown to be *"necessary in a democratic society".* At the outset, the State Party decides whether a restriction of a Convention right is necessary in a democratic society, not just in any democratic society, but specifically its own.[376] As another characteristic of embedding procedural aspects, the author highlights the possibility that the state may have restrictions regarding the Convention, which is necessary for its democratic society. This can be tricky because states may abuse this argument to determine decisions in contravention of the provisions of the Convention. For this reason, the court must analyse these cases with the most careful consideration and scrutiny to determine whether the domestic court has decided in a necessary way to maintain confidence in its rule of law and protect the democratic society.

This author highlights that the process-based review in no way envisages the lowering of standards for human rights protections across Europe; quite the contrary, the overarching aim of a practical procedural embedding phase is to increase the general level of Convention protections at the domestic level, subsidiarity-based deference being premised on good faith domestic engagement with Convention principles. The purpose is thus to incentivise national authorities to fulfil their obligations to secure Convention rights, thereby raising the overall level of human rights protections in the European legal space.[377] The author concludes that although the ECtHR can give determined attributions to state parties to apply the Convention, the process-based review aims to achieve a practical procedural embedding phase to expand the protection of human rights at a national level. Even if the state parties are obliged to be part of the Convention and the court, these are the ultimate protectors of human rights within their jurisdiction. Furthermore, the subsidiary character of this court comprehends that domestic courts follow the laws and render a judgment first. Only if they choose contrary to the provisions of the Convention will the court deal with the case. According to the author, the final purpose of the process-based review is to achieve the protection and guarantee of human rights in the European states. However, it is relevant to establish that there must always be an equilibrium between the objective criteria of the states and the protection of the provisions of human rights. The

[376] Ibid. P. 489,490.

[377] Ibid. P. 492.

author aims for domestic courts to protect human rights correctly and for the cases that reach the ECtHR to be fewer in the future.

Another interesting author for this subchapter is Thomas Kleinlein, who developed the procedural aspect of the ECtHR.[378] He determines two modes of proceduralisation. The first one comprehends the explicit procedural rights, including a duty of due diligence regarding investigation and prosecution or hearing an interested party before deciding. Such obligations have become part of the scope of the right in question, which means that consideration or review of the right in question may also include consideration of its procedural dimensions.[379] Kleinlein states that the procedural duties have become part of the right in question, and when reviewing this right, this aspect must be attended to. There is not only a substantive element in the right. However, the letter of the Conventions does not mention this procedural aspect; rather, it arises from the interpretation of these articles and the courts' case law.

In the second mode of proceduralisation—integrated procedural review—the Court focuses on domestic procedures when determining a case's merits. Integrated procedural review means that the quality of domestic decision-making processes influences the Court's substantive review. Domestic analysis of the proportionality or reasonableness of a measure can even displace the Court's review.[380] This is the mode that Robert Spano describes in his work, and it is related to the procedural aspect of domestic decisions. The ECtHR determines that the domestic procedures are revised upon the decision of the merits of a case. Furthermore, the quality of how the domestic courts decide influences the substantive review of the ECtHR. Kleinlein repeats what Spano said about the possibility that a judgment's domestic analysis of proportionality or reasonableness relocates the court's review. As Spano established, this is related to the rule of law and the democratic values of each country as well as its attributions to decide a case and revise the Convention.

The Court entrenches minimal human rights protection standards and reimposes them on domestic authorities. Proceduralisation does not imply a retreat or a deterioration of international human rights as fundamental values or a decline of the rule of law.

[378] Kleinlein, Thomas. "The Procedural Approach of the European Court of Human Rights: Between Subsidiarity and Dynamic Evolution". In: *International and Comparative Law Quarterly. Vol. 68. Nº1.* P.P. 91-110. 2019.

[379] Ibid. P. 93.

[380] Ibid.

This process can make human rights protection more effective and reinforce procedural values as an element of the rule of law.[381] Kleinlein and Spano agree that the integrated procedural review ensures that state parties internalise the protection of human rights. This will allow better domestic decisions regarding the provision of human rights in the Convention and avoid the overload of cases of the ECtHR.

This section analyses human rights' substantive and procedural aspects, specifically the right to life. It is necessary to distinguish between these elements because the human rights courts analyse them to condemn or absolve a state party regarding the violation of the right to life. These are different aspects of the same right that must be respected. These elements improve the courts' work by determining diverse situations where the right to life may be violated. Furthermore, each court decides on these aspects differently, as stated above.

4. Positive and Negative Obligations of the State regarding the Right to Life

4. A. Introduction

It was established that the state has positive and negative obligations regarding the right to life. To understand this statement, it is necessary to determine the state's positive and negative obligations concerning the right to life and security forces.

The state is responsible for the omission of investigating illegal acts committed by individuals or unidentified subjects when it is proven that there was a lack of diligence to prevent the violation or to investigate, sanction, and repair such infringement.

When the security forces of the state commit an arbitrary or illegal deprivation of life, the state is violating the positive obligation regarding the right to life. When the omission of the security forces causes a death or the state does not properly investigate a crime, it is violating its negative obligation concerning this right.

Moreover, it is necessary to clarify that the security forces of the state commit the homicides. Still, the state is responsible for violating the right to life established in the Conventions. The state chooses or is obliged to be part of the Convention on Human Rights and is judged by the human rights courts as responsible for violating its provisions. Furthermore, the security forces depend on the state, so if these omit or commit an act that violates the provisions of the conventions on human rights, it is the

[381] Ibid. P. 106.

state's responsibility to respond through its security forces. The jurisdiction of the courts comprehends only state parties, and they are the only ones who can be accused, so it is reasonable that they respond to the acts or omissions of their security forces that respond to these and have caused harm and violated one of the provisions of the conventions.

As many works develop the positive and negative obligations of the right to life together, I will examine the literature concerning both human rights tribunals in this aspect. Then, specific texts about the ECtHR can be applied to the IACtHR, which is mentioned extensively in these. These are examples that can be transplanted from one court to another. This also occurs with the last author, which is about the IACtHR but comprehends concepts of the ECtHR. The first text will be about the right to life, explicitly addressing the positive and negative obligations that derive from this.

The origins of the state's positive and negative obligations can be seen in the French Declaration. The drafters of this instrument established that enjoying every man's natural rights has limits, only those that assure other members of society the enjoyment of those same rights. Furthermore, it states that such limits may be determined only by law.[382] These can be seen as seeds of the state's positive and negative obligations regarding human rights because the state must procure the enjoyment of the individual's natural rights. Furthermore, the state has the duty of not limiting the person's rights, and the law has stated the only limits to these. Also, people can always have the liberty of doing what they want so that it does not harm another person in developing their freedom.

4. B. Positive and Negative Obligations of the State Regarding the Right to Life

This part determines the positive and negative obligations concerning the right to life. All human rights generate positive and negative obligations for the state parties of the human rights tribunals, but this section concentrates on the right to life.

An engaging text to start this analysis is by B.G. Ramcharan. This author establishes that the expression of the inherent right to life cannot be adequately understood in a restrictive manner, and protecting this right requires that states adopt positive measures. Moreover, the Inter-American Commission on Human Rights determined that the right to life may never be suspended and called upon governments to fulfil

[382] Bates Ed. *"International Human Rights Law".* Ed. Moeckli Daniel, Shah Sangeeta, Sivakumaran Sandesh and Harris David. Oxford University Press. United Kingdom. Fourth Edition 2022. P. 7.

their responsibilities in upholding respect for this right in all circumstances. The author adds that the protection of prisoners and detainees also receives attention in international law organs, and specific situations of gross human rights violations are being given attention.[383] The author determines that states must adopt positive measures to protect the right to life and highlights that this right cannot be suspended under any circumstances. Ramcharan also establishes the importance of caring for prisoners and detainees in the state's custody, which is responsible for them.

This author states that the adequate protection of the right to life is closely related to and affected by the implementation of human rights standards directed at regulating situations in which threats to life are particularly susceptible. These include norms for the protection of human rights during states of emergency, norms regarding the treatment of prisoners and detainees, norms regarding torture, disappearances and arbitrary summary executions.[384] This author expresses concern about the state's positive obligations to secure the right to life in exceptional cases such as states of emergency. The human rights conventions have established provisions to protect this right during extraordinary situations. Also, he expresses his concern over the situation of people in the custody of the state and the safety of the right to life. It seems that this is a subject that particularly worries this author. In the case law of the ECtHR and the IACtHR, the vulnerable position of people under the state's custody is considered extensively. Furthermore, Ramcharan determines some of the situations of the categories of violation of the right to life in this work, such as arbitrary execution, forced disappearances and the torture of people.

The author continues by saying that protecting the right to life is closely related to promoting and protecting human rights. Establishing an environment conducive to respect for human rights and fundamental freedoms will diminish the risks of excesses being committed against individuals' lives.[385] This is why the international conventions and courts of human rights are so essential. These must impose their provisions' positive and negative obligations regarding the state's duty to protect and respect

[383] Ramcharan, B. G. "The Concept and Dimensions of the Right to Life". In: "*The Right to Life in International Law*." Ed. B.G. Ramcharan. In: *International Studies in Human Rights.* Martinus Nijhoff Publishers. P.P.1-32. The Netherlands, 1985. P. 5.

[384] Ibid. P. 7.

[385] Ibid.

human rights. Also, the tasks of the courts are to ensure the protection of these for the individuals of the state parties and that these latter secure this protection with their negative and positive obligations over human rights.

Furthermore, Ramcharan highlights that the right to life is often violated because law enforcement, security and military personnel disregard elementary principles of due process and fail to have respect for legality. Law enforcement officials' excessive use of force is a particularly acute problem.[386] The author recognises the object of this work by stating that there is a particularly grave problem regarding the misuse of security agents and the abusive behaviour they may present in the exercise of their functions. This is related to the state's negative obligation, including its security forces, to abstain from violating the right to life.

This author establishes that practice within the United Nations, the European Commission, and the Inter-American Commission tended to suggest, therefore, that the right to life has negative and positive dimensions and that the latter encompasses the right of everyone to preserve and enjoy his existence as an individual. This responsibility emanates from the fundamental nature of the right to life as a norm of *Ius cogens* in international law.[387] It is relevant to add that the European Commission ceased to exist in 1998 but has given significant notions about human rights during its functioning. This concept that the author establishes is essential to understand that the European and Inter-American Systems determine the existence of negative and positive obligations of the state parties to preserve the right to life and all human rights. These obligations refer not only to preservation but also to the protection and measurement of the enjoyment of the life of every human being. *Ius Cogens* refers to a norm that cannot be derogated from its content, and, as many authors have mentioned, Ramcharan determines that the right to life has this character.

Ramcharan establishes that Article 2 of the American Convention on Human Rights leaves it to states parties concerned to choose their method of implementation in their territories within the framework set out in that article. It recognises, in particular, that the implementation does not depend solely on constitutional or legislative enactments, which are often insufficient. It is necessary to draw the attention of state parties to the fact that the obligation under the Covenant is not confined to the respect of human

[386] Ibid.

[387] Ibid. P. 10.

rights. Still, the state parties have also undertaken to ensure this enjoyment to all individuals under their jurisdiction. This aspect calls for specific activities by the state parties to enable individuals to enjoy their rights.[388] This part explicitly delineates the state parties' positive obligations regarding the right to life. The text says that legislative and constitutional measures are not sufficient. The state must ensure the enjoyment of the right to life for every person under its jurisdiction through specific activities by the state parties. I believe the author is referring to the fact that the state parties must provide the fulfilment of the right to life by all means at their disposal. This means actively engaging in the protection with the positive obligations and restraining omissions to this through its negative obligation.

The author also explains the negative obligation of the states by saying that the duty to respect has negative and positive dimensions. In negative terms, it is to take measures to prevent unlawful deprivations of the right to life by agents of the state, as well as by other persons acting contrary to the law. In the positive aspect, the duty to respect the right to life applies to all branches and organs of the state, including the legislative, administrative, executive and judicial branches, as well as the law-enforcement security and military forces.[389] This paragraph clearly defines the state's positive and negative obligations. The negative refers to preventing unlawful deprivations of the right to life by state agents, and that refers to the duty of enforcing security and military forces. Also, it establishes that the state must protect people from acts of persons acting contrary to the law. Regarding the positive obligations, the text determines that the duty to respect the right to life concerns all state organs and branches, including the legislative, administrative, executive and judicial branches. This means that the three powers of the state must respect and protect the right to life. This includes the whole state's apparatus and its organs.

Regarding the rule of law, Ramcharan establishes that those who examine situations of political killings, arbitrary and summary executions, disappearances, torture, and excessive use of force by law enforcement officials find that the underlying root cause is the breakdown of the rule of law. The one simple factor which can stamp out these barbarities would be the universal reinstatement of the rule of law. Arbitrary and summary executions and excessive use of force by law-enforcement officials would

[388] Ibid. P. 17.

[389] Ibid.

soon be brought under control if those likely to commit such acts knew that they would come under the scrutiny of the law and its sanctions as well. Therefore, to protect the right to life effectively, long efforts must be continued to strengthen the rule of law universally.[390] The author correctly establishes the necessity of the rule of law as a condition to protect the right to life. However, it isn't easy to apply this in practice because even if the human rights courts try to establish the necessary standards and punish the responsible states in their judgments, this does not mean that the state would comply. The courts would have to continue punishing this to get reparations for the victims, penal sanctions, and civil remedies. Also, even if the states complied with it, it is difficult for the ECtHR and the IACtHR to establish a guarantee of the rule of law. They can judge, punish the responsible and provide reparations for the victims, but these situations may repeat themselves. Regarding this, the IACtHR has established the abolition of any amnesty law that allows impunity for the perpetrator. The ECtHR has determined that these actions can be repeated if there is no sanction for security agents using force arbitrarily. That is why it is essential for these courts to punish the crime and for the state to comply and achieve confidence in the rule of law at an international and national level. It is still a work in progress that these courts are trying to reach to secure adherence to the rule of law.

This author establishes that every internationally wrongful act of a state entails the international responsibility of the state. There is an internationally wrongful act of a state when conduct consists of an action or omission attributable to the state under international law. That conduct constitutes a breach of an international obligation of the state. The wrongfulness of the act of a state is determined by international law. An internationally wrongful act that results from the breach by a state of an international obligation so essential for the protection of fundamental interests of the international community as a whole constitutes an international crime. Accountability is closely related to responsibility, which should also be considered. It is submitted as a general proposition that international accountability lies in all cases of violation of the right to life where such violations are attributable to the state. Beyond accountability, international responsibility *stricto sensu* lies in many instances.[391] Ramcharan determines the state's international obligations, which, in the case of this work, are the

[390] Ibid. P. 27,28.

[391] Ibid. P. 28,29.

breach of any of the positive or negative obligations arising from the human rights Conventions. In this line of thought, the state is internationally responsible for every act or omission that violates the human rights established in the ECHR and the American Convention on Human Rights. The state must face this accountability according to the international tribunals that correspond. In the case of this work, the state is accountable for the acts or omissions of its security forces in violation of the right to life.

Another engaging author is Ramona Nicoleta Predescu. Regarding the IACtHR, this author determines that the right to life involves the negative obligation not to arbitrarily deprive a person of their life and the positive obligation to take all necessary measures to ensure this fundamental right is not violated. The positive obligation is incumbent on every state to take the required measures through its bodies to ensure that the right to life is respected.[392] The author defines the state's positive and negative obligations regarding the right to life as interpreted by the IACtHR. The negative obligation that does not arbitrarily deprive a person of their life refers to the abstention of state agents. The positive obligation comprehends the legal framework states must adopt to ensure the right to life and that every organ and agent of the state must execute and comply.

4. C. Positive and Negative Obligations in International Human Rights

This section concerns the states' positive and negative obligations regarding human rights in international law. Several authors explore this subject.

In her book *International Human Rights Law,* Rhona K.M. Smith provides some general conceptions of human rights and state obligations. She establishes that international human rights are legally binding on states: some rights and freedoms are binding on all states. In contrast, others are freedoms only binding on states that explicitly accept their applicability.[393] The ECHR and the ECtHR have 46 member states; the American Convention and the IACtHR have 25 member states. The author acknowledges that these courts cannot make demands on states that are not part of their court or convention and do not comply with the provisions on human rights of

[392] Predescu, Ramona Nicoleta. "Human Dignity in Criminal Proceedings. Relevant Decisions in the Case Law of the European Court of Human Rights and the Inter-American Court of Human Rights." In: *International Conference of Law, European Studies and International Relations IX*. Ed. The Central and Eastern European Library. P.P. 166-175. Romania, 2021. P. 169.

[393] Smith, Rhona K. M. *"International Human Rights Law"* 10th Edition. Ed. by Oxford University Press, Oxford, United Kingdom. 2022. P. 2.

the latter. Furthermore, it generates a positive and negative obligation over the states that are part of these treaties and the human rights established there. However, every state should respect the human rights of the people under its jurisdiction, although nowadays, several violations in many countries are not judged. That is why the work of regional human rights courts is so important. For example, it was mentioned that Europe, America, and Africa have human rights courts, but this is not the case in Asia and Oceania. Currently, there are 193 states in the United Nations, and as part of this organisation that protects peace, security and human rights, they should be obliged to respect these.

Rhona K. M. Smith establishes that the right to life is the most fundamental of all rights, and all other rights add quality to that life. She also determines the importance of an adequate standard of living and the state's positive obligations, such as adequate food, water, housing, and sanitation.[394] Although this work concerns the right to life, all human rights generate positive and negative obligations regarding the state that must be met. It is relevant to establish that this work concentrates on security forces' arbitrary deprivation of life. Still, there are other aspects to fulfilling the right to life, such as those mentioned by this author.

Furthermore, this author establishes that states must respect human rights in their deeds and actions, protect human rights in laws and policies, and fulfil their treaty obligations. Smith states that human rights are necessary to complement the country's rule of law.[395] This author determines the positive and negative obligations that the states have concerning human rights by establishing that they must respect and protect these in their laws and policies. Also, they must execute this legal framework. Smith establishes that the states must fulfil their treaty obligations, which can be related to the positive and negative obligations arising from the provisions of the ECHR and the American Convention on Human Rights. Concerning the right to life, the state must act to prevent violations of this right through all the means at its disposal: legal, cultural, institutional or administrative measures (positive obligation) and avoid committing any act that can cause an infringement of this right (negative obligation). The rule of law is a political and legal ideal that all people and institutions within a state are accountable for following the same laws. This means that the people under

[394] Ibid. P. 6.

[395] Ibid. P. 10.

the jurisdiction of the state must trust their apparatus and institutions. Respect for human rights is necessary for trust and confidence in the rule of law. In this way, the people of a state can be assured of the rule of law.

Moreover, Smith establishes that international human rights go beyond the boundaries of general international law. There is an overlap between the traditional effect of international law (relations between states) and the conventional effect of national and constitutional law (relations between the state and individuals) on human rights, allowing the international community to determine some limits to what a state may do to its nationals. This has always been controversial, with some states reluctant to endorse what they regard as interference in the state's internal affairs.[396] What the author states here is essential to understanding the protection of human rights. The human rights conventions determine provisions that protect individuals against the violation of these rights, including those perpetrated by the state or its organs. As Smith highlights, some states are reluctant to give some powers for international jurisdiction over their nationals. However, this is necessary to protect the human rights of individuals. If this international law of human rights did not exist, the states could infringe on the human rights of their individuals without having to respond to any organ, which would cause massive violations. An example is what happened in Latin America during the sixties, seventies and eighties with the dictatorships and the crimes of extrajudicial executions and forced disappearances. The IACtHR did not exist yet, so the states did not have to respond to this court for human rights violations.

An interesting author, Maurice Cranston, establishes that there may occasionally be a conflict between the individual's rights and the state's security. However, security, in general, is not at odds with human rights because it is one of them. The security of each is bound up with the security of all, and private enjoyment depends on public enjoyment.[397] This author determines that sometimes, state security can conflict with individual rights, but that security is a human right everyone must enjoy. This means the state must provide security and restrain security forces that depend on it from violating human rights.

[396] Ibid. P. 11.

[397] Cranston, Maurice. "Are there any Human Rights?" In: *Daedalus. Vol. 112, No. 4,* Human Rights (Fall, 1983). P.P. 1-17. 1983. P. 17.

Concerning the IACtHR, subsection 4.1. of the Article adds that the right to life *"will be protected by the law",* establishing the state's positive obligation. This amplifies the state's field of participation. Includes actions that can affect the conduct of the agents of the state, as well as particulars. By this positive obligation, the state must take the necessary measures, legislative or of other nature, to prevent violations of the right to life or punish those that occur, considering what the American Convention establishes and the development of its norms through jurisprudence.[398] Cranston highlights the state's positive obligation to protect everyone's right to life in its jurisdiction by law. Article 2 of the ECHR establishes the same.

An engaging view is that of Candado Trindado. This author determines that an international human rights tribunal must look after the due application of the human rights treaty at issue in the framework of the domestic law of each state party to secure adequate protection of the human rights outlined in such treaty. Any understanding to the contrary would deprive the international human rights tribunal of the exercise of the function and the duty of protection inherent to its jurisdiction, failing to ensure that the human rights treaty has the appropriate effects in the domestic law of each state Party.[399] The human rights courts must ensure the compliance of their provisions and that the state follows its positive and negative obligations regarding the rights established in the Conventions. Failure to do so would deprive these tribunals of their inherent duty of protecting human rights.

This author establishes that the growth and consolidation of international human rights jurisdictions in the European and American continents have set higher standards of state behaviour, established some degree of control over the interposition of undue restrictions by states, and have reassuringly enhanced the position of individuals as subjects of the international law of human rights endowed with full procedural capacity. Insofar as the basis of the jurisdictions of the IACtHR and the ECtHR in contentious matters is concerned, eloquent illustrations of their firm stand in support of the integrity of the mechanisms of protection of the two Conventions are afforded.[400]

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[398] Ibid. Par. 15.

[399] Candado Trindade, Antonio Augusto. "Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law." Part. I. Ed. *Inter-American Juridical Committee of the Organisation of American States.* P.P. 233-259. 2010. P. 244

[400] Ibid. P. 257.

Every individual's right to life must be protected. Human rights tribunals have determined this through case law establishing that the state must protect these individuals in its jurisdiction. That is why the state's positive and negative obligations regarding human rights are vital to complying with individual human beings' inherent entitlements.

An engaging text is *"The European Union and Human Rights: An International Law Perspective"*[401] by Tawhida Ahmed and Israel de Jesús Butler. These authors establish that traditionally, although states may not base a failure to observe their international obligations on duties under domestic law, each state reserves for itself the means according to which it implements those obligations. International law does not penetrate national law unless the constitutional tradition of that state provides it.[402] Every state has the right and the duty to determine how to apply the provisions of human rights conventions. The authors refer to Nigel White: *"The legal bases upon which human rights apply to all UN activities can be derived first from human rights' inherent nature. Human rights are part of being a human being. Therefore, such rights are automatically part of the legal framework applicable to those with the power to affect the enjoyment of those rights. Secondly, there is a delegation by member states to the UN of their responsibilities under human rights law. States cannot set up an autonomous international actor that can obviate human rights standards that the states are bound by."*[403] According to these authors, states must respect human rights even if a convention does not bind them. They have the positive and negative obligations of protecting and ensuring these rights for everybody under their jurisdiction. States must protect human rights because they are inherent to people's being human beings, and the state cannot ignore this vital obligation. Human rights are mandatory as part of a legal framework applicable to those with power to ensure the enjoyment of those rights.

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[401] Ahmed, Tawhida and Butler, Israel de Jesús. "The European Union and Human Rights: An International Law Perspective." In: *The European Journal of International Law. Vol 17 Nº4 EJIL*. P.P. 771-801. 2006.

[402] Ibid. P. 775.

[403] White, Nigel D. "Towards a Strategy for Human Rights Protection in Post-Conflict Situations". In: *N. White and D. Klaasen (eds), The UN, Human Rights and Post Conflict Situations*. 2005. P. 463, 464.

Customary international law is the body of international law binding on all states, which derives from states' practice and legal opinion (*opinion juris*[404]). Unlike legal obligations deriving from treaties, which states must accede to or ratify to be bound by their terms, Customary International Law may emerge without the express consent of every state to a particular rule.[405] Ahmed and Butler share a similar thought to White's by determining that Customary International Law obliges states to follow fundamental respect for human rights because this is a practical rule that arises without the express consent of every state.

Furthermore, the International Court of Justice has found that international law's rules concerning the fundamental rights of the human person are *erga omnes* and are considered *"the concern of all states."* Given the importance of the rights involved, all states can be held to have a legal interest in their protection. Certain international judicial bodies have had to expressly recognise that particular rights have achieved this status of *Ius Cogens:* the prohibition of torture, the right to life, the right to equality before the law and non-discrimination, and the prohibition of slavery.[406] This is another argument of the authors, based on the International Court of Justice, that human rights are the concern of all states. They are *erga omnes*, meaning they are rights towards all, automatically generating a positive and negative state obligation towards human rights. Furthermore, several international instruments have given *Ius Cogens* the right to life character, meaning this is a peremptory norm that cannot be derogated.

4. D. Positive and Negative Obligations of the State Concerning the Action of Security Forces

The security forces of the state and their actions, which cause the death of people, are the object of this work. This part examines the positive and negative obligations of the state parties regarding these forces.

A thought-provoking author, Robert Esser establishes that the ECHR, in Article 2, has established a positive obligation of the state and its representatives; hence, the

[404] An opinion of law or necessity. *Opinio Juris* requires that customs be regarded as state practices that amount to legal obligations, distinguishing them from mere usage.

[405] Ahmed, Tawhida and Butler, Israel de Jesús. "The European Union and Human Rights: An International Law Perspective." In: *The European Journal of International Law. Vol 17 Nº4 EJIL*. P.P. 771-801. 2006. P. 778.

[406] Ibid. P. 779, 780.

contracting states are obliged to create a public order that provides adequate protection of the right to life for all persons.[407] The same can be applied to the IACtHR's case law, which determines the state's positive and negative obligations by interpreting Article 4 of the Convention.

Dimitris Xenos wrote chapter ten of the book *"The Police and International Human Rights"*[408] about the positive obligations of the police and protecting against crime as a human right. This is another significant text to add to this work. He states that the main focus is put on the professional duty of the police, which in human rights law involves the active positive obligation of the state to protect and guarantee human rights. The positive obligations are about the emergence of the police as service providers and their officers as professionals, bound by a duty of care that characterises their work, which is to enforce the law and tackle crime.[409] This author establishes an interesting view about the positive obligations developed by the police forces of the state. He says that the primary purpose of the police is the positive obligation to protect and guarantee human rights when these are involved. The police must protect the individual from crime and enforce the law. This is a positive obligation that derives from human rights. The police forces must defend the right to life in every situation, and that is why the use of lethal force is the last recourse. Furthermore, this is the situation that usually takes place. The exceptions are when there is an arbitrary deprivation of life by security forces, which this work studies. As an organ of the state, the security forces are bound to respect the positive and negative obligations of the right to life.

International law organs, including the EU, have more often and traditionally examined and reviewed the police's responsibility regarding abuses of police powers.[410] Due to the intersection of the ECHR system with other regional human rights systems and that of the UN, there is a considerable degree of harmonisation of

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[407] Esser, Robert. "Chapter 4: The Police and the Right to Life." In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. P. 46.

[408] Xenos, Dimitris. "Chapter 10: The Protection Against Crime as a Human Right: Positive Obligations of the Police". In: *The Police and International Human Rights. Edit: Springer. Alleweldt, Ralf; Fickensher, Guido.* DSF: German foundation for peace and research. Switzerland, 2018.

[409] Ibid. P. 183.

[410] Ibid.

the review principles and standards at national and European/international levels.[411] This concurs with what has been established about the proliferation of international law courts. Xenos determines that there is harmonisation of the principles and standards at the European and global levels. Although this is true, the ECtHR is the one that has the work to judge human rights. There are cases of human rights that were brought before the European Court of Justice, but when the jurisdiction of the ECtHR became compulsory, this transformed into the court that judges human rights in Europe.

The state´s positive obligations arise in the context of crime since tackling crime is a common form of protection against human rights violations. Since the early years of the emergence of positive obligations in the constitutional review of the ECtHR, victims of crime have asserted protection of their human rights from the state.[412] Xenos determines that positive obligations emerged for the police when facing crime. For the author, this is a common form of human rights protection and establishes that the victims of crime have positive and negative human rights obligations protected by the state since the ECtHR started. The police must protect these positive and negative obligations regarding human rights. However, as will be shown in Chapter III, many times, they abuse the use of force or treat the persons in custody without the inherent dignity of the human person. This creates a dichotomy for these forces: they must protect and guarantee human rights, but many times, they use lethal force that can cause the death of a person. This can mean violating the right to life or not, according to the circumstances in which it occurs.

The ECtHR has clarified the starting point of its constitutional review by constantly reiterating that the state´s positive obligation involves a primary duty of the state to secure the right to life by putting in place adequate criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.[413] This has been explained before, including the right to life and how the

[411] ECTHR. M. and Others v, Italy and Bulgaria. (Application no. 40020/03). Judgment 31 July 2012. Par. 147.

[412] Xenos, Dimitris. "Chapter 10: The Protection Against Crime as a Human Right: Positive Obligations of the Police". In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. P. 208.

[413] ECtHR. Osman V. the United Kingdom. (Application no. 23452/94). Judgment 28 October 1998.

ECtHR protects it. According to Xenos, the state's positive obligation determines efficient criminal law provisions to prevent the crime from occurring. This aligns with the state's positive obligation to ensure a political, legal, administrative and institutional framework for protecting human rights. The aim is to prevent the violation of human rights, as Medina Quiroga mentioned. If this is not the case, and the crime occurs, the state must punish the responsible. If this did not happen, these crimes would take place more often. Crimes arise, and although there is punishment for the perpetrators, this example prevents the crime from spreading further. The security forces are not exempt from being judged if they abuse lethal force that has to be applied according to the circumstances and the principles of proportionality and absolute necessity.

Where a conflict of rights exists, the police's duty to protect against crime requires balancing the competing human rights. Generally, guidance can be obtained by identifying the most pressing issue without considering the specific facts.[414] The author discusses the *"supreme value in the hierarchy of human rights"*.[415] This is important because, in many of the cases studied in this research, the police and other security forces are in a situation where they have to decide if they violate a right to save another, like the right to life. Several times, violating the right to life by security forces is not necessary in these cases because it is possible to apprehend the person who commits the crime without taking the lives of the people involved. The supreme value in the hierarchy of human rights that the author mentions is the right to life before any other right because, without fulfilling this right, the other human rights are meaningless.

José Antonio Pastor Ridruejo wrote an engaging text for this research.[416] In the ECHR of 1950 and its Additional Protocols, many rights and freedoms are defined in terms that imply fundamental obligations of respect or abstention for states. This occurs mainly in Article 2 (according to which death cannot be inflicted intentionally), Article

[414] Xenos, Dimitris. "Chapter 10: The Protection Against Crime as a Human Right: Positive Obligations of the Police". In: *The Police and International Human Rights.* Edit: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German foundation for peace and research. Switzerland, 2018. Par. 209.

[415] Ibid. P. 210.

[416] Pastor Ridruejo, José Antonio. "La Reciente Jurisprudencia del Tribunal Europeo de Derechos Humanos: Temas Escogidos". In: *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz.* P.P. 240-276. 2007.

3 (prohibition of torture), and Article 4 (prohibition of slavery and forced work).[417] The author describes articles that protect human rights and generate the state's positive and negative obligations regarding those. The abstention is the negative obligation, and the respect is the positive. It is significant what the author determines about the right to life in Article 2, and that this death cannot be caused intentionally. This is the primordial duty of security forces. Although they have the right and duty to carry firearms and use force in strictly determined circumstances, this cannot be applied arbitrarily, and they cannot deprive a person of their life intentionally without cause unless the situation corresponds to one of the exceptions of Article 2.2. In this case, it is possible because, as was mentioned, the right to life is not absolute. However, if they kill a person unintentionally, the ECtHR must examine the situation and its circumstances to determine if there was a violation of the right to life.

There is a doctrine of the old tribunal that has luckily persisted in the new, which comprehends that the assumptions it applies make human rights prevail over the sovereigns of the states.[418] In the case mentioned above, McCann and Others, the defendant state's condemnation was based fundamentally on violating its positive obligation.[419] Here, it also highlights that the right to life is the most important on a scale of human rights. The state understands that protecting human rights is more important than its sovereignty. The regional human rights courts establish judgments that oblige the state to be accountable for violating human rights when they correspond. Furthermore, human rights generate positive and negative obligations regarding the states they must comply with, even if these limit their sovereignty.

The utility of the doctrine of positive obligations is also used when the applicant alleges several summaries of executions and acts of torture in violation of Articles 2 and 3. In these cases, the state accused has frequently been left to investigate and sanction the facts.[420] The situation of extrajudicial executions, forced disappearances, and torture is widespread in the case law of the ECtHR and the IACtHR, mainly in the

[417] Ibid. P. 247.

[418] Ibid. P. 251.

[419] ECtHR McCann V. United Kingdom. (Application No. 18984/91). Strasbourg. Judgment 27 September 1995. Par. 12

[420] Pastor Ridruejo, José Antonio. "La Reciente Jurisprudencia del Tribunal Europeo de Derechos Humanos: Temas Escogidos". In: *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz.* P.P. 240-276. 2007. P.252.

latter. The state must comply with its positive obligation to investigate the events that lead to these crimes and punish those responsible.

The context of crime has long provided and continues to offer judicial opportunities for developing not only the duties of the police but also the entire constitutional review of the state's human rights obligations.[421] As the police are also subject to negative obligations, they cannot interfere with human rights without proper justification. A preliminary condition for a lawful exercise of police powers regards the prior regulation of the offence in criminal law.[422] The positive obligation regarding the right to life of the state can also be seen when security forces do nothing to save the life of a person. The police forces must know the situation and how to handle it. In this way, it would be possible for them to comply with the state's positive and negative obligations. For this, it is necessary to have a careful and planned operation from the superiors. The negative and positive obligations apply to the framework of criminal law. The police and all security forces must be trained and capacitated in human rights law to develop their duties and protect these rights. If this does not occur, it is probably a situation that is part of the five categories of violation of the right to life that will be established below.

4. E. Positive and Negative Obligations of the State in the IACtHR and the ECtHR

This section determines some notions regarding the positive and negative obligations of the state parties concerning the regional human rights courts.

The text of Tawhida and Butler determines essential notions about the positive and negative obligations regarding the ECtHR. These authors acknowledge that the ECtHR has held that although the ECHR does not exclude the transfer of competencies to international organisations, it is the responsibility of states parties to the ECHR to ensure that their human rights obligations will receive equivalent protection within the

[421] ECtHR. Delfi V. Estonia (Application no. 64569/09). Judgment 16 June 2015. Par. 4*: "Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States".*

[422] Pastor Ridruejo, José Antonio. "La Reciente Jurisprudencia del Tribunal Europeo de Derechos Humanos: Temas Escogidos". In: *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz.* P.P. 240-276. 2007. P.252.

context of those Inter-Governmental Organisations (IGOS onwards) to which they become parties. In this way, despite the transfer of specific competencies from states to IGOs, human rights supervisory bodies will continue to hold states accountable for using those powers to prevent a loophole in human rights protection.[423] The Contracting States' responsibility continues even after they assume international obligations after the entry into force of the Convention or its Protocols. It would be incompatible with the object and purpose of the Convention if the contracting states, by assuming such obligations, were automatically absolved from their responsibility under the Convention. Thus, states remain responsible for breaches of the ECHR resulting from any acts or omissions required by the laws of the IGO.[424] The authors establish specific characteristics of the clash of rights between the IGOs and the states in the ECtHR. While the state may be part of intergovernmental organisations, this is not exempt from its obligations towards the ECHR. The states assume a compromise when they ratify the European Convention on Human Rights and cannot allow norms contrary to these provisions. The states are not allowed to disregard the provisions of the ECHR, and they must understand that positive and negative obligations towards its provisions were established when they ratified this Convention. They can transfer powers to IGO but must never leave a legal vacuum regarding protecting human rights. The obligations flowing from the UN Charter include the duty to guarantee human rights.[425] The predominance of the UN Charter over the ECHR and the American Convention on Human Rights could be a problem if this Charter did not protect human rights, but luckily, it does, and it is in concordance with the provisions of the human rights conventions. Although the members of the European Union must respect the UN Charter over other treaties that have come later, this Charter does not contradict the respect and protection of human rights of the ECHR. Furthermore, the authors highlight the importance of the EU members respecting Customary International law

[423] Ahmed, Tawhida and Butler, Israel de Jesús. "The European Union and Human Rights: An International Law Perspective." In: *The European Journal of International Law. Vol 17 Nº4 EJIL*. P.P. 771-801. 2006. P. 782.

[424] ECtHR. Case of Capital Bank Ad V. Bulgaria. (Application. No. 49429/99). Judgment 24 November 2005. Par. 111

[425] Ahmed, Tawhida and Butler, Israel de Jesús. "The European Union and Human Rights: An International Law Perspective." In: *The European Journal of International Law. Vol 17 Nº4 EJIL*. P.P. 771-801. 2006. P. 792.

and must consider any EU law incompatible with *Ius Cogens* void. The international law courts and organisations are indeed horizontal. Still, the United Nations Charter predominates over other treaties, considering it was the first established and originated the modern organisation of international law and its organs. However, the ECHR and the American Convention on Human Rights have expanded the catalogue of human rights protected by the United Nations Charter.

The ECHR imposes a general duty on states to take those measures necessary at the national level to secure or ensure the rights protected by the relevant treaty.[426] Similarly, the Inter-American Court has affirmed that state parties are under the general obligation to adjust their domestic legislation to the provisions of the Convention itself, to guarantee thus the rights enshrined in the Convention. Domestic legal provisions must be adequate to this end. This means that the State must adopt measures that may be necessary for actual compliance with what is outlined in the Convention.[427] In this spirit, the Inter-American Court has found that the fundamental right to life includes not only the right of every human being not to be arbitrarily deprived of his life but also the right to access conditions that guarantee a dignified existence. States must ensure the creation of the conditions required so that violations of fundamental rights do not occur.[428]

The typology of *"respect, protect, and fulfil"* can be seen as a particular means of expressing and conceiving existing human rights obligations. It is widely acknowledged that EU institutions must respect human rights; they may not directly violate them when they act.[429] The authors establish the positive and negative obligations regarding human rights in the European Union.

The authors believe that EU law has no positive obligations for the member states arising from human rights. It is different if they consider the ECHR and the case law of the ECtHR. The letter of the provisions of the ECHR provides positive obligations,

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[426] Ibid. P. 798, 799.

[427] IACtHR. Case Bulacio V. Argentina. Merits, Reparations and Costs. Judgment 18 September 2003. Series C No. 100. Par. 142.

[428] IACtHR. Case of the "Street Children " (Villagran-Morales et al.) V. Guatemala. Merits. Judgment 19 November 1999. Series C No. 63. Par. 144.

[429] Ahmed, Tawhida and Butler, Israel de Jesús. "The European Union and Human Rights: An International Law Perspective." In: *The European Journal of International Law. Vol 17 Nº4 EJIL*. P.P. 771-801. 2006. P. 798, 800.

such as in Article 2,[430] to protect the right to life by law. Furthermore, other provisions establish positive commitments for the state, such as Article 6 (Right to a Fair Trial)[431], which determines a series of rights that the state must comply with in the case of someone charged with a criminal offence or Article 1[432] that establishes that the contracting parties must secure for everyone in its jurisdiction the rights and freedoms of the Convention. However, there are negative obligations in the ECHR as well. An example is Article 3, which establishes the prohibition of torture and determines an act that gives a negative obligation. Ahmed and Butler establish that IACtHR has defined the state's positive obligations, referring to Article 2 of the American Convention on Human Rights, which settles the obligation of the states to adopt the provisions of the Convention and adapt them to their domestic legislation.[433] Furthermore, another positive obligation of the state for the IACtHR is in Article 4,[434] which establishes the right to life and, in interpreting this tribunal, obliges the state to adopt provisions necessary to guarantee a dignified existence of the human being. These are only a few

[430] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 2.

[431] Ibid. Article 6: Right to a fair trial. 1. In determining his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

[432] Ibid. Article 1.

[433] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 2.

[434] Ibid. Article 4.

examples of the positive obligations that arise from the Conventions for the states. The authors have a significant value in highlighting respect, protection and fulfilment as the essential requisites and characteristics of a positive obligation of the state.

Eva Brems concentrates on the state's procedural positive and negative obligations. Regarding the procedural positive obligations, the author established that these comprise the obligations intended to prevent human rights violations in general by providing an adequate normative framework, to prevent violations in specific cases, and to oblige states to react appropriately to credible allegations of human rights violations. Concerning negative procedural obligations, procedural shortcomings may be identified as a violation of the legality requirement or as a factor (negatively) affecting the court's assessment of the proportionality of an infringement of its aim.[435] This author believes that the procedural positive obligation refers to establishing a legal and normative framework to prevent human rights violations in general or specific cases. This framework must be based not only on the letter of domestic law but also on the state's execution. Furthermore, the other positive procedural obligation is to react to the allegation of a breach of human rights. The negative procedural commitments refer to the absence of investigation and the court's assessment when there is an alleged violation of human rights. The lack of inquiry can be seen in many cases of this work.

An engaging text about the positive and negative obligations of the state in the IACtHR is one of Marcela Barón Soto and Alejandro Gómez Velásquez.[436] These authors establish that International human rights treaties are the recognition of essential standards for the development of societies, which are based on the most fundamental values of human beings. However, this development is only authentic if the establishment of rights is strengthened with the creation of mechanisms for its protection and a due process of responsibility for violations of these globally accepted demands. Consequently, it is impossible to think of an international Human Rights law

[435] Brems, Eva. "Procedural Protection. An examination of Procedural Safeguards read into Substantive Convention Rights". In: *Shaping Rights in the ECHR. The role of the European Court of Human Rights in Determining the Scope of Human Rights*. Ed: Eva Brems and Janneke Gerards. Cambridge University Press. P.P. 137-161. United Kingdom, 2013. P. 139.

[436] Báron Soto, Marcela and Gómez Velásquez, Alejando. "An Approach to the State Responsibility by an omission in the Inter-American Court of Human Rights Jurisprudence". In: *Revista CES Derecho. Volumen 6, No. 1.* P.P. 3-17. Washington, United States. 2015.

without an international responsibility system.[437] These authors recognise the obligations that emerge from human rights, which they established as the most fundamental values of human beings. However, they say that the development of human rights is only possible if there are mechanisms for their protection. States must be accountable for violating their positive and negative obligations towards these rights. They determine the necessity of an international responsibility system for international human rights law. The ECtHR and the IACtHR have been examining and condemning violations of these responsibilities since they began ruling.

Internationally, state responsibility for wrongful actions or omissions has also emerged from doctrine and practice. The right, composed of positive and negative obligations, is the basis for the emergence of state responsibility.[438] Wrongful actions regarding human rights refer to the state's positive obligations and wrongful omissions of its negative duty. The authors establish that the state's responsibility derives from non-compliance with its negative and positive obligations concerning fundamental rights and freedoms.

Barón Soto and Gómez Velásquez state that the analysis of the state's international responsibility has become more critical with the advances of the human rights protection agreements. Today, the issue of state responsibility under international human rights law is essential to give them a genuine effect. Thus, the state is responsible for an action or omission violating any internationally recognised rights. This responsibility is the consequence of the existence of international obligations that the states must comply with because of the existence of a right whose holder expects and can demand that it be met.[439] The evolution of human rights law, together with the regional courts, has developed the critical examination of the negative and positive obligations of the state, making these accountable for the violation. The authors establish the state's responsibility for the actions or omissions that violate human rights, and that it has become more genuine because of the development of international human rights law. These obligations have a holder in the ECtHR and the IACtHR, individuals who have seen their human rights violated.

[437] Ibid. P. 3.

[438] Ibid.

[439] Ibid. P. 4.

Accordingly, in international human rights law, we are in front of a triadic relation where the individuals are the active subjects and the states are the passive ones. Consequently, the active subject can demand a specific behaviour from the state. If the state does not respond to it, it will be responsible and possibly liable for violating international law. An action or omission is attributable to the state because of the behaviour of its agents or representatives. The international obligations of the state bind all the organs of the state.[440] These authors define precisely the state's positive and negative obligations. They refer to the individual as the active subject, who can interpose a claim before the human rights courts (in the IACtHR through the Commission) and the state as the passive subject that will be accused. The specific behaviour of the state the authors refer to is the positive and negative obligations regarding human rights. The authors determine that the state's international commitments include all the state's organs. For this, in this work, it is the state's responsibility when security forces that are organs of the state violate the right to life. In addition, sometimes the state may be responsible for the actions of private individuals who are not empowered with government authority but who are involved, for example, in a violation of human rights. According to international jurisprudence, this can happen when the state tolerates, controls, directs, or allows such acts, which is a global responsibility of the state for omission. The existence of an internationally wrongful act of the state occurs if the conduct that is attributable to the state constitutes a breach of an international obligation of that state.[441] The positive obligation of the states regarding human rights arises if they have perpetrated violations of these rights or have acquiesced in the actions regarding these violations. Another way the authors highlight this is when there was a violation of human rights, and the state tolerated these acts. It does not perform due diligence in investigating and punishing the responsible. This is an omission of the state and generates a violation of the negative obligation. An internationally wrongful act occurs when the state's conduct concerns a breach of an international obligation. Every violation of human rights stated in the provisions of the human rights conventions is an infringement of international commitments by state parties.

[440] Ibid.

[441] Ibid. P. 7.

Accordingly, one of the principal duties of the state is protecting the citizens and all people under its jurisdiction, a duty that requires positive actions against the non-state actors´ actions. Indeed, in general terms, this international responsibility stems from the fact that the state has failed to provide the necessary protection for the population to enjoy full rights.[442] The state's positive obligation includes securing a legal framework for the enjoyment of everyone in its jurisdiction of human rights and fundamental freedoms. The negative obligation arises when the state has not applied these laws regarding a violation of human rights perpetrated by one of its organs or a non-state actor. The state has not effectively implemented these rights to protect individuals, which generates an omission and violation of the negative obligation. Furthermore, the state fails to fulfill its positive obligation when it does not establish the necessary laws to protect human rights or does not act diligently to protect the people in its jurisdiction.

The authors follow the words of the IACtHR case law and establish that the obligation to ensure the free and effective exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation—it also requires the government to conduct itself effectively to ensure the free and effective exercise of human rights.[443] Barón Soto and Gómez Velásquez determine some negative and positive obligations derived from the American Convention on Human Rights letter and the court's case law. A positive obligation is to ensure the enjoyment of these rights by all means at the disposal of the state. This refers to establishing a juridical, administrative and legal framework that protects human rights and fundamental freedoms. However, the positive obligation does not end there. The state must adopt effective conduct and mechanisms to ensure this framework complies with its jurisdiction. Another positive obligation that states must secure is the adoption and adaptation of the provisions of the Convention in their domestic courts. This is an essential obligation to guarantee the protection of human rights by state parties to the human rights conventions.

The authors add that there are cases of the IACtHR where the state has violated its international obligations through actions committed by third parties in which the state´s agents were part of or tolerated their occurrence. This wrong behaviour of state

[442] Ibid. P. 8.

[443] Ibid. P. 10.

representatives must be proven and represents a significant omission to prevent and protect people under the state's jurisdiction.[444] There are examples in Chapter III of these cases where security forces were in agreement and acted with paramilitary groups which perpetrated massacres, extrajudicial executions or forced disappearances. This is an infringement of the positive obligation of the state to protect human rights and the negative obligation to refrain from doing anything that can violate these rights. Even if the state did not have present acquiescence with the crime, it can violate its negative obligation for not investigating and punishing the responsible with due diligence.

The state can be responsible for violating human rights by a private actor. This scenario is based upon the failure of the state to act with due diligence to prevent those private individuals´ actions that constitute a violation of the rights recognised by the American Convention. Therefore, the state's responsibility is an evident consequence of the omission of fulfilling a positive obligation: protecting all the people under its jurisdiction. The IACtHR has stated in different decisions that the state must prevent all actions that could interfere with the full and effective enjoyment of the American Convention´s rights. The absence of due diligence has been recognised by the Court mostly when the state does not act diligently even though it knows of the existence of a specific, immediate and determined risk.[445] To generate the negative responsibility of the state for acts of private or non-state actors, it is necessary that these are identified, and the state ought to know the risk the individuals under its jurisdiction are at. The ECtHR establishes this situation in its case law by stating that the state should know which identified individual is in danger regarding another identified third party. The states cannot be responsible for all violations of human rights. They must know about the imminent and tangible threat people might face. Furthermore, the state should be able to avoid or prevent that danger. If not, it would be an unrealistic burden on the state. However, in cases where the IACtHR has been established, the identified individuals who were at risk, and the domestic court has failed in its positive obligation to protect the Convention's human rights and fundamental freedoms for everyone in its jurisdiction.

[444] Ibid. P. 12.

[445] Ibid. P. 12,13.

Finally, the authors establish that obligations would not exist without the correlative existence of a right. The state's role is fundamental in protecting people's most basic rights. Without a successful government and a pertinent protection system, populations will become more vulnerable to the risks they face from living in society.[446] The negative and positive obligations of the state parties arise from the human rights of the conventions. The authors correctly determine that an obligation does not exist without a right from which it derives. Furthermore, they add the state's fundamental role in protecting individuals' basic rights and freedoms. However, these states must comply with their positive and negative obligations regarding the human rights established in the conventions. If not, this would cause everyone under its jurisdiction to lack protection.

Two critical positive obligations to highlight are reparations for the victims or their relatives and the state's obligation to design, implement, and enforce the legal framework for protecting human rights and the provisions of the conventions.

In summary, the positive obligation guarantees and protects the right to life through a legal framework that establishes these. Furthermore, the positive obligation generates the duty of the state and its whole apparatus and organs, including security forces, to protect human rights. The negative obligation guarantees these rights but refers to the state's abstention from violating human rights. The security forces must be careful when using lethal force and must restrain themselves from doing so and causing unnecessary death. The negative obligation also includes the state not establishing provisions contrary to the human rights conventions.

5. Categories of Violation of the Right to Life by Security Forces

5. A. Introduction

This analysis must establish the different categories of violation of the right to life based on what has been judged in the tribunals studied. I created the following categorisation to help classify the cases I analysed. After reading the judgments for this research, I found that they always belong to a particular category with the same characteristics. That is why, using these cases, I could define these five categories in which I classify the judgments.

[446] Ibid. P. 15.

5. B. Categories of Violation of the Right to Life by Security Forces of the State

(1) First, there are cases of the disproportionate use of force by the state's security agents. These cases are related to the right of the state to use force and its implications concerning the deprivation of life in the exercise of the maintenance of order. A state's security forces must consider the proportionality of their situation.

(2) Second, there are cases of extrajudicial execution by the security forces of the state. In some situations, these executions have been premeditated.

(3) Third, there are examples of massacres committed by security forces of the state or with the acquiescence of these. Some cases show massacres in Aboriginal communities that are more discriminated against, and it is easier to commit acts of abuse of force in these communities.

4) Fourth, there are cases in which the security forces committed homicides with police brutality.

(5) Fifth is the category of forced disappearance. For this crime to be committed, the state must be an accomplice.

It is necessary to highlight that in many of the mentioned cases, the Convention on the Rights of the Child,[447] The Convention against Torture,[448] The CEDAW,[449] And the Convention of Belem do Pará[450] have been violated.

It is essential to establish that some of these categories may overlap. While this research is being conducted, adding more categories or discarding others could be possible.

In the following, I will examine the key cases of the two tribunals regarding these categories to establish the standards of each category determined by the regional courts of human rights. This will allow me to find similarities and differences between these

[447] United Nations General Assembly Resolution 44/25. *Convention on the Rights of the Child.* Adopted 20 November 1989. It entered into force on 2 September 1990.

[448] United Nations General Assembly Resolution 39/46. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* Adopted on 10 December 1984. It entered into force on 26 June 1987.

[449] United Nations General Assembly Resolution 34/180. *Convention on the Elimination of All Forms of Discrimination against Women.* Adopted on 18 December 1979. It entered into force on 3 September 1981. New York, United States.

[450] Organisation of American States. *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará).* Adopted on 9 June 1994. Belem do Pará, Brazil.

standards. Furthermore, the analysis of the cases is vital to determine how the courts decide, apply the standards and define the substantive and procedural aspects.

Conclusion

The literature I chose helped me to develop the structure of this work. By comparing authors with different insights about the diverse topics, it was possible to establish why the right to life, the IACtHR and the ECtHR are so complex and fascinating to examine. In this work, I want to determine how the articles about the right to life of the Conventions can be interpreted in different ways by the tribunals of human rights, how they rule the judgments and the standards they apply concerning the violation of the right to life. It is difficult to understand and interpret the right to life, so the IACtHR and the ECtHR's decisions concerning violations of this right are critical. Although this work concentrates on the breach of the state of the right to life by the actions or omissions of security forces, the aim was to give an expanded panorama of theoretical aspects. Furthermore, it is essential to see how the case law and the court's decisions have evolved constantly.

The chapter shows how the different conventions come together to decide a judgment's future and the investigation's importance.

Although some sub-chapters have not kept the balance of the quantity of information about the ECtHR compared to the IACtHR, or vice versa, it is essential to remember what Anikó Raisz established about the transplantation of laws between tribunals. The concepts of one court can be determined in the other, as typically happens with these two regional human rights courts, established in the texts and commentaries.

This chapter is relevant for establishing a basis on the literature and jurisprudence concerning several theoretical aspects. I examined the substantive and procedural aspects of the right to life and the positive and negative obligations of the states in both courts. It is necessary to emphasise that in the cases presented in Chapter III, the states have often not complied with their negative and positive obligations. Another critical aspect is the articles protecting the right to life in the American Convention and the European Convention on Human Rights. Article 4 of the American Convention protects the right to life but establishes the rules of the death penalty, which became obsolete after its prohibition. An essential difference with Article 2 of the ECHR is that this creates some exceptions where violating the right to life is allowed with strict requisites. I believe that it is essential to establish these exceptions in this Convention

to understand why a person who kills another is justified in some instances. For not having these exceptions in the letter of its Article, the IACHR must apply the Basic Principles and Code of Conduct for Use of Force of Law Enforcement Officials of the OHCHR that establishes similar exceptions to the ones of Article 2.2. of the ECHR.

Furthermore, it is possible to determine that the ECtHR's procedural aspect is more developed because its case law has discussed this aspect extensively.

Moreover, it is significant to identify the situation of security forces and know if they committed homicide with justification or if it was an abuse of power. The state is always responsible for these forces that depend on it.

Chapter III: Analysis of the Judgments Regarding the Violation of the Right to Life by State Security Forces

Introduction

When I started to examine the cases related to the question of violation of the right to life by the state's security forces, I realised that including all of the cases in the thesis analysis would shift the balance of my work to descriptive. The number of cases that apply to the categories is too high to outline in this work, and several of them share the essential standards. I decided to select from the analysed cases and, in that way, make a more coherent and organised thesis that could centre on its object of study, which are the standards and the comparison between them. The cases selected are those that are more representative of each Court. This means those judgments that have been paradigmatic and have established essential notions and standards about violating the right to life, among other characteristics of each category and crime. This selection was necessary because there were many cases in each category. Analysing all of them would have made a prolonged and repeated study of the standards, considering that these are reiterated in several judgments. Moreover, many cases quote previous judgments because the concepts established in one of them are relevant and have been stated in later sentences, such as *Ius Cogens, mutatis mutandi,* and other significant notions. Several cases are often analysed in one category rather than another because the chosen judgments are necessary to establish the relevant standards. Furthermore, the selected cases are the key cases of each court and have been quoted in later judgments in both courts.

It is relevant to establish that I included the key cases with their facts and standards because it was essential to determine how these standards are applied. Every case will have a summary of what occurred in the specific situation (facts) and the standards established by the courts when they decide. In this way, it is possible to understand how each court works better, resolve and interpret the Convention's articles, and apply the corresponding standards. This was significant to determine because after I read all the cases related to this work, I realised that it would be necessary to explain the situations in which the security forces may violate the right to life and why the state's responsibility is established to determine the development and evolution of the case law of the courts and human rights.

The list of cases is in Appendix I.

Moreover, the chosen cases are those where the defendant state has several instances of this category against it and those key cases that were famous and quoted as background in subsequent judgments.

The following categories of violation of the right to life by security forces will be analysed in the selected case studies:

1. Disproportionate use of force by agents of state security.
2. Extrajudicial execution by the security forces of the State.
3. Massacres committed by security forces or with the acquiescence of these.
4. Homicides committed with police brutality.
5. Forced disappearances.

Although these categories may overlap, some cases belong to two or more categories. However, each case was analysed in only one category for academic purposes, which was the most relevant to the court's reasoning and better described the situation of the people involved and the standards applied.

It is significant to determine some statistics about the cases analysed. Regarding the IACtHR, there are cases with 13 defendant states. Venezuela, Guatemala, Honduras and Perú have the most judgments against them, with 13,04% each. Followed by Ecuador and Colombia, which had 8,09%. Brazil, Paraguay, Bolivia, Uruguay, Argentina, El Salvador, and the Dominican Republic have only one case as accused states with 4,34%. The variety of defendant states in this court can be explained by the number of countries with enforced disappearance cases. In this category, I considered one case of each state to demonstrate the spread of this crime in the region. However, Honduras stands out for the number of instances in which it is a defendant state in this latter category. In my view, Perú has a predominance in the category of disproportionate use of force.

As the defendant states, 10 countries are concerned about the ECtHR. This is related to the number of cases against Turkey regarding violating the right to life. Turkey presents 39,13% of the cases. This state is followed by the United Kingdom and Russia, with 13,04% of the cases. Then, the Netherlands, with 8,69%. Finally, there are countries with only one case against them, such as Cyprus, Poland, Italy, Romania, Ukraine, and Bulgaria, with 4,34%.[451]

[451] The statistics were developed according to the cases examined in this work.

Before analysing the cases, it is essential to mention the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR (Office of the High Commissioner of Human Rights), which the IACtHR quotes. This instrument is relevant because it has standards that establish the possibility of the use of force with the consequence of an unintended killing if the life of a third person/s is/are in danger. Furthermore, it determines several essential standards for using the necessary force when deploying this. As the IACtHR does not have exceptions in its Article 4 where the security agents may use force, they rely on this instrument to establish fundamental standards for the conduct of law enforcement.

It is relevant to establish that Russia left the Council of Europe in 2022 after the invasion of Ukraine. Russia has belonged to the Council of Europe for 25 years, from 1996 to 2022. Despite this country's condemnations in front of the ECtHR, this state has maintained its place in the Council. Nevertheless, in 2021, after the invasion of Ukraine, the Council of Europe decided that Russia could no longer be part of this. Thus, the possibility of being an applicant or defendant in the ECtHR is gone. Furthermore, the Council decided to throw Russia out of the Court and the Council because it violated the ECHR.

On 16 March 2022, a resolution was issued by the Committee of Ministers of the Council of Europe, establishing that the Russian Federation ceased to be a member of the Council of Europe with immediate effect. Finally, on 16 September 2022, Russia ceased to be a European Convention on Human Rights member. This means that the 17.450 petitions against the Russian Federation that were pending to date will not take place or have a resolution. Moreover, the place of a magistrate of a Russian judge ceased to exist, too. This supposes that the execution of pending sentences cannot be applied.

3. A. Disproportionate Use of the Force by Agents of Security of the State

Inter-American Court of Human Rights

1. Case Neira Alegría and others V. Perú. Judgment 19 of January 1995:

Facts: This case is about a riot in a prison in Perú that was suppressed by the security forces with the demolition of a pavilion in that facility.[452] In the present case, Perú had the right and the duty to execute the suppression of the riot in the Prison San Juan Bautista.[453] However, their force was disproportionate to the force of the inmates they were facing. The deaths of several inmates were caused by the crash of a wall by the security forces of the State. These were homicides by action, and the Court established that the State was responsible for the procedural and substantive aspects of the right to life.

Standards:

Substantive aspects:

- Disrespect of the principle of proportionality in the use of force.[454]
- Disproportionate use of force by agents of state security considering the situation.[455]
- The importance of the right of the State to use force, although this implies the deprivation of life for the maintenance of order and when it is allowed.[456]
- Insufficient elements to justify the volume of force used by the security forces.[457]
- According to Article 4 of the American Convention on Human Rights, which protects the right to life, *"Nobody can be deprived of his or her life arbitrarily"*.[458] However,

[452] IACtHR. Case Neira Alegría and Others V. Perú. Merits, Reparations and Costs. Judgment 19 January 1995. Series C No. 20. Par. 3.

[453] Ibid. Par. 60, 61.

[454] Ibid. Par. 69.

[455] Ibid.

[456] Ibid.

[457] Ibid. Par. 73.

[458] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 4: Right to Life. 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. 2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply. 3. The death penalty shall not be reestablished in states that have abolished it. 4. In no case shall capital punishment be inflicted for political offences or related common crimes. 5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women. 6. Every person condemned to death shall have the right to apply for amnesty, pardon, or

in the present case, the analysis that must be done concerns the right of the State to use force, although this implies the deprivation of life for maintaining the order.[459]

- The proportionality of force that the security forces used was not commensurable with the force that the other party was using, which caused the deaths of several people.[460]
- The right to life plays a fundamental part in the American Convention as it is the essential principle for realising other rights.[461]
- The behaviour observed by security agents and high authorities of the State during an operation was a planned attack against the life and integrity of people.[462]
- Direction towards a political party to kill the people who belong to it.[463]

Procedural Aspects:

- Negligence in the removal and identification of the bodies.[464]

2. Case del Caracazo V. Venezuela. Judgment 11 of November 1999:

Facts: This case is about a large group of protesters who started a series of disturbances in the city of Garenas due to the increase in the prices of urban transportation.[465] Young recruits of the armed forces repressed the protest because the city police were on strike. The events that took place between February and March of 1989, according to official data, left a balance of 276 deaths, numerous injuries, several disappearances and many material losses.[466] These were homicides by the action of security forces, and the Court established that the State was responsible for the substantive and procedural aspects of the right to life.

Standards:

Substantive Aspects:

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commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

[459] IACtHR. Case Neira Alegría and Others V. Perú. Merits, Reparations and Costs. Judgment 19 January 1995. Series C No. 20. Par. 74.

[460] Ibid.

[461] Ibid. Par. 74.

[462] Ibid. Par. 76.

[463] Ibid.

[464] Ibid. Par. 72.

[465] IACtHR. Case of Caracazo V. Venezuela. Merits, Reparations and Costs. Judgment 11 November 1999. Series C No. 58. Par. 2.

[466] Ibid.

• The State must guarantee the creation of the required conditions so that they do not cause violations of inalienable rights and the duty to prevent their agents from attempting to violate these rights.[467]

3. Case of Penal Miguel Castro V. Perú. Judgment 25 of November 2006:

Facts: On 6 April 1992, the reorganisation of the National Penitentiary Institute was entrusted to the National Police of Perú to control the security of the penitentiary establishments.[468] In the context of this disposition, *"Moving Operation 1"* was planned and executed (Operativo Mudanza 1).[469] The fundamental objective of the operative was a deliberate attack, a design to attempt against the life and integrity of the prisoners who were in pavilion 1A and 4B of the prison Miguel Castro. The acts of violence were directed against such pavilions occupied by inmates accused or sentenced for crimes of terrorism and betrayal of the country.[470] These inmates were suspected to belong to the Communist Party *"Sendero Luminoso"*.[471] The external wall of Pavilion 1A was demolished.[472] There were several deaths caused by security force attacks, including extrajudicial executions of inmates who surrendered. There were at least 111 deaths.[473] These were homicides by action, and the Court established that the State was responsible for the substantive and procedural aspects of the right to life.

Standards:

Substantive Aspects:

• Context of systematic violation of human rights in which there were extrajudicial executions of people suspected of belonging to specific groups.[474]

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[467] Ibid. Par. 42, 43.

[468] IACtHR. Case of Penal Miguel Castro V. Perú. Merits, Reparations and Costs. Judgment 25 November 2006. Series C No. 160. P. 197.2

[469] Ibid. Par. 197.15.

[470] Ibid. Par. 197.16.

[471] The Communist Party of Perú-Sendero Luminoso was a communist revolutionary and Marxist-Leninist-Maoist organization originated in Perú founded in 1970. The dictatorship government considered them enemies and they committed several violent attacks.

[472] Case of Penal Miguel Castro V. Perú. Merits, Reparations and Costs. Judgment 25 November 2006. Series C No. 160. Par. 197.22.

[473] Ibid. Par. 197.34, 197.37.

[474] Ibid. Par. 236.

- The observance of Article 4 related to Article 1.1. It not only presupposes that no person was deprived of their life arbitrarily (negative obligation) but also requires that the States adopt all necessary measures to protect and preserve the right to life (positive obligation) by the duty to guarantee the plain and free exercise of the right of all people under their jurisdiction.[475]
- The Court recognises the existence of the faculty and the obligation of the State to guarantee security and maintain public order using force if necessary.[476]
- Regarding the violation of Article 5, it was recognised that the threat and real danger of subduing a person to physical injuries, in determined circumstances, is a moral anguish of such degree that can be considered psychological anguish.[477]
- The State is responsible, in its status as a guarantor of the rights enshrined in the Convention, for the observance of the right to the personal integrity of every person under its custody.[478]
- In situations of massive violation of human rights, the systematic use of torture generally has the purpose of intimidating the population.[479]
- The State's protection of the right to life involves legislators, every state institution, and the security forces, who must ensure security.[480]

Procedural Aspects:

[475] Ibid.

[476] Ibid. Par. 240.

[477] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 5: Right to Humane Treatment: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

[478] Case of Penal Miguel Castro V. Perú. Merits, Reparations and Costs. Judgment 25 November 2006. Series C No. 160. Par. 268.

[479] Ibid. Par. 317.

[480] Ibid. Par. 236.

- It is possible to consider the State responsible for torture, cruel, inhuman and degrading punishment and treatment of a person that has been in the custody of state agents if the authorities have not carried out a serious investigation, following the facts of the judicial process, who appeared as responsible for them.[481]
- The State must investigate the violation of the right to life.[482]
- The duty to investigate is an obligation of means, not results.[483]
- The State assumes the investigation as its juridical duty and not a mere management of interests that depends on the processual initiative of the victims, relatives, or the private contribution of evidentiary elements. The latter does not contradict victims' or relatives' rights concerning human rights to be heard during the investigation and judicial procedures.[484]
- When authorities know a criminal fact, they must immediately start a serious, impartial, and effective investigation *ex officio*.[485]
- This investigation must be carried out by all the available legal means and oriented to the determination of the truth and the investigation, prosecution, capture, trial and punishment of the responsible for the facts, especially when state agents are involved.[486]
- The obligation to provide a satisfactory explanation falls on the State and refutes the allegations regarding its responsibility using appropriate evidentiary elements.[487]

4. Case Casierra Quiñonez and Others V. Ecuador. Judgment 11 May 2022:

Facts: The brothers Casierra Quiñonez were engaged in fishing activities.[488] On 7 December 1999, the Captain of the Puerto de Esmeraldas (Emerald Port), corresponding to the Third Naval Zone of the Army of Ecuador, ordered an anti-crime operation before the information provided about a boat with nine pirates on board who

[481] Ibid. Par. 270.

[482] Ibid. Par. 242.

[483] Ibid. Par. 255.

[484] Ibid.

[485] Ibid. Par. 256.

[486] Ibid.

[487] Ibid. Par. 273.

[488] IACtHR. Case Casierra Quiñonez y otros V. Ecuador. Merits, Reparation and Costs. Judgment 11 May 2022. Series C No. 450. Par. 48.

committed robberies.[489] On 8 December 1999, at approximately 1:30 hours, an incident occurred in the context of the anti-crime operation executed by the Navy marines of Ecuador, under which the death of Eduardo Casierra Quiñonez resulted, while his brothers Andrés Alejandro and Sebastián Darlin were injured.[490] That night, while the brothers were fishing, they stopped with the lights on, and another boat approached without identifying itself because it did not have signs, lights and loudspeakers. The brothers Casierra Quiñonez thought they were pirates.[491] Then, the brothers turned on the engine and tried to flee. The members of the other boat shot at them repeatedly. The bullets impacted Andrés Alejandro on the leg, Sebastián Darlin in one of their hands and Luis Eduardo, who died because of the shooting.[492] The Court determined that the State was responsible for violating the right to life in its procedural and substantive aspects by this homicide by the action of security forces.

Standards:

Substantive Aspects:

- The IACtHR determined that from the legal record, elements arose that confirm the use of lethal force incompatible with the international obligations of the State.[493]
- The Court established that the escape can never be considered as a legitimate purpose and strict absolute necessity for the use of lethal force unless the life of a person is in danger. That was not the case.[494]
- Regarding proportionality, it was established that there was disproportionate use of force because of the number of holes in the victims' boats.[495]

Procedural Aspects:

- The State did not provide a satisfactory and convincing explanation about the deaths and injuries that the state agents caused. There was no independent, impartial investigation performed with due diligence.[496]

European Court of Human Rights

[489] Ibid. Par. 49.

[490] Ibid. Par. 52.

[491] Ibid. Par. 54.

[492] Ibid. Par. 56.

[493] Ibid. Par. 96.

[494] Ibid.

[495] Ibid.

[496] Ibid. Par. 95.

1. Case of Andronicou and Constantinou V. Cyprus. Judgment 9 October 1997:

Facts: This case is about the death of Lefteris Andronicou and Elsie Constantinou caused by police agents who intervened because of a domestic argument.[497] There were negotiations with Andronicou, who threatened her girlfriend Constantinou. Six police officers entered the house where the couple was and killed them because they saw that Andronicou represented a threat to their lives and the life of Elsie Constantinou. Due to a bullet that was not intended for her, Elsie Constantinou also died. The Court determined that the security forces acted with absolute necessity given the circumstances of the case, and the State was not responsible.[498] These were homicides by the action of the security forces.

Standards:

Substantive Aspects:

- According to Article 2, the Court's sole concern regarding violating the right to life must be evaluating whether, in the circumstances, the planning and control of the rescue operation included the decision to deploy state officers.[499]
- It is not unreasonable to alert the officers to the dangers which awaited them and to direct them carefully to use firearms.[500]
- The ECtHR notes that the use of force by state agents in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken.[501]
- To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in executing their duty, perhaps to the detriment of their lives and the lives of others.[502]
- The Court considers that the use of lethal force in the circumstances, however regrettable it may have been, did not exceed what was *"necessary"* to defend a life.[503]

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[497] ECtHR. Case of Andronicou and Constantinou V. Cyprus. (Application no. 86/1996/705/897). Strasbourg. 9 October 1997. Par. 6, 10.

[498] Ibid. Par. 76, 86.

[499] Ibid. Par. 181.

[500] Ibid. Par. 186.

[501] Ibid. Par. 192.

[502] Ibid.

[503] Ibid. Par. 193.

Procedural Aspects:

- The Court cannot substitute its assessment of the situation with a detached reflection for that of the officers who were required to react in the heat of the moment in what was, for them, a unique and unprecedented operation to save a life.[504]

2. Case of Oğur V. Turkey. Judgment 20 May 1999:

Facts: This case involves the security forces carrying out an armed operation at a site belonging to a mining company. Musa Oğur, who worked at the mine as a night watchman, was killed at about 6.30 a.m.[505] According to the Government, the scene of the incident had been used as a shelter by four terrorists who were members of the PKK (Workers' Party of Kurdistan).[506] This was a case of homicide by the security forces, and the Court found the State guilty for the substantive and procedural aspects of the violation of the right to life.

Standards:

Substantive Aspects:

- The exceptions delineated in paragraph 2 of Article 2 of the Convention indicate that this provision extends to but is not concerned exclusively with intentional killing.[507]
- The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual but describes the situations where it is allowed to *"use force",* which may result, as an unintended outcome, in the deprivation of life.[508]
- The use of force must be no more than *"absolutely necessary"* for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c).[509]
- The term *"absolutely necessary"* in Article 2.2. indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether state action is *"necessary in a democratic society"*.[510]

[504] Ibid.

[505] ECtHR. Case of Ogur V. Turkey. (Application no. 21594/93). Strasbourg. 20 May 1999. Par. 8

[506] Ibid. Par. 10.

[507] Ibid. Par. 78.

[508] Ibid.

[509] Ibid.

[510] Ibid.

- The force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2.[511]
- The use of force must be absolutely necessary and strictly proportionate to achieve one of the aims in paragraph 2 of Article 2.[512]
- The obligation to protect the right to life under Article 2 of the Convention must be read in conjunction with the State's general duty under Article 1 of the Convention to *"secure to everyone within its jurisdiction the rights and freedoms defined in the Convention"*.[513],[514]
- In keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.[515]

Procedural Aspects:

- It is required by implication that there should be some form of effective official investigation when individuals have been killed because of the use of force, in particular by agents of the State.[516]
- This investigation should be capable of leading to the identification and punishment of those responsible.[517]
- Any deficiency in the investigation which undermines its ability to identify the perpetrator or perpetrators will risk falling foul of this standard.[518]

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[511] Ibid.

[512] Ibid. Par. 79.

[513] Ibid. Par. 88.

[514] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 1: Obligation to respect Human Rights The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

[515] Ibid.

[516] ECtHR. Case of Ogur V. Turkey. (Application no. 21594/93). Strasbourg. 20 May 1999. Par. 88.

[517] Ibid.

[518] Ibid.

3. Case of Ramsahai and Others V. The Netherlands. Judgment 15 May 2007:

Facts: Moravia Ramsahai forced the scooter owner at gunpoint to give up his vehicle.[519] The scooter owner notified the police. Five minutes later, two uniformed police officers patrolling in a marked police car saw a scooter being driven by a person fitting the description given to them, stopping near a high-rise building.[520] Officer Bultstra saw Moravia Ramsahai draw a pistol from his trouser belt. This Officer drew his service pistol and ordered Moravia Ramsahai to drop his weapon. Officer Brons, the driver of the patrol car, then approached. It was stated afterwards that Moravia Ramsahai raised his pistol and pointed it in the direction of Officer Brons, who also drew his service pistol and fired. Moravia Ramsahai was hit in the neck and died.[521] This was a homicide by the action of the security forces, and the Court decided that the State was not responsible for the substantive and procedural aspects of the right to life.

Standards:

Procedural Aspects:

- For the investigation to be effective, it may generally be regarded as necessary for the persons responsible to carry it out to be independent from those implicated in the events.[522]
- This means a lack of hierarchical or institutional connection and practical independence. What is at stake here is the public confidence in the state's monopoly on the use of force.[523]
- The investigation is not an obligation of result but one of means.[524]

4. Case of Armani da Silva V. The United Kingdom. Judgment 30 May 2016:

Facts: As a framework for this case, it is necessary to say that on 7 July 2005, four suicide bombers detonated explosives on the London transport network.[525] Fifty-six

[519] ECtHR. Case of Ramsahai and Others V. The Netherlands. (Application no. 21594/93). Strasbourg. 20 May 2007. Par. 14.

[520] Ibid. Par. 17.

[521] Ibid. Par. 18.

[522] Ibid. Par. 325.

[523] Ibid.

[524] Ibid. Par. 154.

[525] ECtHR. Case of Armani da Silva V. United Kingdom. (Application no. 5878/08). Strasbourg. Judgment 30 March 2016. Par. 13.

people, including the four suicide bombers, were killed in the attack, and many more were injured.[526] The Metropolitan Police Service ("the MPS") initiated a significant police investigation to establish the identities of the persons involved, in or otherwise connected with the explosions. Available intelligence indicated that terrorists were actively planning a further attack within a matter of days. Jean Charles de Menezes was a Brazilian national living at 17 Scotia Road, and the security forces considered him a suspect.[527] The SFOs were told that they were going to Code Red, which meant that they were to have ultimate control of the situation and that an armed interception was imminent. They followed the suspect into the subway. Mr. de Menezes stood up, arms down; he was pushed back onto his seat and pinned down by two police officers, and two SFOs (Charlie 2 and Charlie 12) shot Mr. de Menezes several times and killed him.[528]

Within days of the shooting, after it had become apparent that Mr. de Menezes had not been involved in the attempted terror attacks on 21 July, the Commissioner of the Police of the Metropolis, the Prime Minister and the Secretary of State for Foreign and Commonwealth Affairs expressed their profound regret at his death. A representative of the MPS travelled to meet his family in Brazil and apologised directly to them on behalf of the police. An *ex-gratia* payment was agreed upon to meet the family's financial needs.[529]

The Court determined that neither the substantive nor the procedural aspect of the right to life was violated by the State in this homicide by action, considering that the State apologised, trialled the security forces and paid compensation to the family of the victim.

Standards:

- The Court has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation of Article 2 on that account) and the fact

[526] Ibid.

[527] Ibid. Par. 29.

[528] Ibid. Par. 38.

[529] Ibid.

that on several occasions, a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint as to its substantive aspect.[530]

Substantive Aspects:

- The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention and, together with Article 3, enshrines one of the fundamental values of the democratic societies making up the Council of Europe.[531]
- The obligation imposed is not exclusively concerned with intentional killing resulting from the use of force by agents of the state but also extends, in the first sentence of Article 2.1, to a positive obligation on States to protect by law the right to life.[532]
- A general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if no procedure existed for reviewing the lawfulness of the use of lethal force by state authorities.[533]
- The State must ensure a satisfactory response by all means at its disposal – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is implemented correctly and any breaches of that right are repressed and punished.[534]
- The use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would impose an unrealistic burden on the state and its law-enforcement personnel in executing their duty, perhaps to the detriment of their lives and those of others.[535]

Procedural Aspects:

- The State's obligation to carry out an effective investigation has, in the court's case law, been considered as an obligation inherent in Article 2, which requires that the right to life be *"protected by law*".[536]

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[530] Ibid.

[531] Ibid. Par. 261.

[532] Ibid.

[533] Ibid. Par. 230.

[534] Ibid.

[535] Ibid. Par. 244.

[536] Ibid. Par. 231.

- The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including eyewitness testimony, forensic evidence and, where appropriate, an autopsy, which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death.[537]
- Where there has been a use of force by state agents, the investigation must also be effective because it can lead to a determination of whether the force used was justified in the circumstances.[538]
- The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. The nature and degree of scrutiny that satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. The nature and degree of scrutiny must be assessed based on all relevant facts and the practical realities of investigation work.[539]
- Where a suspicious death has been inflicted at the hands of a state agent, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation.[540]
- A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that obstacles or difficulties may prevent progress in an investigation in a particular situation.[541]
- A prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.[542]
- Where the official investigation leads to the institution of proceedings in the national courts, the proceedings, including the trial stage, must satisfy the requirements of the positive obligation to protect the right to life through the law. In this regard, the national courts should not be prepared to allow life-endangering offences to go unpunished.[543]

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[537] Ibid.

[538] Ibid.

[539] Ibid. Par. 234.

[540] Ibid.

[541] Ibid. Par. 237.

[542] Ibid.

[543] Ibid. Par. 239.

- The Court's task, therefore, consists of reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the scrutiny required by Article 2 of the Convention so that the deterrent effect of the judicial system in place and the significance of the role it is necessary to play in preventing violations of the right to life are not undermined.[544]
- In several cases, the Court has expressly stated that, as it is detached from the events in issue, it cannot substitute its assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others; instead, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of those events.[545]
- In those Article 2 cases in which the Court specifically addressed the question of whether a belief was perceived, for good reasons, to be valid at the time, it did not adopt the standpoint of a detached observer; instead, it attempted to put itself into the position of the person who used lethal force, both in determining whether that person had the requisite belief and in assessing the necessity of the degree of force used.[546]
- In this regard, it is particularly significant that the court has never found that a person purporting to act in self-defence honestly believed that the use of force was necessary but proceeded to find a violation of Article 2 because the belief was not perceived, for good reasons, to be valid at the time.[547]
- The principal question to be addressed is whether the person had an honest and genuine belief that using force was necessary.[548]
- There should be some form of adequate and effective official investigation when individuals have been killed as a result of the use of force.[549]

Summary

In this category, important notions are established that will be repeated by the courts in subsequent cases. In the case of the IACtHR, I believe there are notions of the importance of the right to life and the necessity for this right to be fulfilled to protect

[544] Ibid.

[545] Ibid. Par. 245.

[546] Ibid.

[547] Ibid. Par. 247.

[548] Ibid.

[549] Ibid.

other human rights. Furthermore, the obligation of an effective and impartial investigation results from the interpretation of Article 4 of the American Convention on Human Rights (Right to Life). Also, it is determined the situation in Latin America in the sixties, seventies, and eighties, when many countries were under dictatorships. The target was the *"enemies of the state"* and guerrilla groups, and the aim was to eliminate them. This tribunal also establishes the importance of the state's positive and negative obligations. The IACtHR states that escape can never be considered a strict absolute necessity for the use of lethal force unless the life of a person is in danger. There is the tutelage of legal assets where life is more important, and killing a person who is suspected of a crime, such as robbery, does not comply with the principles of proportionality, an absolute necessity and legitimate finality.

Concerning the ECtHR, the term *"absolute necessity"* is determined to justify the use of force in terms of Article 2.2 of the European Convention of Human Rights. In my view, this allows the use of force that can result in the death of one or more persons. Also, there is careful scrutiny of the circumstances in which the death of a person can be justified. Moreover, the necessity of an effective and impartial investigation is a duty that derives from the interpretation of Article 2 (Right to Life) and Article 3 (Prohibition of Torture), as in the IACtHR. This court also highlights that the vision of the tribunal is detached from the subjective perspective of a security force agent facing a threat to life. It is relevant to state that the security forces are committing homicides, but the responsibility lies with the state to which these forces belong. Also, the court establishes the essential requisites for an effective investigation in this category. When there is a homicide by the action of security forces, the state must ensure a satisfactory response by all means at its disposal. An essential notion in this category is that the court has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation. A prompt response by the authorities in investigating the use of lethal force is essential in maintaining public confidence in their adherence to the rule of law and in preventing any collusion in or tolerance of unlawful acts. The court demonstrates that its task is to determine if the use of force was applied according to the circumstances and if it was justified.

Regarding the national courts, the ECtHR and the IACtHR must determine if they have achieved the requirements of the articles that protect the right to life in the Conventions. The ECtHR shows that the use of force by state agents concerning

Article 2.2. must be examined regarding an honest belief of the agent that perpetrated the killing because otherwise, it would impose an impossible burden on the authorities and security forces agents. The court remembers that Articles 2 and 3 rank as the most fundamental provisions and enshrine the basic values in democratic societies. The obligation of Article 2 is a positive obligation of the state to protect the right to life by law.

These cases are related to the judgment of Finogenov and Others V. Russia. Judgment 4 June 2012 of the European Court of Human Rights. In the latter, after a group of terrorists belonging to the Chechen separatist movement led by Mr. B., armed with machine guns and explosives, took hostages in the *"Dubrovka"* theatre in Moscow.[550] The police used a potent narcotic gas to make the terrorists go out and liberate the hostages, but several of them got sick and even died.[551] In both cases, the proportionality of the force that the security forces used was not commensurable with the strength that the inmates or terrorists were using, which, sadly, caused the deaths of several persons.

I could not include all the cases, but it was important to add this one because of its perspective, which is similar to other cases mentioned in this category. This case was significant in highlighting the problem of the disproportionate use of force and its possible consequences.

3. B. Extrajudicial Execution by Agents of Security Forces of the State

Inter-American Court of Human Rights

1. Case Barrios Altos V. Perú. Judgment 14 March 2001:

Facts: At approximately 22:30 hours on 3 November 1991, six individuals, heavily armed, broke into the building located on Jirón Huanta Nº 840 of the neighbourhood known as Barrios Altos of Lima. When the irruption occurred, a party was held to raise money to repair the building. [552] The individuals, whose ages ranged between 25 and

[550] ECtHR. Case of Finogenov and Others V. Russia. (Applications nos. 18299/03 and 27311/03.). Strasbourg. 4 June 2012. Par. 1.

[551] Ibid. Par. 22.

[552] IACtHR. Case Barrios Altos V. Perú. Merits, Reparations and Costs. Judgment 14 March 2001. Series C No. 75. Par. 1,2.

30 years, covered their faces and forced the alleged victims to lie on the ground. Once they were on the ground, the attackers shot them indiscriminately for approximately two minutes, killing 15 persons and gravely injuring four others. After this, the attackers fled in two vehicles. The judicial investigations revealed that the people involved worked for military intelligence; there were members of the Army of Perú who acted on an elimination squadron named *"Grupo Colina"* that took part in an anti-subversive program.[553] The State recognised its international responsibility in the present case for violating the substantive and procedural aspects of the right to life. It was a homicide by the action of the security forces.

Standards:

Substantive Aspects:

- When a State recognises its responsibilities regarding a case's crimes, it contributes positively to the development of the process and the validity of the principles that inspired the American Convention on Human Rights.[554]
- The IACtHR considers inadmissible the dispositions of amnesty, prescription and the establishment of liability exclusions that pretend to prevent the investigation and sanction of the responsible for the grave violations of human rights such as torture, summary, extralegal or arbitrary executions and forced disappearances, all of them prohibited for contravening rights that are not derogable recognised by international law of human rights.
- Furthermore, it was relevant to establish this judgment as an example of the case law where the State decided to consent to the Convention and recognise the responsibility for the human rights that have been violated in the past, understanding its errors about the behaviour and the crimes of its security forces.
- The Court determines that, according to the jurisprudence, to establish state responsibility for a violation of the duty to respect the actions of third parties, a general situation of context is not enough, but it is necessary that, in the concrete case, the acquiescence or State collaboration arises in its circumstances.[555]

2. Case Myrna Mack Chang V. Guatemala. Judgment 25 November 2003:

[553] Ibid.

[554] Ibid. Par. 40.

[555] Ibid. Par. 50.

Facts: Myna Mack Chang was a woman who criticised the politics of the Army regarding the displacements and was against the dictatorship in Guatemala.[556] On 11 September 1990, Mirna Mack Chang was attacked by at least two persons. The victim died at the scene of the events as a consequence of wounds on the neck, thorax and abdomen produced by a knife.[557] One of the material perpetrators of the homicide was Noel de Jesús Beteta Álvarez.[558] These arbitrary executions, in general, were performed by the State's intelligence organisms and had common characteristics and patterns. The decision to execute certain persons was accompanied by acts and manoeuvres tending to hinder the judicial process aimed at clarifying the facts and sanctioning the responsible.[559] The Court determined that the State was responsible for the homicide by action perpetrated by security forces and the violation of the procedural and substantive aspects of the right to life.

Standards:

Substantive Aspects:

- The circumstances of a homicide are aggravated when, at the time of the events, there is a pattern of selective state-driven extrajudicial executions. These executions are directed to individuals considered as *"internal enemies"*.[560]
- When a pattern of extrajudicial executions tolerated by the State exists, a climate incompatible with the adequate protection of the right to life is generated.[561]
- The practice of selective summary executions is a situation that is contrary to the State's duty of respect and guarantees the right to life.[562]
- The majority of the arbitrary executions perpetrated by the State were complemented with other acts and manoeuvres oriented to avoid or hinder the investigation of judges, intensifying the climate of impunity.[563]

[556] IACtHR. Case Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs. Judgment 25 November 2003. Series C No. 101. Par. 134.1.

[557] Ibid. Par. 134.4.

[558] Ibid. Par. 134.5

[559] Ibid. Par. 134.12.

[560] Ibid. Par. 139, 142.

[561] Ibid. Par. 152.

[562] Ibid. Par. 154.

[563] Ibid. Par. 149.

- When the right to life is not respected, all rights are meaningless. The States must guarantee the creation of required conditions so violations of that inalienable right do not occur, and the duty to prevent their agents' attempts against this.[564]

Procedural Aspects:

- The international responsibility of the defendant State is determined when no effective judicial mechanisms have been used to investigate human rights violations or sanction the responsible.[565]
- The Court considers that in several cases, there were no effective mechanisms to investigate violations of the right to life, by which a climate of impunity concerning human rights violations existed.[566]
- The Court highlighted that in the case of extrajudicial executions, it is fundamental that the States investigate effectively the deprivation of the right to life and punish all responsible parties, especially when state agents are involved, since if not so, they would be creating an environment of impunity of the conditions so that this type of events repeats itself, which is contrary to the duty to respect and guarantee the right to life and its positive obligation.[567]
- The safeguard of the right to life requires an effective official investigation when people lose their lives because of the use of force by agents of the state.[568]

3. Case Brothers Landaeta Mejías and others V. Venezuela. Judgment 27 August 2014:

Facts: This is also one of the cases that could be in this category or homicides committed with police brutality.

On 20 November 1996, Mrs. María Magdalena Mejías, mother of the victims, declared before the sectional of Mariño (Venezuela) that the police agents CJZM, GACF and AAC harassed her son Eduardo Landaeta because the latter witnessed the death of a person.[569] According to the evidence offered by the parties, the Court confirmed that

[564] Ibid. Par. 152.

[565] Ibid.

[566] Ibid.

[567] Ibid. Par. 156.

[568] Ibid. Par. 157.

[569] IACtHR. Case Brothers Landaeta Mejías and others V. Venezuela. Merits, Reparations and Costs. Judgment 27 August 2014. Series C No. 281. Par. 47.

on 17 November 1996, Igmar Landaeta died due to two gunshot wounds received by police agents.[570]

On 29 December 1996, at approximately 17:10 hours, Eduardo Landaeta, 17 years old, was detained by two police agents in the vicinity of Matarredonda. According to the police reports of the detention, Eduardo was undocumented and had a police file.[571] On 31 December 1996, Eduardo Landaeta was transferred to the Sectional Mariño; he was handcuffed in the back seat of a red Fiat car.[572] According to the version given during the investigation, at approximately 8:30 hours, the police unit was collided in the back by a grey Chevrolet vehicle, whereby the police agents stopped the car to verify what had happened. At that moment, four hooded subjects carrying firearms got out of the grey vehicle, stripped the police agents ' guns of their regulatory weapons and started shooting at the red car, causing the death of Eduardo Landaeta.[573] The Court found the state responsible for violating the right to life in its procedural and substantive aspects by this homicide by the action of security forces. It was established that the perpetrators of both homicides belonged to the security forces of the State.

Standards:

Substantive Aspects:

- The IACtHR states the importance of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR.[574],[575]
- The Court analysed the use of force by state agents, considering three fundamental moments: a) preventive actions, b) accompanying actions to the facts, and c) posterior actions to the facts.[576]

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[570] Ibid. Par. 59.

[571] Ibid. Par. 69.

[572] Ibid. Par. 72.

[573] Ibid. Par. 73.

[574] Ibid. Par. 124.

[575] United Nations. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.* Adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba.

United Nations. *Code of Conduct for Law Enforcement Officials.* Adopted on 17 December 1979 by General Assembly resolution 34/169.

[576] IACtHR. Case Brothers Landaeta Mejías and others V. Venezuela. Merits, Reparations and Costs. Judgment 27 August 2014. Series C No. 281. Par. 124.

- The Court reiterates that in dealing with the use of force, it is essential that the state: a) count with the existence of an adequate juridical frame that regulates the use of the force and guarantees the right to life; b) provide appropriate equipment to the officers in charge of the use of the force, and c) selection, capacitation and correctly trained the officers in charge of the use of the force.[577]
- About the duty of guaranteeing, the IACtHR establishes that the State must have national legislation adequate to the Convention and watch their security bodies to whom the use of legitimate force is attributed, respecting the right to life of those under its jurisdiction.[578]
- The State must be clear when demarcating the domestic politics of using force and search for strategies to implement the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct.[579]
- The State must endow its agents with different kinds of weapons, munitions and protective equipment that allow them to adequately respond proportionally to the facts in which they should intervene, restricting to the greatest extent the use of lethal weapons that could cause injuries or death. Also, they must capacitate their agents to know the legal dispositions and have the proper training so that if they must decide about the use, they have the elements of judgment to do so.[580]
- The Court has pointed out that the general duty derived from Article 4 implies the adoption of measures in two slopes: 1) the suppression of norms and practices of any nature that entails the violation of the guarantees provided in the Convention; 2) the expedition of norms and development of practices conducive to the practical observance of such guarantees.[581]
- The IACtHR maintains that in developing an event of deployment, the authority and the state agents, as far as possible, must evaluate the situation and a previous plan of action for their intervention. In consequence, the police operatives must be directed to the arrest and not the deprivation of the life of the offender.[582]

[577] Ibid. Par. 126.

[578] Ibid.

[579] Ibid.

[580] Ibid.

[581] Ibid. Par. 127.

[582] Ibid. Par. 131.

- As a general rule, the use of firearms is planned as a last resort considering domestic and international law. In every case, the intentional use of lethal weapons can be possible only when it is inevitable to protect a life.[583]
- The Court reiterates the Basic Principles about the use of force and firearms by the officers in charge of enforcing the law of the United Nations. It indicates with clarity that the agents in charge of enforcing the law will not use firearms against the people except a) in self-defence or of other persons, in case of imminent danger of death or severe injuries, or b) to avoid the commission of a crime grave that entails a serious threat for life, or c) with the object of stopping a person that represents such danger and opposes resistance to the authority, or d) to prevent their escape, and only in that case that less extreme measures are insufficient to achieve such objectives.[584]
- Basic Principles on the Use of Force established that in every case, only intentional use of lethal weapons may be made when unavoidable to protect life. As a general rule, the use of firearms is planned as a measure of last resort in the light of national and international law.[585]
- If the use of force is imperative, this must be done in harmony with the principles of legitimate finality, absolute necessity and proportionality.[586]
- Proportionality: The agents must apply criteria for a differentiated use of force, determining the grade of cooperation, resistance, and aggression by the subject they intend to intervene in and employ tactics of negotiation, control, or use of force, as appropriate.[587]
- The IACtHR establishes that when the state agents employed illegitimate, excessive and disproportionate measures causing the loss of life, it is considered an arbitrary deprivation.[588]
- The action of the state agents must adjust to the principles of due diligence and humanity that must be attended to after the deployment of the force.[589]

[583] Ibid.

[584] Ibid. Par. 131.

[585] Ibid. Par. 133.

[586] Ibid. Par. 134.

[587] Ibid.

[588] Ibid. Par. 142.

[589] Ibid. Par. 146.

- The American Convention expressly acknowledges the right to personal and physical integrity, a class of violation with various connotations of degree whose physical and psychological consequences vary in intensity according to the endogenous and exogenous factors that should be demonstrated in each concrete situation.[590]

Procedural Aspects:

- The Court establishes that in every case that includes the deployment of force in which state agents have produced the death or injuries to a person, there is a need to analyse the use of force.[591]
- In every case of use of force by state agents that have caused deaths or injuries to one or more people, corresponding to the State, the obligation is to provide a satisfactory and convincing explanation of what happened and to rebut the allegations about its responsibility through adequate evidentiary elements.[592]
- The Court determines that there must be an investigation of the facts that allows the grade and participation of each of the interveners, materials or intellectuals to be determined and the corresponding responsibilities.[593]

European Court of Human Rights

1. Case of Ergi V. Turkey. Judgment 28 July 1998:

Facts: On 29 September 1993, the security forces set up an ambush in the vicinity of a village, purportedly to capture members of the PKK.[594] The facts in this case are disputed.[595] The security forces opened fire. It led to the death of the applicant's sister, Havva. No members of the PKK were killed or captured. She was hit in the head by a bullet when she was on the threshold and died immediately. The government stated that there were no units positioned to the south, and there would have been no point in having men there since the PKK would not come from the south.[596] The Court established that the State was responsible for the substantive aspect of the right to life

[590] Ibid. Par. 176.

[591] Ibid. Par. 123.

[592] Ibid.

[593] Ibid. Par. 143.

[594] ECtHR. Case of Ergi V. Turkey. (Application no. 66/1997/850/1057). Strasbourg. Judgment 28 July 1998. Par. 10.

[595] Ibid. Par. 8.

[596] Ibid.

for not planning and controlling an adequate operation and was guilty of violating the procedural aspect of this right for this homicide by action.

Standards:

Substantive Aspects:

- The responsibility of the State is not confined to circumstances where there is significant evidence that misdirected fire from agents of the State has killed a civilian.[597]
- Furthermore, Article 2 of the Convention, read in conjunction with Article 1, establishes that the State may be required to take specific measures to *"secure"* an effective enjoyment of the right to life.[598]
- It may also be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group to avoid and, in any event, minimise incidental loss of civilian life.[599]
- In the light of the failure of the authorities of the state to adduce direct evidence on the planning and conduct of the ambush operation, the court finds that it can reasonably be inferred that insufficient precautions have been taken to protect the lives of the civilian population.[600]

Procedural Aspects:

- The Court requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State.[601]
- The mere knowledge of the killing on the part of the authorities gave rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances surrounding the death.[602]

2. Case of Tanrikulu V. Turkey. Judgment 8 July 1999:

[597] Ibid. Par. 68.

[598] Ibid. Par. 79.

[599] Ibid. Par. 79.

[600] Ibid. Par. 81.

[601] Ibid. Par. 81.

[602] Ibid.

Facts: The facts surrounding the killing of the applicant's husband are disputed.[603] At about noon on 2 September 1993, the applicant's husband, Dr. Tanrıkulu, was shot dead in the town of Silvan on a steep road known as Kaymakam Hill.[604] The Court established that the security forces' action in this homicide violated the procedural aspect of the right to life.

Standards:

Procedural Aspects:

- There is an obligation imposed by Article 2 to carry out an effective investigation. That being so, the applicant must be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies.[605]
- The ECtHR establishes the necessity of exhausting the domestic remedies before presenting cases before this tribunal.

3. Case of Jaloud V. The Netherlands. Judgment 20 November 2014:

Facts: Mr. Azhar Sabah Jaloud died on 21 April 2004.[606] On 21 April 2004, at around 2.12 a.m., an unknown car approached a vehicle checkpoint (VCP) named "B-13" on the main supply route *"Jackson"* north of Ar Rumaytah, in south-eastern Iraq. From inside the vehicle, shots were fired at the personnel guarding the VCP, all of them members of the Iraqi Civil Defense Corps (ICDC). The guards returned fire. No one was hit; the car drove off and disappeared into the night. Called by the checkpoint commander, ICDC Sergeant Hussam Saad,[607] a patrol of six Dutch soldiers led by Lieutenant A. arrived around 2.30 a.m.[608]

Some fifteen minutes later, a Mercedes car approached the VCP at speed. Shots were fired at the vehicle: Lieutenant A. fired 28 rounds from a Diemaco assault rifle; One or more ICDC personnel may also have fired shots. At this point, the driver stopped the car. Mr. Azhar Sabah Jaloud was in the front passenger seat.[609] He had been hit in

[603] ECtHR. Case of Tanrikulu V. Turkey. (Application no. 23763/94). Strasbourg. Judgment 8 July 1999. Par. 8.

[604] Ibid. Par. 13.

[605] Ibid. Par. 110.

[606] ECtHR. Case of Jaloud V. Netherlands. (Application no. 47708/08). Strasbourg. Judgment 20 November 2014. Par. 9.

[607] Ibid. Par. 11

[608] Ibid.

[609] Ibid. Par. 13.

several places, including the chest. Dutch soldiers removed him from the vehicle and attempted to administer first aid. Despite this, Mr. Azhar Sabah Jaloud died.[610] The Court decided that the substantive aspect of the right to life was not violated, but this homicide by action infringed upon the procedural duty of this right.

Standards:

Procedural Aspects:

- Neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into the deaths arising out of clashes involving the security forces, more so in cases where the circumstances are in many respects unclear.[611]
- No domestic investigation can meet the standards of Article 2 of the Convention if it does not determine whether the use of lethal force by agents of the state went no further than the circumstances demanded.[612]
- Although the investigation must be effective in the sense that it is capable of leading to the identification and, if necessary, punishment of those responsible, the Court would also point out that an investigation sufficient to inform a judicial finding as to whether the force used was or was not justified in the circumstances is crucial to the exercise, by any state agent prosecuted in ensuing criminal proceedings, of the rights of the defence.[613]
- The Court is prepared to make reasonable allowances for the relatively difficult conditions under which the military and investigators had to work. It must be recognised that they were engaged in a foreign country which had yet to be rebuilt in the aftermath of hostilities, whose language and culture were alien to them, and whose population included armed hostile elements.[614]

Summary

The IACtHR establishes its position against impunity and amnesty laws, arguing that these protect the perpetrators of crimes and obstruct state justice. In my opinion, they also signify the possibility that these crimes can be repeated. The use of lethal force

[610] Ibid.

[611] Ibid. Par. 149.

[612] Ibid. Par. 152.

[613] Ibid. Par. 200.

[614] Ibid. Par. 226.

by state agents is aggravated when there is a systematic practice of extrajudicial executions. When this pattern is tolerated, it creates a climate incompatible with protecting the right to life and is contrary to the state's duty to respect and guarantee this right. The state must ensure the investigation of the use of lethal force by its security agents and avoid the impunity of these crimes. Furthermore, the court demonstrates that the international responsibility of the defendant state is determined when no effective judicial mechanisms have been used to investigate human rights violations or sanction the responsible, which violates the state's positive obligation. The IACtHR states the importance of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct of the OHCHR in this category. This instrument determines the use of lethal force as a last resort and the circumstances in which it is allowed to use this force, only when a life is in danger, for example, in self-defence. Furthermore, this instrument states the importance of providing the security forces with good equipment, capable agents, and a plan of action when there is an operation of force deployment. Moreover, this court determines that every time the security agents use force, it must be done in harmony with the principles of proportionality, legitimate finality, and absolute necessity, as the ECtHR has established. Also, the state agents must adjust to the principles of humanity and do due diligence when deploying the force. This court also identifies an arbitrary deprivation of life when the security force agents do not follow these rules.

The ECtHR establishes that it is determined that the state may be required to take specific measures to secure the effective enjoyment of the right to life. This court states that it may be a failure of the authorities to take feasible precautions in the chosen methods and measures of planning and conducting an operation that can lead to taking insufficient precautions to protect the lives of the civilian population. The knowledge of the authorities of a death caused by security forces gave *ipso facto* an obligation to carry out an effective investigation into these events. The court identifies important notions about a crime in a situation of violent armed clashes or a high incidence of fatalities. This context cannot displace the obligation under Article 2, although the court recognises that the investigation will have difficulties in the aftermath of hostilities. For the investigation to achieve the standards of Article 2, it is necessary to establish whether the use of lethal force by state agents was consistent with the circumstances. In my view, the ECtHR demonstrates that a general legal prohibition of arbitrary killing by the agents of the state would be ineffective if there is no

procedure for reviewing the lawfulness of the use of lethal force by state authorities. Determining if deadly force was used according to the circumstances is necessary. In this category, this court condemns the procedural aspect in two cases of the three, but not the substantive element.

3. C. Massacres committed by the State's Security Forces or with the Acquiescence of the State's Security Forces

Inter-American Court of Human Rights

1. Case Massacre of Santo Domingo V. Colombia. Judgment 30 November 2012:

Facts: On 12 December 1998, while a bazaar was held on the sidewalk of the neighbourhood of Santo Domingo in Colombia, the Armed Forces of Colombia and the guerrilla FARC engaged in clashes. After that, a small Cessna plane landed over a sidewalk in Santo Domingo.[615]

One helicopter shot a cluster device over the principal street of Santo Domingo, causing the death of 17 persons, among whom were six children and injuring 27 persons.[616] The Court found the State guilty of the substantive and procedural aspects of this homicide by the security forces' action.

Standards:

Substantive Aspects:

- Regarding the right to life (Article 4) and the right to personal integrity (Article 5), the Court reiterated that these rights not only imply that the state must respect them but also require that the State adopt all the necessary, appropriate measures to guarantee them in complying with its general duty established in Article 1.1 of the American Convention (positive obligation).[617]
- The Court has established that the state's international responsibility is based on acts or omissions of any power or organ of this, independently of its hierarchy, that violate the rights and obligations in the American Convention on Human Rights.[618]

[615] IACtHR. Case Massacre of Santo Domingo V. Colombia. Merits, Reparation and Costs. Judgment 30 November 2012. Series C No. 259. Par. 60, 61.

[616] Par. 61, 62,70.

[617] Ibid. Par. 188.

[618] Ibid.

- Concerning the general obligation to respect and guarantee the right that is established in Article 1.1. of the American Convention, special duties are determined in function of the particular necessities of protection of the subject of the law, either due to their condition or for the specific situation in which they find themselves.[619]
- Regarding the obligation of respect, the first assumption by the state parties on the terms of Article 1.1 of the Convention restricts the exercise of the State power. This obligation implies the duty of the States to organise every governmental apparatus, and in general, every structure through which the exercise of public power is manifested, in such a way that they can ensure the free and plain exercise of human rights.[620]
- The Court presents two principles of International Humanitarian Law: one is the principle of distinction. This principle refers to the customary norm for international and non-international armed conflicts, in which it is established that the parties in conflict must distinguish at every moment between civil persons and combatants so that attacks can only be directed against combatants and that civilians cannot be attacked.[621]
- The principle of proportionality in International Humanitarian Law. This principle established a limit to the finality of the war, which prescribed that the use of force must not be disproportionate, limiting it to what is indispensable to achieve the military advantage sought.[622]

Procedural Aspects:

- The State is on the juridical protection of the duty of *"prevent reasonably the violations of human rights, of seriously investigating the violation that was committed within the context of the jurisdiction to the end of identifying the responsible, of imposing the relevant sanctions and ensuring adequate reparation to the victims."*[623]

2. Case Coc Max and others (Massacre of Xamán) V. Guatemala. Judgment 22 August 2018:

[619] Ibid.

[620] Ibid. Par. 189.

[621] Ibid. Par. 212.

[622] Ibid. Par. 214.

[623] Ibid.

Facts: Between 1962 and 1996, the State of Guatemala was the subject of an internal armed conflict that caused significant human, material, institutional, and moral costs.[624] This Court has found that following the Commission for Historical Clearance, the Mayan people were the ethnic group most affected by the violation of human rights committed during the internal armed conflict, suffering a forced displacement and the destruction of their communities.[625]

On 5 October, in the morning, some community residents of Mayan origin warned about military personnel coming through the farm Xamán.[626] The military entered the Community.[627] Later, the members of the patrol tried to leave the place, pushing the people with rifles. In the course of the situation of tension, the soldiers fired indiscriminately. The people started to run, but many fell under the impact of projectiles while fleeing. The judicial authorities considered that after the shots were fired when the soldiers were leaving the place, they found a boy, Santiago Coc, who was shot, causing his death.[628] Eight adults and three children of the Community were executed during this event, and 29 were injured.[629] The Court considered that the State violated the right to life in its substantive and procedural aspects for these homicides by action.

Standards:

Substantive Aspects:

- The active protection of the right to life involves all state institutions, including those who must ensure security, whether police or armed forces. It is contrary to the Convention if there is a deprivation of life which is a product of the use of force in an illegitimate, excessive or disproportionate manner.[630]
- It was indicated that the Mayan people were the most affected ethnic group by the violations of human rights committed during the armed conflict and that the violence

[624] IACtHR. Case Coc Max and others (Massacre of Xamán) V. Guatemala. Merits, Reparation and Costs. Judgment 22 August 2018. Series C No. 356. Par. 28.

[625] Ibid. Par. 29.

[626] Ibid. Par. 37.b.

[627] Ibid. Par. 37. c.

[628] Ibid. Par. 37. d.

[629] Ibid. Par. 37. e.

[630] Ibid. Par. 109.

directed against this group was manifested in different kinds of acts, including massacres.[631]

- The Court concluded that the military actions, which resulted in a violation of life and personal integrity, were related to discriminatory conceptions against Indigenous people. Hence, the State did not comply with its duty of respecting without discrimination the rights to life and personal integrity and carried racist prejudices.[632]

European Court of Human Rights

1. Case of Al-Skeini and others V. United Kingdom. Judgment 7 July 2011:

Facts: During the occupation of Iraq from 1 May 2003 to June 2004, the Coalition Forces consisted of six divisions under the overall command of US generals.[633] Each division was given responsibility for a particular geographical area of Iraq. The United Kingdom was given command of the Multinational Division (South-East). There are six applicants in this case. All of the petitions are about an Iranian citizen who was shot in a strange situation by British soldiers. The Court found a violation of the procedural duty under Article 2 of the Convention regarding the first, second, third, fourth and fifth applicants by this homicide by action of the security forces.

Standards:

Procedural Aspects:

- The Court has held that the procedural obligation under Article 2 continues to apply in difficult security conditions, including in the context of armed conflict. It is clear that where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators, and concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed.[634]
- What form of investigation will achieve the purposes of Article 2 may vary depending on the circumstances. However, whatever mode is employed, the authorities must act on their motion once the matter has come to their attention. They

[631] Ibid. Par. 119.

[632] Ibid. Par. 181.

[633] ECtHR. Case of Al-Skeini and Others V. The United Kingdom. (Application no. 55721/07). Strasbourg. Judgment 7 July 2011. Par. 20.

[634] Ibid. Par. 164.

cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures.[635]

2. Case of Janowiec and others V. Russia. Judgment 21 October 2013:

Facts: In the aftermath of the Second World War, in the wake of the Red Army's advance, around 250,000 Polish soldiers, border guards, police officers, correctional officers, state officials and other functionaries were detained.[636] After they had been disarmed, some of them were set free; the others were sent to special prison camps established by the People's Commissariat for Internal Affairs (NKVD), a predecessor of the State Security Committee (KGB) in Kozelsk, Ostashkov and Starobelsk.

In early March 1940, Lavrentiy Beria, Head of the NKVD, submitted to Joseph Stalin, Secretary General of the USSR Communist Party,[637] a proposal to approve the shooting of Polish prisoners of war on the ground. The proposal specified that a further 10,685 Poles were being held in the prisons of the western districts of Ukraine and Belarus. The killings took place in April and May 1940. Prisoners from the Kozelsk camp were killed at a site near Smolensk known as the Katyn Forest.[638] The Court decided that, despite violating the right to life, it could not rule on this case because the events occurred before the European Convention on Human Rights entered into force.

Standards:

Procedural Aspects:

- The Court's temporal jurisdiction extends to those procedural acts and omissions that occurred or should have occurred after the Convention entered into force concerning the respondent's government.[639]
- The mention of *"omissions*" refers to a situation where no investigation or only insignificant procedural steps have been carried out, but where it is alleged that an effective investigation should have taken place. Such an obligation on the part of the authorities to take investigative measures may be triggered when a plausible, credible

[635] Ibid. Par. 165.

[636] ECtHR. Case of Janowiec and Others V. Russia. (Applications nos. 55508/07 and 29520/09). Strasbourg. Judgment 21 October 2003. Par. 16.

[637] Ibid. Par. 17.

[638] Ibid. Par. 19.

[639] Ibid. Par. 142.

allegation, piece of evidence or item of information comes to light which is relevant to the identification and eventual prosecution or punishment of those responsible.[640]

- The Court finds that, for a *"genuine connection"* to be established, both criteria must be satisfied: the period between the death as the triggering event and the entry into force of the Convention must have been reasonably short, and a significant part of the investigation must have been carried out, or ought to have been carried out, after the entry into force.[641]
- The Court considers that the *"Convention values"* clause cannot be applied to events which occurred before the adoption of the Convention on 4 November 1950, for it was only then that the Convention began its existence as an international human rights treaty.[642]
- Hence, a Contracting Party cannot be held responsible under the Convention for not investigating even the most serious crimes under international law if they predate the Convention.[643]
- The Court emphasises the fundamental difference between having the possibility of prosecuting an individual for a serious crime under international law where circumstances allow it and being obliged to do so by the Convention.[644]
- The alleged violation of the procedural obligation consists of the lack of an effective investigation; the procedural obligation has a distinct scope of application and operates independently from the substantive limb of Article 2.[645]

Summary

Regarding Article 1.1.- which establishes that all the rights in the Convention must be respected-; the IACtHR determines that the state must adopt all necessary measures to ensure the compliance of Articles 4 and 5. The Article 1.1. restrict the exercise of the state's power that it was given in accepting being a part of the court and incorporating the Convention. In my view, the court proves that the state must organise its apparatus to protect human rights. The court demonstrates in this category that the state's

[640] Ibid. Par. 144.

[641] Ibid. Par. 148.

[642] Ibid. Par. 151.

[643] Ibid.

[644] Ibid.

[645] Ibid. Par. 142.

international responsibility includes all state organs and their actions or omissions. This consists of the security forces. The state must prevent the violation of human rights, investigate the people responsible for these crimes if they are committed, and sanction them. In this category, it is relevant to highlight the principles of humanitarian law that the court presents: the principles of distinction and proportionality. The latter is different from the one named before in this work. The court remembers that the state is responsible for violating the Convention by using force illegally, excessively, or disproportionately. In this category, the court establishes the state's responsibility for violating Article 1 of the Convention by violating human rights regarding discriminatory conceptions.

The IACtHR states in its case law that a case (Massacre of Santo Domingo V. Colombia) was considered to violate Article 1 regarding non-discrimination. The court confirms that the Mayan people were the most affected ethnic group by the violations of human rights committed during an armed conflict. Also, the violence directed against this group was manifested in different kinds of acts, including massacres. The court states that the military actions, which resulted in a violation of life and personal integrity, were related to discriminatory conceptions against Indigenous people. Therefore, the state did not comply with its duty of respecting and not discriminating against the rights to life and personal integrity of certain groups and carried racist prejudices.

In this category, one of the ECtHR cases (Case of Janowiec and others V. Russia) presents a problem with the court's temporal jurisdiction because it concerns facts that occurred before the Convention entered into force. The court explains that its temporal jurisdiction includes procedural acts and omissions that happen or should appear after the Convention is enacted regarding the respondent state. The court can judge this case if a *"genuine connection"* exists. The court highlights the difference between prosecuting an individual for a serious crime under international law and being obliged to do so by the Convention. In my opinion, the court considers that the procedural obligation under Article 2 continues to apply in difficult security conditions, including in the context of armed conflict, as mentioned above. The investigation may have difficulties, but it must be carried out even if there is violence, armed conflict, or insurgency. Furthermore, the state's motion must carry out the investigation, which cannot leave the initiative to the next of kin.

The ECtHR judges an interesting situation in the Case of Al-Skeini and others V. United Kingdom. This is in the context of war and the aftermath. The court finds that neither the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into the deaths arising out of clashes involving security forces. Undoubtedly, it is a complex investigation because of the conditions surrounding it. The court makes reasonable allowances for the relatively tricky conditions the military and investigators had to work under. Above all, they were in a foreign country whose language and culture differed, yet it had to be rebuilt after hostilities.

3. D. Homicides committed with Police Brutality

Inter-American Court of Human Rights

1. Case Bulacio V. Argentina. Judgment 18 September 2003:

Facts: On 19 April 1991, the Federal Police of Argentina performed a massive detention or *"razzia"* of more than 80 persons in the city of Buenos Aires, in the vicinity of the stadium *"Club de Obras Sanitarias"* where a recital of rock music had taken place. Among the detainees was Walter David Bulacio, 17 years old, who was transferred to Police Station N°35 after his detention, especially to the juvenile room of this precinct. In this place, he was hit by police agents. In the case of the minors, the juvenile Correctional Judge on duty was not notified, and in the particular case of Walter David Bulacio, his family members were not informed either. During the imprisonment, the minors were under inadequate conditions of detention.[646]

On 20 April 1991, Walter David Bulacio, after vomiting in the morning, was taken in an ambulance to the Municipal Hospital Pirovano without notifying his parents or a juvenile judge. The doctor who treated him in the hospital pointed out that the young man presented with injuries and a diagnosis of head trauma. Walter David Bulacio manifested that the police had beaten him.[647] On 21 April 1991, On 26 April, Walter David Bulacio died.[648] A friendly agreement between the State, the parties and the

[646] IACtHR. Case Bulacio V. Argentina. Merits, Reparations and Costs. Judgment 18 September 2003. Series C No. 100. Par. 3.1)

[647] Ibid. Par. 3.2)

[648] Ibid. Par. 3.5).

Commission established that the State was responsible for violating the right to life in its procedural and substantive aspects of this homicide by action.

Standards:

Substantive Aspects:

- The Court considered proving that, at the time of the events, police practices were carried out that included the named razzias, which were identity inquiries and detentions by contraventional police edicts.[649]
- The razzias were incompatible concerning the fundamental rights, among others, of the presumption of innocence, the existence of a judicial order to detain someone except on the hypothesis of flagrancy and the obligation to notify the guardians of minors.[650]
- The State must respect the right to life of every person under its jurisdiction established in Article 4 of the American Convention. This obligation presents unique modalities for minors, as seen from the rules established in the American Convention and the Convention on the Rights of the Child.[651]
- In this condition of guarantor, the State is responsible for guaranteeing the rights of the individual under its custody by providing information and proof related to what happens with the detainee.[652]
- Concerning the guarantee of non-repetition of harmful events, about the faculty of the State of detaining the persons that are under its jurisdiction, this Court has referred when analysing Article 7 of the American Convention that material and formal requirements exist which must be observed when a measure or sanction depriving of the liberty if applied: nobody can be deprived of the freedom but for the causes, cases or circumstances expressively typified in the law (material aspect), but also, with strict restraint to the procedures objectively defined in the same (formal aspect).[653]

[649] Ibid. Par. 137.

[650] Ibid.

[651] Ibid. Par. 138.

[652] Ibid.

[653] Ibid. Par. 125.

- The detainee's vulnerability is aggravated when the detention is illegal or arbitrary. Then, the person is entirely helpless, and a particular risk arises, such as violating other rights.[654]
- The condition of the State as guarantor concerning this right obliges it to prevent situations that could arise, by action or omission, to the detriment of that.[655]

Procedural Aspects:

- The Court has established several times that the obligation to investigate must be fulfilled seriously, not only as a simple formality but also by fulfilling this obligation. Also, the State must assume it as its juridical duty and not as mere management of particular interests.[656]
- Regarding the conventional commitments taken by the States, there is no disposition or internal institute between these prescriptions that can be opposed to complementing the decisions of the Court regarding the investigation and sanction of the person responsible for the violations of human rights. If it were not so, the rights established in the Convention would be deprived of adequate protection. This understanding of the Court is according to the letter and spirit of the Convention, as well as the general principles of law, one of them *pacta sunt servanda*, which requires that the valuable effect of a treaty is assured in the domestic law of the State parties.[657]
- The Court understands impunity as the lack of overall investigation, prosecution, capture, trial and condemnation of the responsible for violations of the rights protected by the American Convention every time that the state must combat the situation by all the legal means available since impunity promotes chronic repetition of the violations to human rights and the total helplessness of the victims and their relatives.[658]
- The Court determined in the judgment that as part of the state's recognition of responsibility, the State needed to continue and conclude the investigation of the facts and sanctions responsible for these. The victim's relatives should have plain access and the capacity to act in every instance of such investigations. The results of these

[654] Ibid. Par. 128.

[655] Ibid.

[656] Ibid. Par. 112.

[657] Ibid. Par. 117.

[658] Ibid. Par. 200.

investigations must be publicly disclosed so that society knows the truth about the facts.[659]

2. Case Nadege Dorzema and others V. República Dominicana. Judgment 24 October 2012:

Facts: As it has been settled in several judgments, the cases of homicide with police brutality are linked with the cases of extrajudicial executions, and a lot of them can be included in both categories. For academic reasons, to make the presentation of cases more organised, each case will be established in only one category, but could be included in the other. This case could be a part of the category of extrajudicial executions.

On 17 June 2000, a group of Haitian nationals reached the region of Santa María. In the early morning of 18 June 2000, a truck driven by Mr. Félix Antonio Núñez Peña, in the company of Mr. Máximo Rubén de Jesús Espinal, both of Dominican nationality, started a journey to the city of Santiago de los Caballeros in the Dominican Republic. The Haitian nationals were sitting in the back, covered with a tarp.[660] Upon reaching a second checkpoint in Botoncillo, at approximately 3:00 hours, the military signalled for the truck to stop; nevertheless, the car took a detour and continued its march to Copey.[661] Four militaries from the Destacamento Operativo de Fuerza Fronteriza (border force operational detachment in English) started pursuing the yellow truck. After a few kilometres, the patrol reached the car and changed the lights and horn noises to stop the truck; however, the driver kept driving.[662] The military fired numerous shots with their regulatory weapons in the direction of the car. These shots impacted the tailgate and the cabin. During the shooting, the driver, Mr. Espinal, was mortally wounded.[663]

Kilometres ahead, in the section of Copey, the truck overturned on the side of the road, trapping some people under it. When the military crossed a curve, the vehicle driver lost control and impacted the car, which had previously been overturned.[664] The driver

[659] Ibid. Par. 201.

[660] IACtHR. Case Nadege Dorzema and Others V. República Dominicana. Merits, Reparations and Costs. Judgment 24 October 2012. Series C No. 251. Par. 41.

[661] Ibid. Par. 42.

[662] Ibid. Par. 43.

[663] Ibid. Par. 44.

[664] Ibid. Par. 46.

and the surviving victims manifested that when the military got to the rollover site, seeing that several of the people who were on the truck ran out of nervousness about the situation, the military started shooting.[665]

On 19 June 2000, the bodies of the six Haitian nationals who died were buried in a common grave in Gurabo, in the Dominican Republic.[666] The Court established that the State violated the procedural and substantive aspects of the right to life in this homicide by action.

Standards:

Substantive Aspects:

- The Court established that the State must ensure that its national legislation is adequate and ensure that its security bodies, to whom it attributes the use of force, must respect the right to life of those under its jurisdiction[667].
- The State must be clear when demarcating domestic policies about using force and search for strategies to implement the principles about using force.[668]
- The IACtHR establishes that the State must ensure appropriate training for administrative infractions, such as migrations, to address the quality of the infraction and the vulnerability of the migrants.[669]
- The Court considered that state agents must evaluate their situation and develop a previous plan of action for their intervention when creating an authority deployment event.[670]
- The Court highlighted that the use of force must be carried out in harmony with the principles of legality, absolute necessity and proportionality: i. Legality: force must be directed to achieve a legitimate objective. Absolute necessity: it is necessary to verify if other means exist to protect the life and personal integrity or the situation intended to protect, in conformity with the circumstances of the case. iii. Proportionality: the level of force used must be consistent with the level of resistance offered.[671]

[665] Ibid. Par. 47.

[666] Ibid. Par. 52.

[667] Ibid. Par. 80.

[668] Ibid.

[669] Ibid. Par. 81.

[670] Ibid. Par. 84.

[671] Ibid. Par. 89.

- The IACtHR considered that, even when abstaining from using force would have allowed the escape of the people object of the state action, agents should not have employed lethal force against persons who did not represent any threat or real or imminent danger to agents or third parties.[672]
- The Court observed that less harmful means could be used in a determined case. The State could foresee less extreme measures to achieve the same objective.[673]
- The State demonstrated a lack of planning, capacity and organisation, resulting in highly disproportionate actions by the military agents. Previous evidence in this case establishes a lack of precise regulation and public politics regarding the prevention of the use of force.[674]
- The Court established that there was no credit for the legality of absolute necessity that motivated the usage of lethal force during the action of the state officials since the agents were not repelling aggression or imminent danger. In addition, the Court observed that in the context of discrimination against migrants, the use of force was excessive in the case, demonstrating the lack of implementation of reasonable and adequate measures to deal with this situation.[675]

Procedural Aspects:

- This Tribunal has considered that in every case of use of force by state agents that have produced death or lesions to one or more persons corresponds to the state's obligation to provide a satisfactory and convincing explanation of what happened and detract the allegations about its responsibility through adequate evidentiary elements, which has not been proven in the present case.[676]
- The general prohibition of the state agents of arbitrary deprivation of life would be ineffective if there were no proceedings to verify the legality of the lethal use of force exercised by these agents. The Court understood that the general obligation to guarantee human rights established in the Convention, provided in Article 1.1. of this instrument, contains the responsibility of investigating the cases of violations of the substantive right that must be protected and guaranteed. Once the State knows that its

[672] Ibid.

[673] Ibid. Par. 90.

[674] Ibid. Par. 89.

[675] Ibid. Par. 91.

[676] Ibid. Par. 89.

security agents have used firearms with lethal consequences, it is obliged to start a serious, independent, impartial and effective investigation *ex officio* and without delay. This obligation constitutes a fundamental and conditioned element for protecting the right to life that looks cancelled in these situations.[677]

- If human rights violations are not investigated seriously, it would result in a way favoured by public power, compromising the state's international responsibility.[678]

3. Case Díaz Loreto and Others v. Venezuela. Judgment 19 November 2019:

Facts: On 6 January 2003, in the afternoon, agents of the Security Forces and Public Order of the State Aragua got to the sector of la Segundera. Subsequently, it was the product of a series of circumstances that led these officers to shoot Robert Ignacio Díaz Loreto.[679] He was later transferred to the city hospital. In a moment, after they had the circumstances that also objected to disagreement between the parties, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez were shot by police officers.[680] The protocol of the autopsy of the three men indicated that the cause of death was a cardiac wound by a projectile of a firearm.[681] The Court established that the State was guilty of violating the procedural and substantive aspects of the right to life for these homicides by the action of the security forces.

Standards:

Substantive Aspects:

- Regarding the right to life of Article 4, the Court has recognised that the State must guarantee security and maintain the public order inside its territory and, therefore, has the right to use rightful force for the restoration if necessary.[682]
- State agents can appeal to the use of force and, in some circumstances, even lethal force. The state's power is not limited to reaching its independent purposes of the gravity of specific actions and the guilt of the authors.[683]

[677] Ibid. Par. 101.

[678] Ibid. Par. 117.

[679] IACtHR. Case Díaz Loreto and Others V. Venezuela. Merits, Reparations and Costs. Judgment 19 November 2019. Series C No. 392. Par. 35.

[680] Ibid. Par. 36.

[681] Ibid. Par. 37.

[682] Ibid. Par. 63.

[683] Ibid.

• The conventionality of using force must be evaluated in every circumstance and the context of the facts, considering the criteria to satisfy the principles of legality, legitimate purpose, necessity, and proportionality.[684]

Procedural Aspects:

• The Court has pointed out that it is the internal authorities' liability to clarify the facts and determine the individual responsibilities. In effect, every case of the use of force by state agents that has caused death or injuries to one or more persons corresponds to the State's obligation to provide a satisfactory and convincing explanation of what happened and detract the allegations about its responsibility through adequate evidentiary elements, which have not occurred in the present case given the unclarified contradictions and criminalistics technique defects pointed out.[685]

4. Case Rodríguez Vera and others. (Desaparecidos del Palacio de Justicia) V. Colombia. Judgment 14 November 2014:

Facts: On the 6 and 7 November 1985, the guerrilla group known as M-19 violently took the installations of the Palace of Justice, where the Supreme Court of Justice and the State Council of Colombia had their headquarters, taking hundreds of people as hostages. In front of the armed incursion of the guerrilla, known as *"the take of the Palace of Justice"* (la toma del Palacio de Justicia in Spanish), the answer of the security forces of the State was known as *"the re-take of the Palace of Justice"* (la retoma del Palacio de Justicia in Spanish). Such a military operation has been qualified as disproportionate and excessive by the internal tribunals and the Commission of the Truth about the facts of the Palace of Justice of Colombia (hereafter the Commission of the Truth), created by the Supreme Court of Justice.[686]

In respect of posterior actions, in the present case, the Court has been asked to examine the international responsibility of the State for the alleged forced disappearances of 12 persons who were in the Palace of Justice and who would have survived the events without knowing the whereabouts of 11 of them until the date of this judgment; the alleged enforced disappearance followed by the extrajudicial execution by the security forces of the State of an Auxiliary Magistrate of the State Council; the alleged

[684] Ibid. Par. 70.

[685] Ibid. Par. 88.

[686] IACtHR. Case Rodríguez Vera and Others (Desaparecidos del Palacio de Justicia) V. Colombia. Merits, Reparations and Costs. Judgment 14 November 2014. Series C No. 287. Par. 77.

detentions and torture of 4 additional persons in relation with these facts, 3 of which have survived the events, and the developed investigations by the State to clarify all of these facts.[687] The State recognises its responsibility for specific facts in this case. Regarding the events the State did not acknowledge, the Court finds a violation of substantive and procedural aspects of the right to life by security forces' action.

Standards:

Substantive Aspects:

• It is relevant to establish that this case is inside the category of homicides with police brutality. However, it could be in disproportionate use of force, forced disappearances or extrajudicial executions. This is a case where the behaviour of the security forces was disproportionate to the situation they were facing. The events caused several deaths, and although there was a dangerous situation with the takeover of the Palace of Justice by group M-19, the response of the security forces was violent and disorganised. Furthermore, it was unnecessary because there were other ways to approach the take and release of the hostages, such as negotiation. Because of these reasons, it is a critical case to analyse in this work.

5. Case García Ibarra and others V. Ecuador. Judgment 17 November 2015:

Facts: José García Ibarra was an adolescent of 16 years at the time of his death.[688] On Tuesday, 15 September 1992, between 20:00 and 20:30 hours, José Luis García Ibarra was in the corner of the neighbourhood of Codesa. He was with Cristian Cristobal Rivadeneira Medina, Bryron Rolando Saa Macias and Segundo Rafael Mosquera Sosa. The agent of the National Police, Guillermo Segundo Cortez Escobedo, arrived at the place with another man. After a discussion with Mr. Mosquera Sosa, to whom the agent manifested that he was searching, he hit him several times in the abdomen and beat him with a revolver. It was then that the police shot his official weapon, impacting José Luis García Ibarra and causing his death.[689] Although there is no controversy that the referred police agent was the perpetrator who caused the death of the adolescent García Ibarra, the evidence provided shows that in the context of the

[687] Ibid. Par. 80.

[688] IACtHR. Case García Ibarra and Others V. Ecuador. Merits, Reparations and Costs. Judgment 17 November 2015. Series C No. 306. Par. 50.

[689] Ibid. Par. 51.

criminal process, at least two versions of what happened were considered. However, the Court decided that the State was responsible for violating the right to life in the substantive and procedural aspects of this homicide by action.

Standards:

Substantive Aspects:

- For this Court, the conviction is necessary to acquire that the actions and omissions have been verified, attributable to the State, and that the state's international obligation is unfulfilled by this.[690]
- If the use of force has no basis or appearance of legitimacy or legality, it does not correspond to these standards when analysing the State's actions or omissions.[691]
- As a general rule, the use of firearms is planned as a measure of last resort in the light of national and international law.[692]

Procedural Aspects:

- The Court has repeatedly pointed out that the state has the juridical duty of preventing, reasonably, the violations of human rights, seriously investigating with the means at its disposal the violations that have been committed inside the ambit of its jurisdiction with the end of identifying the responsible, imposing the pertinent sanctions on them and assure to the victim the adequate reparation.[693]
- In particular, as a highlighted obligation and a conditioning element to guarantee the right to life, the Court has established that once it knows that its security agents have used firearms with lethal consequences, the State is obliged to start *ex officio* and, without delay, a serious, independent, impartial and effective investigation.[694]
- The State is the main guarantor of the human rights of the people, so if a violating act of such rights is produced, the State must resolve the matter at an internal level and repair it before having to respond to international instances such as Inter-American System, which derives of the subsidiary character that covers the global process in front of the domestic systems of human rights guarantees.[695]

[690] Ibid. Par. 98.

[691] Ibid. Par. 109.

[692] Ibid. Par. 112.

[693] Ibid.

[694] Ibid.

[695] Ibid. Par. 103.

• It is precisely based on this principle of complementarity that the Court's jurisprudence has developed the conception that every authority and organ of a state party to the Convention has the obligation of exercising a *"conventionality control"*. In this way, only if a case has not been solved internally, as it would primarily correspond to any state party of the Convention in the effective exercise of the conventionality control, could the case get to the Inter-American System.[696]

European Court of Human Rights

1. Case of McCann and others V. The United Kingdom. Judgment 27 September 1995:

Facts: Before 4 March 1988, and probably from at least the beginning of the year, the United Kingdom, Spanish and Gibraltar authorities were aware that the Provisional IRA[697] (Irish Republican Army - "IRA") were planning a terrorist attack on Gibraltar. The three suspects were Savage, Farrell and McCann. By the information they had gathered, they thought that the suspects had a car bomb that was detonated by a device that could be in their hands.

Soldier B opened fire on Farrell. He deemed McCann in a threatening position, unable to see his hands, and switched fire to McCann. Then he turned back to Farrell and continued firing until he was confident that she was no longer a threat, namely, her hands away from her body. He fired a total of seven shots. Soldier D believed that Savage was going for a detonator. He opened fire from about two to three meters away. Soldier D fired nine rounds at a rapid rate, initially aiming into the centre of Savage's body, with the last two at his head. He kept firing until Savage was motionless on the ground, and his hands were away from his body.[698] The Court found that the State was responsible for the procedural and substantive aspect of the right to life for these homicides by the action of the security forces, considering that they could have detained the suspects before their entrance to Gibraltar.

Standards:

Substantive Aspects:

[696] Ibid.

[697] ECtHR. Case of McCann and Others V. United Kingdom. (Application no. 18984/91). Strasbourg. Judgment 27 September 1995. Par. 13.

[698] Ibid.

- The Court's approach to the interpretation of Article 2 must be guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied to make its safeguards practical and effective.[699]
- In determining whether the force used was compatible with Article 2.2., the Court must carefully scrutinise not only whether the force used by the soldiers was strictly proportionate to the aim of protecting persons against unlawful violence but also whether the anti-terrorist operation was planned and controlled by the authorities to minimise, to the greatest extent possible, recourse to lethal force.[700]
- The ECtHR considers that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would impose an unrealistic burden on the State and its law-enforcement personnel in executing their duty, perhaps to the detriment of their lives and those of others. It follows that, about the dilemma confronting the authorities in the circumstances of the case, the soldiers' actions do not give rise to a violation of this provision.[701]
- The authorities were bound by their obligation to respect the right to life of the suspects to exercise the most excellent care in evaluating the information at their disposal before transmitting it to soldiers whose use of firearms automatically involved shooting to kill.[702]
- Their reflex action in this vital respect lacks the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects. This stands in marked contrast to the standard of care reflected in the police's instructions on the use of firearms, which had been drawn to their attention and emphasised the legal responsibilities of the individual officer in light of conditions prevailing at the moment of engagement. This failure by

[699] Ibid. Par. 146.

[700] Ibid. Par. 194.

[701] Ibid. Par. 200.

[702] Ibid. Par. 211.

the authorities also suggests a lack of appropriate care in controlling and organising the arrest operation.[703]

2. Case of Nachova and Others V. Bulgaria. Judgment 6 July 2005:

Facts: The case concerns the killing on 19 July 1996 of Mr. Angelov and Mr. Petkov by a member of the military police who was attempting to arrest them.[704] In 1996, Mr. Angelov and Mr. Petkov, who were both 21 years old, were conscripts in the Construction Force.[705] Early in 1996, Mr. Angelov and Mr. Petkov were arrested for repeatedly being absent without leave.[706] Both had previous theft convictions. On 15 July 1996, they fled from a construction site outside the prison.[707] Both men were armed when they were brought to work and travelled to the home of Mr. Angelov's grandmother in Lesura. Their absence was reported the following day, and their names were put on the military police's wanted list. At around noon on 19 July 1996, the officer on duty in the Vratsa Military Police Unit received an anonymous telephone message that Mr. Angelov and Mr. Petkov were hiding in the village of Lesura.[708]

At around 1 p.m., the officers arrived in Lesura.[709] As soon as the jeep drew up in front of the house, between 1 and 1.30 p.m., Sergeant K. recognised Mr. Angelov,[710] who was inside, behind the window. Having noticed the vehicle, the fugitives tried to escape. The two men continued running. Sergeant N. ran onto the street to intercept them, cutting past several houses. While running, he heard Major G. shout: *"Freeze, military police, freeze, or I'll shoot!"* It was then that the shooting started. According to the statements of the three subordinate officers,[711] Mr. Angelov and Mr. Petkov were lying on the ground in front of the fence, with their legs pointing toward the house from which they had come. Sergeant K. and Sergeant S. took the wounded men to Vratsa Hospital.[712] Mr. Angelov and Mr. Petkov died on the way to Vratsa. They were

[703] Ibid. Par. 212.

[704] ECtHR. Case of Nachova and Others V. Bulgaria. (Applications nos. 43577/98 and 43579/98). Strasbourg. Judgment 6 July 2005. Par. 10.

[705] Ibid. Par. 13.

[706] Ibid. Par. 14.

[707] Ibid. Par. 15

[708] Ibid. Par. 17.

[709] Ibid. Par. 22.

[710] Ibid. Par. 24.

[711] Ibid. Par. 27.

[712] Ibid. Par. 32.

pronounced dead on arrival at the hospital.[713] The Court found that the respondent State failed to comply with its obligations under Article 2 of the Convention in the relevant legal framework. This means that the State violated the substantive and procedural aspects of the right to life by this homicide by the action of the security forces.

Standards:

Substantive Aspects:

- Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and enshrines one of the basic values of the democratic societies making up the Council of Europe.[714]
- As the text of Article 2.2. It shows that the use of lethal force by police officers may be justified in certain circumstances.[715] According to Article 2.2. (b) of the Convention, the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity.[716]
- The Court considers that, in principle, there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards.[717]
- According to the principle of strict proportionality inherent in Article 2, the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat they pose.[718]

[713] Ibid. Par. 33.

[714] Ibid. Par. 93.

[715] Ibid. Par. 94.

[716] Ibid. Par. 95.

[717] Ibid. Par. 96.

[718] Ibid.

- The Court notes as a matter of grave concern that the relevant regulations on the use of firearms by the military police effectively permitted lethal force to be used when arresting a member of the armed forces for even the most minor offence. Not only were the regulations not published, but they also contained no clear safeguards to prevent the arbitrary deprivation of life.[719]
- Under the regulations, it was lawful to shoot any fugitive who did not surrender immediately in response to an oral warning and the firing of a warning shot in the air.[720]
- Such a legal framework is fundamentally deficient. It falls well short of the protection *"by law"* of the right to life required by the Convention in present-day European democratic societies.[721]

Procedural Aspects:

- It was established in previous examination cases that these are the characteristics of an investigation into such a delicate matter. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. They must apply a standard comparable to the *"no more than essential"* required by Article 2.2. of the Convention. Any investigation deficiency that undermines its ability to establish the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness.[722]

3. Case of Wasilewska and Kalucka V. Poland. Judgment 23 February 2010:

Facts: On 23 August 2002, Mr. Przemysław Kałucki was with his friends in a club.[723] A column of four vehicles arrived at the Spała Sports Centre accompanied by two persons, G.B. and T.N. Suddenly.[724] Several armed men jumped out of the cars. It later turned out that they were police officers from the Łódź and Tomaszów Mazowiecki

[719] Ibid. Par. 99.

[720] Ibid.

[721] Ibid.

[722] Ibid. Par. 113.

[723] ECtHR. Case of Wasilewska and Kalucka V. Poland. (Applications nos. 28975/04 and 33406/04). Strasbourg. Judgment 23 February 2010. Par. 6.

[724] Ibid. Par. 7.

Police Forces and a special anti-terrorist group. There were no visible signs indicating they were from the police.[725]

Mr. Kałucki and the other two occupants of the car thought they were about to be robbed and tried to escape in the direction of the swimming pool, which led to a dead end.[726] Mr. Kałucki and G.B. drove between the second and third police vehicles while the police opened fire, shooting repeatedly at the driver and the passenger.[727] The commanding officer's orders had not been complied with; he had ordered that the police officers from the last vehicle arrest the suspects. Instead, many other officers had left their vehicles and attempted to stop the car by firing automatic weapons.

Mr. Kałucki was severely wounded and was removed from the car by one of the police officers, who pulled him by the head. No arrangements had been made for an ambulance to be present. Mr. Kałucki died before the arrival of an ambulance, twenty minutes after the shooting. The driver of the car, G.B., was seriously wounded.[728] The Court decided that the State was responsible for violating the substantive and procedural aspects of the right to life by this homicide by the action of the security forces.

Standards:

Substantive Aspects:

- In determining whether the force used is compatible with Article 2, whether a law enforcement operation has been planned and controlled to minimise, to the greatest extent possible, recourse to lethal force or incidental loss of life may be relevant.[729]
- In cases concerning the use of force by state agents, the State must consider who administered the force and all the surrounding circumstances, including the relevant legal or regulatory framework in place and the planning and control of the actions under examination.[730]

[725] Ibid. Par. 8.

[726] Ibid. Par. 9

[727] Ibid. Par. 10.

[728] Ibid. Par. 13.

[729] Ibid. Par. 35.

[730] Ibid.

- The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing. However, there are also situations where it is permitted to *"use force",* which may result in the unintended deprivation of life.[731]
- The Court has held that the opening of fire should, whenever possible, be preceded by warning shots.[732]

Procedural Aspects:

- The deliberate or intended use of lethal force is only one factor to consider in assessing its necessity.[733]
- The essential purpose of the investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility.[734]
- The investigation must afford a sufficient element of public scrutiny of the investigation or its results.[735]

4. Case of Giuliani and Gaggio V. Italy. Judgment 24 March 2011:

Facts: Carlo Giuliani was shot and killed during the demonstrations on the fringes of the G8 summit in Genoa in July 2001.[736] On 19, 20 and 21 July 2001, the G8 summit was held in Genoa. Numerous *"anti-globalisation"* demonstrations[737] were staged in the city, and substantial security measures were put in place by the Italian authorities. At approximately 5 p.m., the demonstrators pushed back the charge, and the carabinieri were forced to withdraw disorderly near Piazza Alimonda. Given the withdrawal of the carabinieri, the jeeps attempted to reverse away from the scene.[738] One found its exit blocked by an overturned refuse container. Suddenly, several demonstrators wielding stones, sticks and iron bars surrounded it. The two side windows at the rear window of the jeep were smashed. There were three carabinieri on board the jeep. One

[731] Ibid. Par. 42.

[732] Ibid. Par. 43.

[733] Ibid.

[734] Ibid. Par. 60.

[735] Ibid.

[736] ECtHR. Case of Giuliani and Gaggio V. Italy. (Application no. 23458/02). Strasbourg. Judgment 24 March 2011. Par. 11.

[737] Ibid. Par. 12.

[738] Ibid. Par. 22.

of them, Dario Raffone ("D.R."). M.P.[739] was suffering from the effects of the tear gas grenades he had thrown during the day, crouched down in the back of the jeep, injured and panicked. M.P. drew his Beretta 9 mm pistol, pointed it in the direction of the smashed rear window of the vehicle, and, after some ten seconds, fired two shots.[740] One of the shots struck Carlo Giuliani, a balaclava-clad demonstrator, in the face under the left eye. A doctor who arrived at the scene subsequently pronounced Carlo Giuliani dead. The Court found that the State was not responsible for the procedural or the substantive aspect of the right to life in this homicide by action.

Standards:

Substantive Aspects:

- The circumstances in which deprivation of life may be justified must be strictly construed.[741]
- Responsibility under the Convention is based on its provisions, which are to be interpreted in the light of the object and purpose of the Convention, considering any relevant rules or principles of international law.[742]
- The Court cannot but attach considerable importance to the video footage produced by the parties, which they had the opportunity to view and the authenticity of which has not been called into question.[743]
- The Court concludes that lethal force was absolutely necessary in the instant case *"in defense of any person from unlawful violence"* within the meaning of Article 2.2. (a) of the Convention.[744]
- Article 2.1. enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.[745]
- In line with the principle of strict proportionality inherent in Article 2, the national legal framework must make recourse to firearms dependent on carefully assessing the situation. Furthermore, the national law regulating policing operations must secure a

[739] Ibid. Par. 23.

[740] Ibid. Par. 24.

[741] Ibid. Par. 187.

[742] Ibid.

[743] Ibid. Par. 183.

[744] Ibid. Par. 194.

[745] Ibid. Par. 208.

system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accidents.[746]

- According to the Court's case law, Article 2 may imply, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. That does not mean, however, that a positive obligation to prevent every possibility of violence can be derived from this provision.[747]
- The obligation in question must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources.[748]
- According to its case law, the Court must examine the planning and control of a policing operation resulting in the death of one or more individuals to assess whether, in the particular circumstances of the case, the authorities took appropriate care to ensure that any risk to life was minimised and were not negligent in their choice of action.[749]
- The use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant carte blanche. Unregulated and arbitrary action by state agents is incompatible with adequate respect for human rights.[750]
- This means that policing operations must be sufficiently regulated by national law within a system of adequate and effective safeguards against arbitrariness and abuse of force.[751]
- Law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only based on the letter of the relevant regulations but also with due regard to the pre-eminence of respect for human life as a fundamental value.[752]

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[746] Ibid.

[747] Ibid. Par. 244.

[748] Ibid. Par. 245.

[749] Ibid. Par. 249.

[750] Ibid.

[751] Ibid.

[752] Ibid. Par. 250.

- While the Contracting States must take reasonable and appropriate measures regarding lawful demonstrations to ensure their peaceful conduct and the safety of all citizens, they cannot guarantee this and have broad discretion in the choice of the means to be used.[753]

Procedural Aspects:

- When there have been criminal proceedings in the domestic courts concerning such allegations, it must be borne in mind that criminal law liability is distinct from the state's responsibility under the Convention. The Court's competence is confined to the latter.[754]
- When called upon to examine whether the use of lethal force was legitimate, the Court, detached from the events at issue, cannot substitute its assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life.[755]
- The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The court is not concerned with reaching any findings as to guilt or innocence in that sense.[756]

5. Case of Mocanu and others V. Romania. Judgment 17 September 2014:

Facts: On 13 June 1990, the security forces' intervention against the demonstrators who were occupying University Square and other areas of the capital resulted in several civilian casualties.[757] The applicant association brings together mainly individuals who were injured during the violent suppression of the anti-totalitarian demonstrations which took place in Romania in December 1989[758] and the relatives of persons who died during those events. Three people were killed by the shots fired in the Ministry of the Interior.[759] It was in those circumstances that, at about 6 p.m., when

[753] Ibid. Par. 251.

[754] Ibid. Par. 182.

[755] Ibid. Par. 179.

[756] Ibid.

[757] ECtHR. Case of Mocanu and Others V. Romania. (Applications nos. 10865/09, 45886/07 and 32431/08). Strasbourg. Judgment 17 September 2014. Par. 11.

[758] Ibid. Par. 13.

[759] Ibid. Par. 43.

he was a few meters away from one of the doors of the Ministry, Mr. Mocanu was killed by a bullet which hit the back of his head after having ricocheted.

Towards the end of the afternoon on 13 June 1990, while he was walking to his workplace along a street near the state television headquarters, Mr. Stoica was brutally arrested by a group of armed individuals and taken by force into the television building. In sight of the police officers and service members present, civilians struck and bound him, then took him to the basement of the building. In the course of the same night, the applicant was beaten, hit on the head with blunt objects and threatened with firearms until he lost consciousness.[760] Mr. Stoica woke up at around 4.30 a.m. in the Floreasca Hospital in Bucharest.[761] The Court declared that there was a procedural breach of the right to life regarding the lawsuit interposed that only involved this aspect of the homicides and ill-treatment by the action of security forces.

Standards:

Substantive Aspects:

- The general duty of the State under Article 1 of the Convention is to *"secure to everyone within their jurisdiction the rights and freedoms defined in the Convention."*[762]

Procedural Aspects:

- The provisions of Articles 2 and 3 require, by implication, that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the State.[763]
- The national courts should not, under any circumstances, be prepared to allow life-endangering offences to go unpunished. The Court's task consists of reviewing whether and to what extent the courts may be deemed to have submitted the case to the scrutiny required by Article 2 of the Convention so that the deterrent effect of the judicial system in place and the significance of the role it is necessary to play in preventing violations of the right to life are not undermined.[764]

[760] Ibid. Par. 51.

[761] Ibid. Par. 52.

[762] Ibid. Par. 137.

[763] Ibid.

[764] Ibid. Par. 135.

- The general legal prohibition of arbitrary killing and torture and inhuman or degrading treatment or punishment by agents of the State would be ineffective in practice if there existed no procedure either for reviewing the lawfulness of the use of lethal force by state authorities or for investigating arbitrary killings and allegations of ill-treatment of persons held by them.[765]

Summary

When analysing this category, the IACtHR establishes the importance it gives to the investigation, stating that it is an obligation that must be fulfilled by the state and not a mere formality that is condemned beforehand. The court determines the importance of the investigation, as it has done in other categories, establishing the concept of *pacta sunt servanda*, which means that the contracts must be fulfilled and comply, referencing the compromise the states have taken with the Convention. Although the state recognises its responsibility, it is necessary that if the investigation has not found the responsible and sanctioned them, the state continues the investigation. Furthermore, even though the next of kin is not obliged to start the procedure and the state must begin by its motion, the victim's relatives have the right to participate. This is significant for the court to highlight because it could be vital for relatives who are indirect victims to participate in the judicial process. The IACtHR demonstrates the necessity of protecting every person under its jurisdiction regarding Article 4 and minors in a vulnerable position. Also, the IACtHR highlights the vulnerable position of people under the custody of the state who can be subjected to torture or ill-treatment, and that is why the security forces must respect the Convention and protect the people under their care. Moreover, in this category, the court proves the importance of Article 7, about the right to personal liberty. In my view, this Article demonstrates that nobody can be arbitrarily deprived of their liberty except in the conditions mentioned in the Convention's letter. The material aspect of this article establishes that people may be deprived of their freedom in cases typified by the law, and the formal element is that the strict procedures to do so must be followed. A significant aspect for both courts in this category is that the national legislation must comply with the Convention. If the state does not comply with this, its national courts could never judge the infringements of the articles of the Convention and human rights. It is vital for this court that the population knows the truth about human rights violations.

[765] Ibid. Par. 136.

The court proves that there are vulnerable groups that must be protected, one of them being migrants. That is why the IACtHR states that the security forces must have adequate training to deal with these vulnerable groups and administrative infractions such as migration. Moreover, the IACtHR states the necessity of the rights that the security forces are protecting regarding the life of the offenders. The most important thing is to preserve life, although this means the offender's escape if it is not a dangerous person and another life is not at risk. This means the offenders do not represent an immediate or actual danger to them or third parties. Also, the court determines that less extreme measures, such as negotiation or reducing the offender, are necessary to apply before using lethal force, which is the last resort. In my opinion, it is demonstrated that national legislation is needed to define the use of force as a last resort and prevent its use. If this does not occur, the state must prove through evidentiary elements why force was used. This is necessary to avoid arbitrary deaths, and if these have happened as a consequence of the situation, the explanation of the state is required to establish why the right to life was violated and to give an adequate response to the relatives of the dead person. Furthermore, international law specifies that when the remains of dead people are identified, these must be returned to the next of kin. Supposing there has been an arbitrary or illegal death by security forces. In that case, an immediate investigation is necessary to respect the Convention, not allowing impunity and not permitting this action to be repeated. In this category, the IACtHR shows that the state has the right and duty to use force to maintain public order. However, this force must be necessary to achieve the objectives and not be an arbitrary use of lethal force. The use of force must be judged in every case according to the circumstances because these are always different. It is necessary to highlight whether the force used was according to the principles of legitimate purpose, proportionality, and absolute necessity. If it is not the situation, it has been an arbitrary use of force. In this category, it is determined that the IACtHR and the ECtHR are complementary. They must decide if the state is responsible according to the Convention, but first, the case must exhaust all the domestic instances, and the national courts must decide about the infringements. That is why every authority and organ of the state must exercise conventional control.

The ECtHR establishes the requirement of the absolute necessity in the use of force, as does the IACtHR. When the fugitive does not pose a threat to the life of another person, it is preferable to escape rather than being killed. Careful scrutiny of the use of

force is vital to prevent arbitrary killings and violations of Article 2. Another important concept of this court is that the investigation must be applied with the standard of *"no more than essential"*, and every use of force must be judged according to the circumstances of each case with its particularities. Moreover, the ECtHR demonstrates that the investigation must be efficient in determining the action in the circumstances because if not, it violates the standard of effectiveness. Also, the states must adopt and adapt the Convention to their juridical framework to judge the cases regarding the provisions in this instrument, as determined in the IACtHR. The ECtHR shows essential notions about the security forces' operations and the actions of these forces. A warning shot must always precede the use of lethal force to warn the suspects that it is possible to deploy force. The operation must be planned to avoid using deadly force, which, as stated, is the last recourse in national and international law. Furthermore, it is necessary to achieve the aims of Article 2 to minimise the possibility of losing incidental lives.

Regarding the investigation, the state must afford a sufficient element of public scrutiny, and the use of force, deliberate or unintentional, is only one factor to consider when determining if it is necessary. All these standards are required to protect lives according to Article 2, and it is also essential that the national framework can judge the cases and establish the responsibility of state agents. The ECtHR has correctly demonstrated that its view is detached from the events. To judge a case, it must take the perspective of the state agents who thought that their lives or the lives of others were in danger and perhaps acted in self-defence. Legal issues of individual criminal responsibility under examination are not the court's concern. This organ is not concerned with reaching any findings as to the guilt or innocence of an individual, but establishing if the state is responsible under the provisions of the European Convention. Although the right to life is the most important for this court, if the state agents use lethal force and the outcome is the death of a person, but is inside the sphere determined in Article 2.2. of possibilities to use force, the court considers that this agent has acted according to the Convention. Article 2.2. does not give *"carte blanche"*, as the court referred that state agents cannot use lethal force without consequences and in an arbitrary way. The situations when the use of force is justified are strictly constructed. The operations must not be planned negligently. This court emphasised the unpredictable human conduct that can lead to the use of force and the death of a person by fear or error. In this category, the ECtHR highlights that the most

important thing is that the provisions of the Convention are interpreted to make its safeguards practical and effective. This tribunal aims to respect Article 2 and protect the right to life of all individuals under its jurisdiction, which is one of the most essential values of a democratic state. Furthermore, the court highlights the significant value of the planned and controlled operation because the security forces in the field could use lethal force, believing that was the right choice at the time. The operation must be carefully planned and controlled to protect civilian lives. The security officers in the field must honestly believe that they comply with Article 2.2. This can cause the unnecessary deaths of people who could have been detained at another instance before it was necessary to use force. The ECtHR identifies the general duty of Article 1, which is that the state must secure everyone within its jurisdiction's rights and freedoms. The court must be subject to the careful scrutiny of the convention's provisions and the national courts' decisions. The ECtHR highlights the necessity of an investigation when there has been ill-treatment or torture in violation of Article 3, as if these are not punished, this provision would not have meaning.

The ECtHR has judged two cases of deaths in mass demonstrations, which makes the decision more complicated because several aspects must be considered. These were the cases of Giuliani and, Giagio, and Mocanu. The court determined that contracting states must take reasonable and appropriate measures regarding lawful demonstrations to ensure their peaceful conduct and the safety of the citizens. Nevertheless, the states cannot guarantee this and have broad discretion when choosing the means to use. It is relevant here to remember that human nature is contradictory, changing and unpredictable, so it is impossible to determine how a human will react to a particular situation. According to the law, the state can only prepare and capacitate the security forces.

A vital notion to develop is that in both courts, the possibility of using lethal force is established when an offender is escaping. The ECtHR in Article 2.2. of the Convention is the first possibility, and the IACtHR in Article 3 of the Code of Conduct of the OHCHR allows lethal force in determined circumstances. However, in its case law, both courts have shown that the offender's life should not be violated, even if this means escaping from the authorities. I think it contradicts the letter of the instruments and the courts' jurisprudence. In their standards, the courts have found that the escape of a person is not a sufficient reason for killing them if they do not represent a threat to the right to life of other people.

3. E. Forced Disappearances

Inter-American Court of Human Rights

1. Velásquez Rodríguez V. Honduras. Judgment 29 July 1988:

Facts: Manfredo Velásquez Rodríguez was a student. He was taken in a violent way and without a judicial warrant by members of the National Direction of Investigation and G-2 (intelligence) of the Armed Forces of Honduras. This capture occurred in Tegucigalpa on the 12th of September 1981. He was subjected to harsh interrogations under cruel torture and accused of alleged political crimes. Armed men took him dressed as civilians who utilised a white Ford without license plates.[766] There is no proof that the kidnapping took place by common criminals or other people disengaged with the practice of disappearances that was current at the time.[767] The Court established that the State was responsible for violating the substantive and procedural aspects of the right to life by this homicide by the action of the security forces.

Standards:

Substantive Aspects:

- The Court determines that the forced disappearances implied an abandonment of the values of human dignity and the fundamental principles of the American Convention on Human Rights.[768]
- The State must procure the re-establishment, if possible, of the right violated or, in its case, the reparation of damage produced by the violation of human rights.[769]
- The Court stated that the practice of forced disappearances is characterised by the secret execution of the detainees without a previous trial and the concealment of the body to erase every fingerprint of the material crime and ensure, in this way, the impunity of the perpetrators.[770]
- Beyond doubt, the IACtHR affirmed that the State has the right and the duty to guarantee its security. Neither can it be argued that every society suffers from the infraction of its juridical system. However, no matter how severe specific actions and

[766] IACtHR. Case Velásquez Rodríguez V. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4. Par. 146.

[767] Ibid. Par. 147.

[768] Ibid. Par. 148.

[769] Ibid. Par. 175.

[770] Ibid.

the guilt of the prisoners of determined crimes may be, it is not possible to admit that the power may be exercised without any limit or that the State can take advantage of any procedure to reach its objectives, without subjection to the law or morality. No activity of the State can be founded in the despair of human dignity.[771]

- The enforced disappearance of human beings constitutes a multiple and continuous violation of several rights recognised in the Convention, which the state parties are obliged to respect and guarantee. The kidnapping of a person is a case of arbitrary deprivation of liberty.[772]
- It violates the right to be detained and taken without delay before a judge and interposes the necessary recourses to control the legality of the detention. This supposes an infraction of Article 7 of the American Convention on Human Rights, which recognises the right to personal liberty.[773]
- Forced disappearances are systematic and repeated. They are a technique destined to produce not only the disappearance but also a generalised state of distress, insecurity, and fear. This practice has a universal character.[774]
- The enforced disappearance of human beings constitutes a multiple and continuous violation of several rights recognised in the Convention, which the state parties are obliged to respect and guarantee. The kidnapping of a person is a case of arbitrary deprivation of liberty.[775]
- Forced disappearances violate the right to be detained and taken before a judge without delay and impose the necessary recourses to control the legality of the detention in violation of Article 8 of the Convention.[776]

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[771] Ibid. Par. 154.

[772] Ibid. Par. 155.

[773] Ibid.

[774] Ibid.

[775] Ibid. Par. 156.

[776] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 8. Right to a fair trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: a. The

- The prolonged isolation and the coercive excommunication to which the victims of enforced disappearance are subjected represent ways of cruel and inhuman treatment, harmful to the psychic and moral liberty of the person, and the right to be detained with due respect to the inherent dignity of the human being in violation of Article 5 of the American Convention on Human Rights (Right to Humane Treatment).[777]
- It was also found that the detentions included the ill-treatment of the detained, who see themselves subjected to all kinds of torture and other cruel, inhuman and degrading treatments.[778]
- The practice of disappearances has implied the execution of the detainees, in secret and without a previous trial, followed by the concealment of the corpse with the object of erasing all material traces of the crime and procuring the impunity of the perpetrators, which means a brutal violation of the right to life and Article 4 of the American Convention on Human Rights (Right to Life).[779]
- Concerning Article 1.1 of the American Convention on Human Rights, it is established that this article contains the obligation contracted by the state parties about each protected right. In this way, every pretension that states that the rights of the Convention have been violated implies necessarily a violation of this article.[780]

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right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court; b. Prior notification in detail to the accused of the charges against him; c. Adequate time and means for the preparation of his defense; d. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; e. The inalienable right to be assisted by counsel provided by the State, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law; /. The right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; g. The right not to be compelled to be a witness against himself or to plead guilty; and h. The right to appeal the judgment to a higher court. 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause. 5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

[777] IACtHR. Case Velásquez Rodríguez V. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4. Par. 156.

[778] Ibid.

[779] Ibid. Par. 157.

[780] Ibid. Par. 164.

- This article is fundamental to determine if a violation of human rights recognised in the Convention can be attributed to a state party. Article 1.1. put in charge of the state parties the duties of respect and guarantee in a way that every violation of the human rights established in the Convention that can be attributed according to the rules of international law to the action or omission to any public authority constitutes an imputable fact to the state that compromises its responsibility in the terms foreseen in the Convention.[781]
- About Article 2 (Domestic Legal Effects), the IACtHR determines that it is imputable to the state every violation of the recognised rights in the Convention fulfilled by an act of public power or of people who act under the authority of the power they have by their official character. Nevertheless, the situations in which a State is obliged to prevent, investigate, and sanction human rights violations do not end there. Neither are the assumptions in which its responsibility can be seen compromised by the effect of the lesion on those rights.[782],[783]
- An illicit fact that violates human rights that initially does not result imputable directly to a state, for example, because the act of a particular or the author of the transgression was not identified, can mean the international responsibility of the state, not by that fact in itself but for the lack of due diligence to prevent the violation or for treat it in the terms referred in the Convention.[784]
- The right of the relatives of the victim to know the fate and, in the case where the remains of this person are, represents a just expectation that the State must satisfy with its means of reach.[785]

[781] Ibid.

[782] Ibid. Par. 172.

[783] Organization of American States (OAS). *American Convention on Human Rights. Pact of San José de Costa Rica.* San José of Costa Rica, 7 to 22 November 1969. Article 2: Domestic Legal Effects Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms

[784] IACtHR. Case Velásquez Rodríguez V. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4. Par. 172.

[785] Ibid. Par. 181.

- Every person deprived of liberty must be respected due to the inherent dignity of the human being. Even if there is a margin of doubt, it must be kept in mind that his fate was in the hands of the authorities.[786]

Procedural Aspects:

- The State is obliged to investigate every situation where there has been a violation of human rights protected by the Convention. The obligation to investigate and to prevent are obligations of means or behaviour.[787]
- The lack of investigation by the State is an infraction of the juridical duty of this.[788]
- The duty of investigation by the State in these kinds of cases subsists while it maintains the uncertainty about the fate of the person who has disappeared.[789]
- If the state apparatus acts in a way that keeps this violation unpunished, it does not reset, in a way that is possible (it is impossible to revive a victim that has been deprived of their life), to the victim in the fullness of their rights, can be affirmed that the State has breached the duty of guarantying the free and whole exercise of the people subject to its jurisdiction. The same is valid when particulars or groups act freely or with impunity to the detriment of the human rights recognised in the Convention and the State tolerates it.[790]
- The duty to investigate facts subsists while there is uncertainty about the disappeared person's fate. Even if the legitimate circumstances of the internal judicial order do not allow the application of the correspondent sanctions to those individually responsible for crimes of this nature.[791]

2. Case Godínez Cruz V. Honduras. Judgment 20 January 1989:

Facts: The Commission offered a testimonial and documentary proof to demonstrate that between the years 1981 and 1984, several people were kidnapped and then disappeared, and these actions were imputable to the Armed Forces of Honduras, which had the tolerance of the government in Honduras. These disappearances had a similar pattern that was initiated through the following and surveillance of the victim.

[786] Ibid. Par. 187, 188.

[787] Ibid. Par. 180.

[788] Ibid. Par. 187, 188.

[789] Ibid. Par. 181.

[790] Ibid. Par. 176.

[791] Ibid. Par. 181.

Then, there was a violent kidnapping by armed men dressed as civilians with vehicles without official identification and polarised windows.[792]

Saúl Godínez Cruz disappeared on the 22nd of July 1982 after leaving his house on a motorbike to work as a professor.[793] The Court determined that the State was guilty of the violation of the procedural and substantive aspects of the right to life for this homicide by the action of security forces.

Standards:

Substantive Aspects:

- The practice of disappearance creates an incompatible climate with the proper guarantee of human rights by the state parties of the Convention because the minimal norms of conduct that the security forces must follow were not followed, which ensured impunity to violate human rights.[794]
- States must be capable of assuring the plain and free exercise of human rights. Due to this obligation, States must prevent the violations of human rights.[795]
- The submission of detainees to official repressive bodies that with impunity practice torture and assassination represents, by itself, an infraction to the duty of prevention of violation of human physical integrity and life, even on the supposed that a determined person did not suffer torture or there has not been killed or if these facts cannot be demonstrated in the concrete case. This means that if security forces of a state perpetrate homicides of citizens or commit torture upon these, even when these facts cannot be proven by other means that are not testimonies of witnesses, considering that in these cases, the remains are concealed to achieve the impunity of the perpetrators.[796]
- The duty of prevention encompasses all of those juridical, political, administrative and cultural measures that promote the safeguarding of human rights and ensure that the eventual violation of these is effectively considered and treated as an illicit act that is susceptible to carrying sanctions against those who commit these violations.[797]

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[792] IACtHR. Case Godínez Cruz V. Honduras. Merits, Reparations and Costs. Judgment 20 January 1989. Series C No. 5. Par. 3.

[793] Par. 3,4,5.

[794] Ibid. Par. 171.

[795] Ibid. Par. 175.

[796] Ibid. Par. 186.

[797] Ibid. Par. 175.

- The instauration of the practice of disappearances by the government means the abandonment of the juridical duty of preventing violations of human rights committed under the coverture of public power.[798]

Procedural Aspects:

- The State has the juridical duty of seriously investigating with the means to reach the human rights violations committed in the ambit of its jurisdiction and to identify the responsible. Furthermore, the State has to impose pertinent sanctions and assure the victim, or the relatives in its case, an adequate reparation.[799]
- The State must procure the re-establishment, if possible, of the right violated or, in its case, the reparation of damage produced by the violation of human rights.[800]
- The state must compensate the victims for the prejudicial consequences.[801]
- The obligation to investigate is an obligation of means or behaviour that is not unfulfilled by the fact that the investigation does not produce a satisfactory result. The requested criminal investigation was not even provided, and there was no procedure.[802]
- The Court establishes that the circumstances of the apparatus of the State have served to create a climate in which the crime of enforced disappearance was committed with impunity. According to the principles of international law about the continuity of the State, the responsibility subsists with the independence of the changes of government over time. Especially, between the moment the illicit act is committed, which generates responsibility and is declared.[803]

3. Case Fairén Garbi and Solís Corrales V. Honduras. Judgment 15 March 1989:

Facts: Francisco Fairén Garbi and Yolanda Solís Corrales entered the territory of Honduras through the Custom *"Las Manos"*, department of El Paraíso, on 11th of December of 1981, which means that they were last seen in this country. Despite what has been established before, the Court determined that in the present case, it has not

[798] Ibid.

[799] Ibid. Par. 184.

[800] Ibid. Par. 175.

[801] Ibid. Par. 185.

[802] Ibid. Par. 188.

[803] Ibid. Par. 192, 194.

been proved that Francisco Fairén Garbi and Yolanda Solís Corrales have disappeared by a cause imputable to Honduras, whose responsibility has not been determined.[804]

Standards:

Substantive Aspects:

- These disappearances had a very similar pattern, which was initiated through the vigilance of the victims. Then, their violent kidnapping, many times in plain light of the day and populated places, by part of armed men dressed as civilians and disguised, who acted with apparent impunity in vehicles without official identification and with polarised car windows, without or with false plaques.[805]
- The population considered this a public and notorious fact. The kidnappings were perpetrated by military agents or by police agents or staff under their direction. [806]
- The victims were generally considered dangerous persons by the authorities of the State.[807]
- The persons kidnapped were bandaged, taken to secret and irregular places of detention and moved from one of these places to another.[808]
- These people were interrogated and subjected to humiliation, cruelty and torture. Some of these people were finally murdered, and their bodies were buried in clandestine cemeteries. [809]
- The authorities systematically denied the same fact of the detention, whereabouts and the fate of the victims to their relatives, lawyers and people or entities interested in the defense of human rights, such as the executive judges in recourse of personal exhibition. This attitude was produced even in cases of people who later reappeared in the hands of the same authorities that systematically denied having them in their power or knowing their fate. [810]

Procedural Aspects:

[804] IACtHR. Case Fairén Garbi and Solís Corrales V. Honduras. Merits, Reparations and Costs. Judgment 15 March 1989. Series C No. 6. Par. 139-145.

[805] Ibid. Par. 146-152.

[806] Ibid.

[807] Ibid.

[808] Ibid.

[809] Ibid.

[810] Ibid.

- The attempted legal cases were processed slowly and disinterestedly, and some were finally dismissed.[811],[812]
- The military and police authorities, like the government or judicial power, refused or were incapable of preventing, investigating and sanctioning the facts and helping those who were interested in finding out the whereabouts and the fate of the victims or their remains.[813]
- Several circumstances proved that these disappearances were juridically imputable to the State. However, the verification of the practice of disappearances is not enough in the absence of evidence to demonstrate that a person whose whereabouts are unknown was a victim of this practice.[814]

4. Case "Panel Blanca" (Paniagua Morales and Otros) V. Guatemala. Judgment 8 March 1998:

Facts: Between June 1987 and February 1988, a series of arbitrary detentions classified as kidnapping in the company of mistreatment and torture, and, in some cases, deprivation of life took place in Guatemala. Some of the detainees were taken to the installations of the Guardia of the Hacienda and were mistreated. Others, whose place of detention was unknown, appeared dead, and their bodies, with signs of physical violence, were left the same day or the day after the detention in the streets of Guatemala or their surroundings. In this case, there were nine victims.[815] The Guardia of the Hacienda agents had committed a series of crimes using the vehicle *"panel"* (a big white car).[816]

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[811] Ibid.

[812] Note of the author: This mechanism of forced disappearances that is described in this case (and Velásquez Rodríguez) and that happened in the dictatorships of Honduras is the same process that had a place in other countries of the continent with dictatorships such as Chile, Uruguay or Argentina as it will be shown in later cases. Argentina was the only country that judged the perpetrators of this system in 1985, and it produced the book *"Nunca más"* (Never More), where all these practices were described, as well as declarations of witnesses that survived the kidnapping.

[813] IACtHR. Case Fairén Garbi and Solís Corrales V. Honduras. Merits, Reparations and Costs. Judgment 15 March 1989. Series C No. 6. Par. 139-145.

[814] Ibid. Par. 158.

[815] IACtHR. Case of the "Panel Blanca" (Paniagua Morales and Others) V. Guatemala. Merits, Reparations and Cost. Judgment 8 March 1998. Series C No. 37. Par. 126-136.

[816] Ibid.

The Court established that the State was responsible for the violation of the procedural and substantive aspects of these homicides by the actions of security forces.

Standards:

Substantive Aspects:

- The perpetrators assured the concealment of the body, so in this way, it cannot be a corpse to be found, and there is no crime. The argument of the State that the body was not found cannot be admitted in the sense that the situation itself of indetermination of the whereabouts of a person determines the possibility that the authors of an enforced disappearance hide or destroy the remains of the victim. The Court established that this is frequent in the cases of forced disappearances to ensure the absolute impunity of the perpetrators of the crime.[817]
- The Court recognises the relatives of the disappeared persons (direct victims) as indirect victims of the crime of enforced disappearance. In this case, proving the relation was unnecessary, as the consanguinity was enough. This is important regarding the anguish and torture that signifies for the relatives of the disappeared person, not knowing about their fate and whereabouts.[818]

5. Case Goiburú and Other V. Paraguay. Judgment 22 September 2006:

Facts: General Alfredo Stroessner's military dictatorship in Paraguay started with a coup d'état in 1954 and lasted for 35 years until the coup d'état headed by his father-in-law, General Andrés Rodríguez.[819]

Dr. Agustín Goiburú was a medical doctor and surgeon. In 1958, he founded the Colorado Popular Movement ("MOPOCCO"), a group against Stroessner. He was the object of a harassment campaign, and consequently, he had to leave Paraguay in September 1959, when he decided to exile to Argentina. However, the vigilance over him and his family continued.[820]

The doctor Agustín Goiburú was kidnapped on 9 February 1977 when he was leaving the Hospital San Martín. Doctor Goiburú's disappearance shows a coordinated action between the Paraguayan and Argentinian security forces inside the Condor operation.

[817] Ibid. Par. 120.

[818] Ibid. Par. 156.

[819] IACtHR. Case Goiburú and Others V. Paraguay. Merits, Reparations and Costs. Judgment 22 September 2006. Series C No. 153. Par. 56.

[820] Ibid Par. 61.

His disappearance is framed on the *modus operandi* in which the Paraguayans disappeared in Argentina during the military dictatorship of this country.

The Condor Operation was a plan carried out in Latin American countries during the 1970s and 1980s, and different dictatorships were established in these countries. Most of the dictatorial governments of the region of the *"Cono Sur"* (southern cone) assumed power or were in control during the decade of the 1970s, which allowed the repression against people named as *"subversive elements"* to an inter-state level. The ideological support of these regimes was the *"doctrine of national security"*, by which the visualisation of the left movements and other groups was *"common enemies"* regardless of nationality. Thousands of citizens of the southern cone searched for ways to escape the repression of their countries of origin by taking refuge in border countries. In this context, dictatorships created a common defence strategy.[821]

In this frame, the operation called "Operation Cóndor" took place, a key name given to the alliance that united the security forces and services of intelligence of the dictatorships of the southern cone in their fight and repression against persons named as subversive elements. The activities deployed as part of this Operation were coordinated by the military of the countries involved. Such an operation systematised the covert coordination between the *"security and military forces and services of intelligence"* of the region more effectively, which the CIA, the agency of intelligence, among other agencies of the United States of America, had supported. For Operation Condor to work, the system of codes and communication needed to be effective, so different States managed the list of *"subversive wants"* fluently.[822] The State recognised its responsibility because of the grave circumstances and context in which the facts occurred.

Standards:

Substantive Aspects:

- The structure of state securities was coordinated and unleashed against the nations at a trans-frontier level by the dictatorial governments involved. The Court has estimated that it is adequate to consider the context in which the facts permeate and condition

[821] Ibid. Par. 61.5.

[822] Ibid. Par. 61.6.

the international responsibility of the State concerning the obligation to respect and guarantee the rights established in the Convention.[823]

Procedural Aspects:

- The IACtHR estimates that before the seriousness of the crimes and the nature of the injured rights, the prohibition of the enforced disappearance of people and the correlative duty of investigating and sanctioning its responsibility has reached the character of *Ius Cogens*.[824]
- The Court considers that the state's responsibility for not repairing the consequences of violations in this case does not diminish because the victims' relatives have not tried using civil and administrative means. The obligation to repair the damage is a juridical duty of the State that does not exclusively depend on the processual activity of the victims.[825]
- A judgment constitutes a form of reparation *per se*. The Court determines that the State must comply with the obligation to investigate the denounced facts, identify, judge, and sanction the responsible parties, and carry out other kinds of commitments and judicial processes in charge of the State.[826]

6. Case Ibsen Cárdenas and Ibsen Peña V. Bolivia. Judgment 1 September 2010:

Facts: Between 1964 and February 1982, a military dictatorship was led by Hugo Banzer Suárez in Bolivia, followed by the impunity of perpetrators of crimes under this regime. Mr. Rainer Ibsen Cárdenas and José Luis Ibsen Peña were victims of forced disappearances from October 1971 and February 1973, respectively. Moreover, there was a lack of repair to the relatives of the damage caused and uncertainty about the whereabouts of the victims.[827]

The whereabouts of Mr. Rainer Ibsen Cárdenas were established in 2008 when his remains were located, identified, and delivered to his relatives. This has not happened concerning José Luis Ibsen Peña.[828] The Court determined that the State was

[823] Ibid. Par. 62, 63.

[824] Ibid. Par. 84.

[825] Ibid. Par. 122.

[826] Ibid. Section XIII.

[827] IACtHR. Case Ibsen Cárdenas and Ibsen Peña V. Bolivia. Merits, Reparations and Costs. Judgment 1 September 2010. Series C No. 217. Par. 49-75.

[828] Ibid.

responsible for violating the procedural and substantive aspects of the right to life in these homicides by the action of the security forces.

Standards:

Procedural Aspects:

- The Court establishes that the authorities in charge of the investigation are responsible for ensuring that they value the systematic patterns that allowed the commission of serious human rights violations.[829]
- The IACtHR determines that the State must compensate for material and immaterial damage.

7. Case Gomes Lund and others ("GUERRILHA DO ARAGUAIA") V. Brazil. Judgment 24 November 2010:

Facts: The Commission presented the lawsuit that referred to the alleged responsibility of the State of Brazil for the arbitrary detention, torture and enforced disappearance of 70 persons, including members of the Communist Party of Brazil and farmers of the region. This resulted from the Brazilian army's operations between 1972 and 1975 to eradicate the Guerrilha do Araguaia.[830] In the context of the military dictatorship of Brazil between 1964 and 1985.[831] In addition, the Commission subjected the case to the IACtHR because the State did not carry out a criminal investigation to judge and did not sanction the persons responsible for the enforced disappearance of the 70 victims.[832] Furthermore, the Court found the State guilty of the violation of the substantive and procedural aspects of the right to life of these homicides by the action of security forces.

Standards:

Procedural Aspects:

- The Court can presume damage to the physical and moral integrity of the direct relatives of the victims of specific violations of human rights by applying a presumption *juris tantum*[833] concerning mothers and fathers, daughters, sons,

[829] Ibid. Par. 166, 174.

[830] A guerrilla group originated in the Communist Party of Brazil established as an internal enemy.

[831] IACtHR. Case Gomes Lund and others ("Guerrilha do Araguaia") V. Brazil. Merits, Reparations and Costs. Judgment 24 November 2010. Series C No. 219. Par. 81-93.

[832] Ibid. Par. 81-93.

[833] Presumption of law that order to admit as proved a fact in a trial while there is no proof on the contrary of this fact.

husbands and wives, and permanent partners who always correspond to particular circumstances of the case.[834]

- The obligation to investigate human rights violations can be found among the positive obligations the State must adopt to guarantee the rights acknowledged in the Convention.[835]

8. Case Gelman V. Uruguay. Judgment 24 February 2011:

Facts: There was an enforced disappearance of María Claudia García Iruretagoyena of Gelman at the end of 1976; she was detained in Buenos Aires, Argentina, while she was in an advanced stage of her pregnancy. It is presumed that later, she was transferred to Uruguay, where she allegedly gave birth to her daughter, who was delivered to a Uruguayan family. [836]

Furthermore, the Commission alleged the suppression of the identity and nationality of María Macarena Gelman García Iruretagoyena, daughter of María Claudia García and Marcelo Gelman and the denial of justice, impunity and, in general, the suffering caused to Juan Gelman, his family, María Macarena Gelman and the relatives of María Claudia García, as consequence of the lack of investigation of the facts, judging and sanction of the responsible, under the Punitive Claim Expiration Law enacted in 1986 by the democratic government of Uruguay. After verifying the facts determined, the Court accepted the partial acknowledgement of international responsibility effected by the State.[837] For the part that the State did not acknowledge, the Court considered that this was responsible for the violation of the procedural and substantive aspects of the right to life by this homicide and appropriation of a person by the action of the security forces.

Standards:

Procedural Aspects:

- The amnesties or analogous figures have been one of the obstacles alleged by several States to investigate and, in their case, sanction those responsible for serious human rights violations. This tribunal, the Inter-American Commission of Human Rights, the

[834] IACtHR. Case Gomes Lund and others ("Guerrilha do Araguaia") V. Brazil. Merits, Reparations and Costs. Judgment 24 November 2010. Series C No. 219. Par. 235.

[835] Ibid. Section XII, II. Par. 9.

[836] IACtHR. Case Gelman V. Uruguay. Merits, Reparations and Costs. Judgment 24 February 2011. Series C No. 221. Par. 44-52.

[837] Ibid. Par. 2.

organs of the United Nations and other universal and regional organisations of protection of human rights have spoken about the incompatibility of the amnesty laws relative to serious violations of human rights with international law and the states' international obligations.[838]

9. Case Contreras and others V. El Salvador. Judgment 31 August 2011:

Facts: The Commission presented the lawsuit that was related to the alleged forced disappearances that took place between the years 1981 and 1983 of children by the members of different military bodies in the context of *"insurgency operations"* during an armed conflict in El Salvador, having been established only the whereabouts of Gregoria Herminia Contreras on the year 2006, who can be found on a process of reconstruction of identity and relation with her family by blood.[839] The Court verified the facts and decided that it accepted the acknowledgement of the international responsibility effected by the State.

Standards:

Substantive Aspects:

- The Court considers that the separation of girls and boys from their families has caused specific effects on their integrity of *"special gravity, which has a lasting impact"*. Corresponds to the State's protection of the civil population in the armed conflict, especially children who are in a situation of grave vulnerability and risk.[840]
- In some instances, the state agents acted on the sidelines of the juridical order using the structure and installations of the State to perpetrate the forced disappearance of boys and girls through the systematic character of the repression that was subjected to determined sectors of the considered population as subversives or guerrillas, or in some way contrary or opponents to the government.[841]

European Court of Human Rights

1. Case Kurt V. Turkey. Judgment 25 May 1998:

[838] Ibid. Par. 195.

[839] IACtHR. Case Contreras and Others V. El Salvador. Merits, Reparations and Costs. Judgment 31 August 2011. Series C No. 232. Par. 2, 41-55.

[840] Ibid. Par. 100, 108.

[841] Ibid. Par. 108.

Facts: The facts surrounding the disappearance are disputed.[842] From 23 to 25 November 1993, security forces, composed of gendarmes and several village guards, operated in the village of Ağıllı. On 23 November 1993, following intelligence reports that three terrorists would visit the village, the security forces took up positions around the town. Two clashes followed.[843]

When the soldiers gathered the villagers in the schoolyard on 24 November 1993, they were looking for Üzeyir Kurt, who was not there. He was hiding in his aunt's house. The soldiers went to that house and took Üzeyir from there. The morning of 25 November 1993 was the last time the mother, who is the applicant, saw Üzeyir. The applicant maintains no evidence that he was seen elsewhere after this time.[844]

On 30 November 1993, the applicant received a response from Captain Izzet Cural at the provincial gendarmerie headquarters,[845] stating that it was supposed that Üzeyir had been kidnapped by the PKK (the Kurdish Workers' Party). The Government submit that there are substantial grounds for believing that Üzeyir Kurt has joined or been abducted by the PKK.[846] The Court found that the State was not responsible for the violation of the procedural or substantive aspect of the right to life because there was not enough proof to determine that security forces killed Kurt.

Standards:

Substantive Standards:

- Amnesty International identified the following elements of the crime of disappearances from their analysis of the relevant international instruments addressing this phenomenon: (a) a deprivation of liberty; (b) by government agents or with their consent or acquiescence; followed by (c) an absence of information or refusal to acknowledge the deprivation of liberty or refusal to disclose the fate or whereabouts of the person; (d) thereby placing such persons outside the protection of the law. According to Amnesty International, while *"disappearances"* often take the form of a systematic pattern, they need not do so.[847]

[842] ECtHR. Case of Kurt V. Turkey. (Application no. 15/1997/799/1002). Strasbourg. 25 May 1998. Par. 8, 9.

[843] Ibid. Par. 14.

[844] Ibid. Par. 15.

[845] Ibid. Par. 16.

[846] Ibid. Par. 28.

[847] Ibid. Par. 68.

- A *"disappearance"* is seen as constituting a violation of the individual's liberty, security, and other fundamental rights.[848]
- The gravity of the violations of the rights attendant on a disappearance has led the United Nations Human Rights Committee to conclude about Article 6 of the International Covenant on Civil and Political Rights that state parties should take specific and compelling measures to prevent the disappearance of individuals.[849],[850]

Procedural Aspects:

- The Court notes that in those cases where it has found that a Contracting State had a positive obligation under Article 2 to conduct an effective investigation into the circumstances surrounding an alleged unlawful killing by the agents of that State, there existed concrete evidence of a fatal shooting which could bring that obligation into play.[851]
- The State should establish facilities and procedures to investigate thoroughly cases of missing and disappearing persons, which may involve a violation of the right to life.[852]

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[848] Ibid. Par. 69.

[849] Ibid.

[850] United Nations General Assembly. *International Covenant on Civil and Political Rights*. Adopted 16 November of 1966. Entry into force 23 March 1976. Article 6: 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. 3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

[851] ECtHR. Case of Kurt V. Turkey. (Application no. 15/1997/799/1002). Strasbourg. 25 May 1998. Ibid. Par. 108.

[852] Ibid. Par. 69.

2. Case of Ertak V. Turkey. Judgment 9 May 2000:

Facts: The facts surrounding the disappearance of Mehmet Ertak are disputed.[853] Between 18 and 20 August 1992, several people were taken into police custody at the Şırnak gendarmerie command and security police headquarters on 21 August. At the time of the events, Mehmet Ertak worked at a coal mine. At the Bakımevi checkpoint, police officers stopped the taxi where Mehmet Ertak was travelling home from work with three other people. The police officers took their identity papers, and one of them asked which one was Mehmet Ertak. Mehmet Ertak identified himself, and the officers took him away. Abdurrahim Demir, a lawyer taken into police custody on 22 August 1992 and released on 15 September 1992,[854] told the applicant (the mother of Ertak) that he had spent five or six days in the same room as Mehmet Ertak. He also stated that Mehmet Ertak had been severely tortured; on being brought back to his cell, he had been unconscious, displaying no signs of life.[855] The Court found the State responsible for the violation of the substantive and procedural aspects of the right to life of this homicide by the action of the security forces; considering the difference from the case of Kurt, there was enough evidence to prove that Ertak had died in the custody of the State. In the Kurt case, although the applicant's son had been taken into custody, there was no other evidence of the treatment to which he had been subjected after that or his subsequent fate.[856]

Standards:

Substantive Aspects:

- This case must be distinguished from the Kurt case, in which the Court examined the applicant's complaints about her son's disappearance under Article 5 (Right to Liberty).[857],[858]

[853] ECtHR. Case of Ertak V. Turkey. (Application no. 20764/92). Strasbourg. 9 May 2000. Par. 8.

[854] Ibid. Par. 17.

[855] Ibid.

[856] Ibid. Par. 18.

[857] Ibid. Par. 18.

[858] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms.* Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 5: Right to liberty and security 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a

• The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention and, together with Article 3, enshrines one of the fundamental values of the democratic societies making up the Council of Europe. The obligation imposed is not exclusively concerned with intentional killing resulting from the use of force by agents of the State but also extends, in the first sentence of Article 2.1, to a positive obligation on States to protect the right to life by law.[859]

Procedural Aspects:

• This requires, by implication, that there should be some form of adequate and effective official investigation when individuals have been killed as a result of the use of force. The procedural protection of the right to life inherent in Article 2 of the Convention entails an obligation for agents of the State to account for their use of lethal force. They subject their actions to some form of independent and public scrutiny that can determine whether the force used was or was not justified in a particular set of circumstances.[860]

3. Case Timurtas V. Turkey. Judgment of 13 June 2000:

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person after conviction by a competent court; (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to defortation or extradition. 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. 3. Everyone arrested or detained following the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

[859] ECtHR. Case of Ertak V. Turkey. (Application no. 20764/92). Strasbourg. 9 May 2000. Par. 134.

[860] Ibid. Par. 134.

Facts: The facts surrounding the disappearance of Abdulvahap Timurtaş are disputed.[861]

On 14 August 1993, the applicant (father of Timurtas) received a telephone call from someone who did not identify himself. The caller said that the applicant's son, Abdulvahap, had been apprehended that day near the village of Yeniköy, in the district of Silopi, Şırnak province, by soldiers attached to Silopi central gendarmerie headquarters.[862] The Court decided that the State was responsible for the violation of the substantive and procedural aspects of the right to life by this homicide by the action of the security forces.

Standards:

Substantive Aspects:

- The Court has previously held that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing an issue that arises under Article 3 of the Convention (Prohibition of Torture).[863],[864]

Procedural Aspects:

- Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody.[865]
- The period which has elapsed since the person was placed in detention, although not decisive, is a relevant factor to be considered. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that they

[861] ECtHR. Case of Timurtas V. Turkey. (Application no. 23531/94). Strasbourg.13 June 2000. Par. 1, 9.

[862] Ibid.

[863] Ibid. Par. 82.

[864] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 3: Prohibition of torture No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

[865] ECtHR. Case of Timurtas V. Turkey. (Application no. 23531/94). Strasbourg.13 June 2000. Par. 82.

have died. The passage of time may, therefore, to some extent, affect the weight of being attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead.[866]

- The Court reiterates that the obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention, *"to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention",* requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.[867]

4. Case of Salman V. Turkey. Judgment 27 June 2000:

Facts: The facts of the case, particularly concerning events on 28 and 29 April 1992 when Agit Salman, the applicant's husband, was detained by police and subsequently died, were disputed by the parties.[868] Agit Salman, the applicant's husband, worked as a taxi driver in Adana. He had no history of ill health or heart problems. On 26 February 1992, Agit Salman was taken into custody by police officers from the anti-terrorism branch of the Adana Security Directorate. During an operation conducted to apprehend several persons suspected of involvement with the PKK (Workers' Party of Kurdistan), police officers came to the applicant's house in the early hours of 28 April 1992, looking for Agit Salman. According to a statement signed by the police officers who had said they had brought Agit Salman to the hospital at 2 a.m. on 29 April 1992, the custody officer informed them that Agit Salman was ill. The Commission found that Agit Salman had died rapidly, without a prolonged period of breathlessness. The Commission concluded that Agit Salman had been subjected to torture during interrogation, which had provoked cardiac arrest and thereby caused his death.[869] The Court decided that the State was responsible for the violation of the substantive and procedural aspects of their right to life and the prohibition of torture by this homicide committed by the action of security forces.

Standards:

[866] Ibid. Par. 84.

[867] Ibid. Par. 88.

[868] ECtHR. Case of Salman V. Turkey. (Application no. 21986/93). Strasbourg. 27 June 2000. Par. 1, 6, 8, 9, 10, 11.

[869] Ibid. Par. 32.

Substantive Aspects:

- People in custody are vulnerable, and the authorities must protect them. Consequently, when an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation of the authorities to account for the treatment of an individual in custody is particularly stringent when that individual dies.[870]

Procedural Aspects:

- In assessing evidence, the Court has generally applied the standard of proof *"beyond a reasonable doubt".* However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact.[871]
- Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise regarding injuries and death occurring during such detention. Indeed, the burden of proof may be considered as resting on the authorities to provide a satisfactory and convincing explanation.[872]

5. Case of Avsar V. Turkey. Judgment 27 March 2002:

Facts: This case concerns, principally, the events between 22 April and 7 May 1994, when Mehmet Şerif Avşar, who had been taken away by armed men, was found killed outside Diyarbakır.[873] Between 1992 and 1994, a large number of disappearances and unexplained killings occurred in the southeast of Turkey in the context of counter-insurgency measures against the PKK. On 22 April, at about 11.00 hours, five village guards entered the fertiliser business premises that the Avşar family ran in Diyarbakır. They talked to Mehmet Şerif Avşar and said they would take him into custody. The seven men took Mehmet Şerif Avşar from the shop, placing him in a white Toros car.[874] The Court established that the State was guilty of violating the substantive and

[870] Ibid. Par. 99.

[871] Ibid. Par. 100.

[872] Ibid.

[873] ECtHR. Case of Avsar V. Turkey. (Application no. 25657/94). Strasbourg. 10 July 2001. Par. 8

[874] Ibid. Par. 10.

procedural aspects of the right to life by this homicide by the action of the security forces.

Standards:

Substantive Aspects:

- The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied to make its safeguards practical and effective.[875]
- In light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, considering the actions of state agents and all the surrounding circumstances.[876]
- The Court observes that the applicant government contends, first and foremost, that the missing persons must be presumed to be still alive unless there is clear evidence to the contrary.[877]

Procedural Aspects:

- The Court considers that taking a person unlawfully, without a judicial warrant and not giving this a right to a fair trial violates Article 6 of the European Convention on Human Rights.[878],[879]

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[875] Ibid. Par. 390.

[876] Ibid.

[877] Ibid. Par. 387, 388, 389.

[878] Ibid.

[879] Council of Europe and European Court of Human Rights. *European Convention for the Protection of Human Rights and Fundamental Freedoms*. Strasbourg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953. Article 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to

- The Court recalls that there is no proof that any of the missing persons have been unlawfully killed. However, in its opinion, the procedural obligation also arises upon evidence of an arguable claim that an individual who was last seen in the custody of agents of the state subsequently disappeared in a context which may be considered life-threatening.[880]
- The essential purpose of an investigation is to secure the effective implementation of domestic laws that protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act on their initiative once they become aware of the matter. They cannot leave it to the initiative of the next of kin to lodge a formal complaint or to take responsibility for conducting any investigatory procedures.[881]
- The Court recalls that in the normal course of events, a criminal trial, with an adversarial procedure before an independent and impartial judge, must be regarded as furnishing the most substantial safeguards of an effective method for finding facts and attributing criminal responsibility.[882]
- The fact that one suspect, amongst several, has succeeded in escaping the criminal justice process is not conclusive of a failing by the authorities.[883]

6. Case of Gongadze V. Ukraine. Judgment 8 February 2006:

Facts: Georgiy Gongadze vanished on 16 September 2000 in circumstances that the Ukrainian authorities have not fully established.[884] He was a political journalist and the editor-in-chief of Ukrayinska Pravda, an online newspaper. He was known for criticising those in power and actively participating in awareness-raising in Ukraine

examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

[880] ECtHR. Case of Avsar V. Turkey. (Application no. 25657/94). Strasbourg. 10 July 2001. Par. 396, 397, 398.

[881] Ibid. Par. 391.

[882] Ibid. Par. 403.

[883] Ibid. Par. 404.

[884] ECtHR. Case of Gongadze V. Ukraine. (Application no. 34056/02). Strasbourg. 8 February 2006. Par. 9, 10.

and abroad regarding the problems of freedom of speech in his country. On 2 November 2000, the decapitated body of an unknown person was discovered in the vicinity of the town of Tarashcha in the Kyiv Region.[885] On 15 November 2000, upon examination of the body, they identified jewellery belonging to Mr. Gongadze. The applicant (the victim's wife) noted that, since 1991, eighteen journalists had been killed in Ukraine.[886] The Court determined that the State was responsible for the substantive and procedural violation of the right to life by this homicide by the action of security forces.

Standards:

Substantive Aspects:

- The Court reiterates that the first sentence of Article 2.1. enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place adequate criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for preventing, suppressing and punishing breaches of such provisions.[887]
- It also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect an individual or individuals whose lives are at risk from the criminal acts of another individual. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made regarding priorities and resources, the positive obligation must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities.[888]
- Not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they

[885] Ibid. Par. 18, 20.

[886] Ibid.

[887] Ibid. Par. 164.

[888] Ibid. Par. 164.

failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.[889]

Procedural Aspects:

- In the Court's view, the failure to take measures constitutes a breach of the obligation to exercise exemplary diligence and promptness in dealing with such a serious crime.[890]

7. Case of Imakayeva V. Russia. Judgment 9 February 2007:

Facts: The facts surrounding the disappearance of Said-Magomed Imakayev are disputed.[891] On the morning of 17 December 2000, Said-Khuseyn Imakayev drove to the market in the village of Starye Atagi. According to the applicant (wife of Imakayev), on 2 June 2002, she and her husband were in their house in Novye Atagi.[892] At 6.20 a.m., they were awakened by a loud noise in their courtyard. They saw several APCs and a UAZ car. About 20 servicemen in military camouflage uniforms, some wearing masks, entered the house. The applicant's husband, Said-Magomed Imakayev, was held against the wall during the search, and after it was over, he was forced into the UAZ vehicle. Then they departed. Her son had been taken by the same forces a few hours earlier.[893] The Court found that the State was responsible for the violation of the right to life in its procedural and substantive aspects by these homicides by the action of the security forces.

Standards:

Substantive Aspects:

- The Court notes the available information about the phenomenon of *"disappearances"* in Chechnya and agrees that, in the context of the conflict in Chechnya, when unidentified service members detain a person without any subsequent acknowledgement of detention, this can be regarded as life-threatening.[894]
- The Court recalls that the question of whether a family member of a *"disappeared person"* is a victim of treatment contrary to Article 3 will depend on the existence of

[889] Ibid. Par. 165.

[890] Ibid. Par. 165.

[891] ECtHR. Case of Imakayeva V. Russia. (Application no. 7615/02). Strasbourg. 9 February 2007. Par. 8, 10, 11.

[892] Ibid Par 47, 48.

[893] Ibid.

[894] Ibid. Par. 141.

unique factors which give the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused by relatives of a victim of a serious human rights violation. It is mainly that a relative may claim directly to be a victim of the authorities' conduct.[895]

8. Case of Medova V. Russia. Judgment 5 June 2009:

Facts: The applicant (Mrs. Medov's wife) submitted that on 15 June 2004, at about 8 p.m., her husband left his temporary home in Nazran in his car.[896] He did not come back home that night. On 16 to 17 June 2004, the applicant's husband called his brother and said on his mobile phone that his car had broken down. He tried to say where he was, but the phone was cut off. On the evening of 17 June 2004, the Medovs were informed that their son, Mr. Adam Medov, was detained at the Sunzhenskiy District Department of the Interior (the Sunzhenskiy ROVD). According to the police officers, Mr. Adam Medov was questioned and explained that on 15 June 2004, he had been apprehended near the Sunzha restaurant in Sleptsovskaya, along with a man to whom he had been giving a lift in his car and whose name he did not know. He said he had been apprehended by eight men, four of them of Russian origin and four of them of Chechen origin and subsequently taken to the Federal Security Service (FSB) headquarters in Magas, the capital of Ingushetia. There, he had been beaten and tortured.[897] The Court determined that the State was responsible for the procedural aspect of the right to life in this homicide by the action of the security forces.

Standards:

Procedural Aspects:

- The Court states that the investigators failed to ensure that the investigation received the required level of public scrutiny and to safeguard the interests of the next of kin in the proceedings. Moreover, the Court notes that the investigation was adjourned and resumed several times. Such handling of the investigation could have hurt the prospects of identifying the perpetrators and establishing the victim's fate.[898]

9. Case of Varnava and Others V. Turkey. Judgment 18 September 2009:

[895] Ibid. Par. 161, 164.

[896] ECtHR. Case of Medova V. Russia. (Application no. 25385/04). Strasbourg. 5 May 2009. Par. 7, 8, 9, 10, 11.

[897] Ibid.

[898] Ibid. Par. 110.

Facts: The complaints raised in this application arise out of the Turkish military operations in Northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus.[899] These events gave rise to four applications by the Government of Cyprus against the respondent State, leading to various findings of violations of the Convention. As an example, these are the facts regarding the disappearance of Andreas Varnava: The first applicant, an ironmonger, has been considered missing since 1974. In July 1974, the first applicant, responding to the declared general mobilisation, enlisted as a reservist in the 305 Reservists Battalion, headquartered in Dhali village. On 8 to 9 August 1974, the reserve soldiers of the 305 Reservists Battalion, including the applicant, manned Cypriot outposts along the front line opposite the Turkish military forces, which extended between Mia Milia and Koutsovendis.

On the morning of 14 August 1974, Turkish military forces, supported by tanks and air cover, launched an attack against the Cypriot area where the applicant and his battalion were serving.[900] The Cypriot line of defence was broken, and the Turkish military forces began advancing towards Mia Milia. The Cypriot forces began retreating and dispersed in all directions.[901] After a while, the Turkish army forces captured the area, and the applicant was trapped within. The applicant has been absent since. There are eight other applicants in this case.[902]

The respondent Government disputed that the applicants had been taken into captivity by the Turkish army during the military action in Cyprus in 1974.[903] The Court determined that the State was responsible for violating the procedural aspect of the right to life by this homicide by the action of the security forces of the State.

Standards:

Procedural Aspects:

- The Court considers that in the situation where persons are found injured or dead, or who have disappeared, in an area within the exclusive control of the authorities of the

[899] ECtHR. Case of Varnava and Others V. Turkey. (Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90). Strasbourg. 18 September 2009. Par. 21, 22, 23.

[900] Ibid. Par. 24, 25

[901] Ibid.

[902] Ibid.

[903] Ibid. Par. 85.

State and there is *prima facie* evidence that the State may be involved, the burden of proof may also shift to the government since the events in issue may lie wholly, or in large part, within the exclusive knowledge of the authorities. Strong inferences may be drawn if they fail to disclose crucial documents to enable the Court to establish the facts or provide a satisfactory and convincing explanation.[904]

- In this case, the Court finds no indication that the CMP (the United Nations Committee on Missing Persons *("CMP"))* is going beyond its limited terms of reference to play any role in determining the facts surrounding the deaths of the missing persons who have been identified or in collecting or assessing evidence to hold any perpetrators of unlawful violence to account in a criminal prosecution.[905]

Summary

The category of forced disappearances has the unique characteristic of having a lot of literature in both tribunals because it can be established that it is one of the more frequently committed crimes. In the IACtHR, there are more than eighty cases; in the ECtHR, there are twenty-seven, more than any other category in my examination. Analysing some of the literature about this crime is relevant to clarifying its characteristics and developing more information on it. There is little literature about the other categories except for analysing specific cases for each category.[906]

In my view, a good definition of forced disappearance is: *"forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorisation, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."*[907] This is the

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[904] Ibid. Par. 184.

[905] Ibid. Par. 192.

[906] Skinner, Stephen. "Chapter 3: Lethal Force, the Right to Life and Democratic Societies: Key Connection". In: *Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy*. Oxford, Hart Publishing, Bloomsbury Collections. 2023.

Ayala Corao, Carlos M. "La Ejecución de Sententicas en la Corte Interamericana de Derechos Humanos". In*: Estudios Constitucionales, Year 5 N° 1*. P.P. 127-201. University of Talca, 2007

[907] General Assembly Organization of American States. *Inter-American Convention on Forced Disappearances of Persons*. 9 June 1994. Belem do Para, Brazil. Article II: For the purposes of this

definition of the Inter-American Convention on Forced Disappearances of Persons and a thorough and complete description.

The ECtHR dictated its first sentence about forced disappearances ten years after Velásquez Rodríguez, issued by the IACtHR in 1988.[908] A paradigmatic case for the ECtHR is Timurtas v. Turkey, judgment of 13 June 2000. This latter is a key case that oriented the ECtHR's activity concerning forced disappearances since 2000.[909]

In this category, the IACtHR demonstrates that the state must determine the reparation of the victims' rights. The reparations are the step after the substantive and procedural aspects, and they are part of the legal consequences together with the punishment of the responsible. If the victims die, it is impossible to bring them back to life, but the reparation must go to the indirect victims, who are their relatives. This can be done with compensation or other ways, and the judgment is, *per se*, a form of reparation. The aim is always to establish the situation as it was before the crime, but in the case of murders, it is not possible. According to the court, the immaterial damage is the suffering and afflictions caused to the direct victim and their relatives, the impairment of significant values to people, and its alterations, of a non-pecuniary nature, in the conditions of the existence of the victims or their families. The court demonstrates that the state must compensate the indirect victims for material and immaterial damage. The latter refers to moral damage, such as the suffering and afflictions caused to the direct and indirect victims, which is non-pecuniary in nature. In my opinion, in this category, the court identifies the characteristics of forced disappearances. The court determines that every state has the right and the duty to guarantee its security, but it

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Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorisation, supfort, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

[908] Kyriakou, Nikolas. *"Enforced disappearance in international human rights law."* PhD Thesis. European University Institute. Department of Law. 2012. P. 50.

[909] López Guerra, Luis. "Desapariciones Forzadas en la jurisprudencia del Tribunal Europeo de Derechos Humanos". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM.* Ed. Instituto de Estudios Constitucionales del Estado de Querétaro. P.P. 431-452. México, 2020. P. 440.

cannot commit crimes against people; no matter which crime they have committed, they cannot take actions against the person's dignity. Forced disappearances violate the rights of Article 4, Article 5, Article 7, Article 8, Article 1 and Article 2 of the American Convention on Human Rights. The problem with this kind of crime is that there is a concealment of the body to procure the impunity of the perpetrators. Still, the obligation to investigate continues while the destiny and whereabouts of the person are not defined. The relatives have the right to know what happened to their loved ones. Also, the court highlights the right of people deprived of their liberty to be treated with dignity. People under the state's custody must be treated with respect and dignity inherent to the human condition. The IACtHR highlights the state's responsibility for acts of particulars if there was an acquiescence to this and/or if it did not act with the due diligence of investigating the crimes. The first case about the enforced disappearance of the IACtHR is Velásquez Rodríguez V. Honduras, judgment of 29 July 1988. The IACtHR has determined that this crime constitutes a breach of the obligation of the state to guarantee the right to life in a preventive and efficient way. This case was quoted and used as a background in several subsequent cases of the two courts. After this judgment, the juridical protection of the right to life was extended in the decisions of the IACtHR in 1990. In 1994, the Inter-American Convention on Forced Disappearance of Persons was adopted.[910] The case of Velásquez Rodríguez was a paradigmatic point for the IACtHR and other tribunals. Renata Cenedesi Bom Costa Rodríguez establishes the importance of this case by stating: *"This judgment represents the first step to the extension of the concept of the right to life for not conceiving this right in a restrictive form, demanding of the states the positive obligation of taking all the necessary providences to protect and preserve the right to life".*[911] In this category, it is proven that if the state cannot procure the re-establishment of the situation before the crime, it must develop legal consequences in the form of reparations, as mentioned above. The court highlights that the duty of prevention encompasses all juridical, political, administrative and cultural measures that promote safeguarding human rights. The violation of human rights is an illicit act

[910] General Assembly Organization of American States. *Inter-American Convention on Forced Disappearances of Persons*. 9 June 1994. Belem do Para, Brazil.

[911] Bom Costa Rodríguez, Renata Cenedesi. "El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos". In: *Revista del Foro Constitucional Iberoamericano,* N. 9, January-March. P.P.74-112. 2005. P. 100.

that is susceptible to carrying sanctions on those who commit these violations and the obligation to compensate the victims for the prejudicial consequences. These are the legal consequences of the breach of the procedural and substantive aspects of the right to life, prohibition of torture and the right to liberty, among other rights infringed. It is relevant to identify that in this category, as the body was concealed and there was no proof of the crime because the whole state's apparatus was involved, including the judicial power, the declarations of witnesses became sufficient proof to determine the existence of a crime. This crime is committed under the coverture of public power. The court shows that the apparatus of the state served to create a climate where the execution of forced disappearances was committed with impunity, as the security forces kidnap people, torture them, and, the majority of the time, kill them. The judicial power was a part of this and did not act or accept lawsuits about the disappeared people. The population understood the disappearances as a public and notorious fact, and this crime created a climate of fear and instability among the citizens. The people who disappeared were considered dangerous or *"enemies of the state"* because they were part of guerrilla groups, communist or socialist parties, or for being against the dictatorship governments. The military and police authorities, like the government or the judicial power, refused or could not prevent, investigate and sanction the facts. This proves that the whole state apparatus was involved in the mechanics of forced disappearances. The cases that reached domestic justice were processed slowly, and the majority were finally dismissed. The court demonstrates that the argument of the state that the body was not found cannot be admitted because the situation itself of indetermination of the whereabouts of a person determines the possibility that the authors of an enforced disappearance hide or destroy the remains of the victim. This was common in this crime. The court recognises the character of indirect victims for the relatives or loved ones of the direct victim (the disappeared person) and many times establishes that it violated Article 3 regarding indirect victims for the suffering of not knowing where the direct victim was. The IACtHR considers that the prohibition of the enforced disappearance of people and the correlative duty of investigating and sanctioning its responsibility has reached the character of *Ius Cogens,* a peremptory norm. The structure of state securities was coordinated and applied against the nations at a trans-frontier level by the dictatorial governments involved. This was proven by people who left their country to go to another that was also under a dictatorship and disappeared there. The court states that, by applying a presumption *juris tantum,*

damage can be attributed to the physical and moral integrity of the relatives and loved ones of the direct victim of a specific human rights violation. It is significant to establish the theft of babies of people who were captive. These babies that are adults today were taken from their biological families and given to other families, which signifies a crime of emulating the identity and the theft of people.[912] The crimes of a dictatorship do not stop being investigated because the government changes. These crimes must continue to be investigated by the subsequent government. The court considers that the separation of girls and boys from their families has caused specific effects on their integrity of extraordinary gravity, which has a lasting impact. According to the court, protecting the civil population, especially children, is at grave vulnerability and risk. The state agents acted on the sidelines of the juridical order using the state's installations and structures. This was allowed because the whole state apparatus was involved and permitted the forced disappearances and the violations of human rights.

The first case of enforced disappearance was ruled by the IACtHR in 1988. During the decade of the 1990s, with the adoption of the Inter-American Convention on Forced Disappearance, significant changes were seen in the internal regulations of the state parties. This instrument defines enforced disappearance and highlights the impossibility of exemption from responsibilities to a person alleged to have acted in due obedience to superior instructions that authorised or established the enforced disappearance. Furthermore, this Convention demonstrated that those responsible for this crime could only be judged by the competent common proper jurisdictions, removing all possibility of special jurisdictions like the military and eliminating the immunities for these charges.[913]

Concerning the ECtHR, Amnesty International, which was part of the case Kurt V. Turkey, establishes another excellent definition of forced disappearances: (a) deprivation of liberty; (b) by government agents or with their consent or acquiescence, followed by (c) an absence of information or refusal to acknowledge the deprivation

[912] The organisation "Abuelas de Plaza de Mayo" in Argentina did fantastic work finding the babies of the disappeared people and uniting them with their families since the dictatorship ended and democracy returned in 1983.

[913] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". *Ed. Facultad de Derecho, Centro de Derechos.* P.P. 59-136. 2005. P. 75.

of liberty or refusal to disclose the fate or whereabouts of the person; (d) thereby placing such persons outside the protection of the law. The ECtHR considers that forced disappearances violate Article 2, Article 3, Article 5, Article 6 and Article 1 of the European Convention on Human Rights. In this category, the court acknowledges that when an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the state to provide a plausible explanation of how those injuries were caused. When people are in the custody of the state, it is the state's responsibility to treat them with the inherent dignity of the human being and in a humane way. The court determines that it will depend on the circumstances of each case, particularly on sufficient circumstantial evidence. This is based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody.

This is of extreme importance, considering that in cases examined in this section of the IACtHR, it is established that if the corpse is not found, it is difficult to prove that there was a crime. Meanwhile, the ECtHR demonstrates that if a person disappears. At the same time, in the custody of security forces, a period passed, and it could be determined that the person died in the state's custody. The period which has elapsed since the person was placed in detention, although not decisive, is a relevant factor to be considered to presume that the person might be dead. In my opinion, the court finds that as time goes by without any news of the whereabouts or destiny of the person, it is most likely that this individual might have died. The ECtHR considers it significant to establish that people in the state's custody are vulnerable and that the state must take care of them. The responsibility of the state when a person is in its custody is particularly stringent when that individual dies. When assessing evidence, the court has generally applied the standard of proof *"beyond a reasonable doubt".* The burden of proof rests on the state to provide a satisfactory explanation with evidentiary elements that it does not have the responsibility for the death of the person. The court recalls that the state establishes there is no proof that any of the missing persons have been unlawfully killed. The state maintained that the missing person must be presumed alive unless there is clear evidence to the contrary. However, the body cannot be found because it was concealed. The procedural obligation also arises upon proof of an arguable claim that an individual who was last seen in the custody of agents of the state subsequently disappeared in a context which may be considered life-threatening. The court shows that in domestic justice and the normal course of events, a criminal

trial, with an adversarial procedure before an independent and impartial judge, must be regarded as furnishing the most substantial safeguards of an effective method for finding facts and attributing criminal responsibility. This is the task of national courts, while the ECtHR must determine if the provisions of the Convention made the domestic judgment. The Court reiterates that the first sentence of Article 2.1 establishes that the state not only must refrain from the intentional and unlawful taking of life but also must take appropriate steps to safeguard the lives of those within its jurisdiction. Furthermore, the state has a duty under Article 2 of the Convention to prevent the violation of human rights and, if this has occurred, to investigate and sanction the party responsible. The court determines that the state must protect an individual in danger from another individual's criminal acts. However, this cannot be an impossible burden to the authorities. For a positive obligation of the state to arise, it is necessary that it is established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers. It is significant for the court to acknowledge that in Chechnya and Turkey, the situation of a person who disappeared in state custody was life-threatening. In the case of Ertak V. Turkey, the applicant identifies the problem of a systematic pattern of forced disappearances in southeast Turkey. However, the ECtHR decided that only insufficient proof exists to acknowledge a systematic pattern of forced disappearances in that area. The relatives may be regarded as victims under Article 3 of the Convention regarding the distress and suffering of not knowing the fate and whereabouts of the direct victim. The court remembers the importance of the investigation and the necessity that the investigators ensure that it receives the required level of public scrutiny and protects the interests of the next of kin in the proceedings.

The court considers that in the situation where persons are found injured or dead or who have disappeared in an area within the exclusive control of the state's authorities, there is prima facie evidence that this may be involved. The burden of proof may shift to the government since the events in issue may lie wholly or in large part within the exclusive knowledge of the authorities. In my view, it is also suspicious to the court that the respondent state refuses to disclose essential documents about the case.

The ECtHR has ruled since 1998, years after the first judgment of the IACtHR, about several cases of forced disappearances, mainly in Turkey and Russia.

Ophelia Claude determines that the ECtHR defines three different state obligations.[914]

1) The state must refrain from unlawful killings.

2) The state bears the positive obligation to prevent avoidable loss of life.

3) The state must investigate suspicious deaths.[915]

The first two obligations relate to the substantive aspect of the right to life, while the last concerns this right's procedural aspect.

López Guerra[916] states that the cases presented before the ECtHR about forced disappearances can be divided into four different areas: 1) The Turkish-Kurdish conflict; 2) Greek Cypriot clashes; 3) Clashes in the Caucasus between Russian forces and other nationalities; 4) Armed conflicts of the dissolution of Yugoslavia.[917] Encarnación Fernández[918] finds that since 1990, the ECtHR has had to attend to a significant quantity of lawsuits about committed abuses by the security forces in situations of conflict or severe internal instability, extrajudicial executions, torture, illegal detentions, forced disappearances, among others, first in the South-East of Turkey and later in Chechnya. The International Convention for the Protection of All People Against Forced Disappearances tries to unify all the complexities of the phenomenon of forced disappearances. This document imposes the obligation to classify the crime of forced disappearances on state parties.[919] Fernández highlights the crimes of forced disappearances in Turkey and Chechnya, which are the ones that are most prosecuted before this court. The other two areas, as determined by López Guerra, have few cases presented before the ECtHR. These can be seen in Appendix I, where all the cases of forced disappearances are named.

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[914] Claude, Ophelia. "A Comparative Approach to Forced Disappearances in the Inter-American Court of Human Rights and the European." In: *Intercultural Human Rights Law Review.* Vol. 5. P.P. 407-461. 2010.

[915] Ibid. P. 420.

[916] López Guerra, Luis. "Desapariciones Forzadas en la Jurisprudencia del Tribunal Europeo de Derechos Humanos". In: *Instituto de Estudios Constitucionales del Estado de Querétaro.* Ed. Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM. P.P. 431-452. 2020.

[917] Ibid. P. 436.

[918] Fernández, Encarnación. "Nuevos Retos para el Tribunal Europeo de Derechos Humanos: La Jurisprudencia sobre Desapariciones Forzadas". (New Challenges for the European Court of Human Rights: The Case Law on Forced Disappearances). In*: Persona y Derecho, No. 61.* P.P.195-226. 2009.

[919] Ibid. P. 197.

In several cases of the category of forced disappearances, the IACtHR and the ECtHR had found the states responsible for the violation of the substantive and procedural aspects of the prohibition of torture regarding the victim, but in the majority of the judgments concerning the relatives (indirect victims).

Chapter IV: Comparison Between Standards and Identification of Similarities and Differences

I chose case study and comparative law methods to determine the standards of both courts regarding their decisions about the right to life violated by security forces. Case study and comparative law methods are complete and necessary for understanding the differences and similarities between standards that may be difficult to establish, being something so specific. Furthermore, through this comparison, I can establish the most critical standards of both tribunals in these kinds of cases.

Introduction

I chose case study and comparative law methods to determine the standards of both courts regarding their decisions about the right to life violated by security forces. Case study and comparative law methods are complete and necessary for understanding the differences and similarities between standards that may be difficult to establish, being something so specific. Furthermore, through this comparison, I can determine the most critical standards of both tribunals in these types of cases.

They will be divided into the substantive and procedural aspects of the right to life to organise the exposition and determine the differences and similarities between the ECtHR and the IACtHR standards.

4. A. Substantive Aspect of the Right to Life

The Similarities in this Aspect

In both courts, the importance of the principles of proportionality and absolute necessity in the act of using force, including whether it intentionally or unintentionally causes a person's death, is highlighted. Furthermore, both courts state the significance of sufficient elements or conditions for a death to occur and be justified. These conditions must be strictly constructed with careful scrutiny.

The tribunals state the necessity of respecting the right to life in a democratic society. The ECtHR establishes that lethal force can only be used when *"absolutely necessary."* This court highlights that the agents find themselves in a conflictive and stressful situation where they must decide if the best choice is to use weapons to save a life if it is absolutely necessary. This means a stricter and more compelling test of

necessity must be employed than the normally applicable test when determining whether state action is *"necessary in a democratic society."*

The ECtHR establishes that its approach to the interpretation of Article 2 must be guided by the object and purpose of the Convention as an instrument for the protection of individual human beings. In this way, its provisions must be interpreted and applied to make safeguards practical and effective for human beings. Article 2 of the European Convention on Human Rights protects the right to life and establishes circumstances when the deprivation of life may be justified. Article 2 ranks as one of the most fundamental provisions in the Convention. The ECtHR needs to clarify that paragraph 2 of Article 2 defines instances where the use of force is permitted, but does not primarily define cases in which it is allowed to kill a person intentionally. Using force may result in an unintended outcome, such as the deprivation of life. However, as it was established before, the use of force must be no more than *"absolutely necessary"* for the achievement of one of the purposes set out in Article 2 subparagraphs two a), b) or c). The use of lethal force is the last recourse in national and international law.

The obligation to protect the right to life under this provision (Article 2), taken in conjunction with the state's general duty under Article 1 of the Convention to *"secure to everyone within its jurisdiction the rights and freedoms defined in the Convention"*, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by agents of the state. Therefore, by all means at its disposal, the state must ensure an adequate response so that the legislative and administrative framework set up to protect the right to life is implemented correctly and any breaches of that right are repressed and punished. This standard appears most often in cases of violation of the right to life in the ECtHR.

The court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention and, together with Article 3, enshrines one of the fundamental values of the democratic societies making up the Council of Europe.

The obligation imposed is not exclusively concerned with intentional killing resulting from the use of force by state agents but also extends, in the first sentence of Article 2.1, to a positive obligation of states to protect by law the right to life. This requires, by implication, that there should be some form of adequate and effective official investigation when individuals have been killed as a result of the use of force.

The IACtHR repeats that the use of force must be employed in harmony with three principles and describes them as follows:

i. Legality: force must be directed to achieve a legitimate objective.

ii. Absolute necessity: it is necessary to verify if other available means exist to protect the life and personal integrity or the situation that it is intended to protect, in conformity with the circumstances of the case. For example, negotiating or apprehending the offenders without taking their lives

The ECtHR establishes that it is essential to understand the requirement of *"absolute necessity"* to use force against persons who are not representing a direct danger, even when the lack of the use of force will result in loss of the opportunity of capture.

iii. Proportionality: the level of force used must be consistent with the level of resistance offered. This principle is very important for deciding in cases of the first category established in this work: *"Disproportionate use of force by Agents of Security Forces"*.

The IACtHR has found in its case law that less harmful methods could be used and that the state could foresee less extreme means to achieve the same objective, like negotiation or warnings.

The IACtHR highlights the negative and positive obligations of the state regarding the right to life. This court clarifies that the positive obligation is not only for legislators but for all the state apparatus and that it is an obligation of the state parties of the Convention to adjust the norms of this instrument to their domestic laws. According to its case law, the ECtHR establishes that Article 2 may determine well-defined circumstances as a positive obligation on the authorities to take preventive operational measures. Nevertheless, this does not mean that a positive obligation to prevent every possibility of violence can be derived from this provision. I believe the IACtHR considered that the conviction that the actions and omissions attributable to the state are verified is necessary. This means that the state has an international obligation. Moreover, the IACtHR highlights the negative obligation of the state by saying that the global responsibility of the state is based on acts but also on omissions of any power or organ that violates the rights and freedoms contained in the Convention.

The IACtHR determines that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR are necessary to judge cases involving law enforcement. The IACtHR analyses essential issues when dealing with the use of force. First, it establishes three

moments: a) preventive actions, b) accompanying actions to the facts, and c) posterior actions to the facts. Second, it determines that it is essential for the state when dealing with the use of force: a) count on the existence of an adequate juridical frame that regulates the use of force and guarantees the right to life; b) provide appropriate equipment to the officers in charge of the use of force, and c) selection, capacitation and adequately trained officers in charge of the use of force. Although the ECtHR does not highlight the importance of these Basic Principles and the Code of Conduct, this instrument has the same standards that the ECtHR determines in its case law. The ECtHR finds that Article 2 implies a primary duty on the state to secure the right to life by establishing an appropriate legal and administrative framework outlining the limited circumstances in which law enforcement officials may use force and firearms, according to the relevant international standards. It is not in the text, but the court is probably referring to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR, which the IACtHR has mentioned extensively. According to the ECtHR, based on the principle of strict proportionality inherent in Article 2, the national legal framework regulating arrest operations must ensure that firearms use depends on carefully assessing the surrounding circumstances. In particular, it is necessary to evaluate the nature of the offence committed by the fugitive/s and the threat they pose. All of these are requirements needed for deciding the use of firearms in a delicate situation, and always as a last resort. Law enforcement officers in these situations must ask themselves if it is absolutely necessary.

The IACtHR reiterates the importance of the Code of Conduct about the use of force and firearms by the officers in charge of enforcing the law of the OHCHR, and that indicates clearly that the agents in charge of enforcing the law will not use firearms against the people except a) in self-defence or of other persons, in case of imminent danger of death or severe injuries, or b) to avoid the commission of a crime grave that entails a serious threat for life, or c) with the object of stopping a person that represents such danger and opposes resistance to the authority, or d) to prevent their escape, and only in that case that less extreme measures are insufficient to achieve such objectives. The Basic Principles on the Use of Force determines that the intentional use of lethal weapons may only happen when it is unavoidable to protect life. As a general rule, the use of firearms is planned as a measure of last resort in the light of national and international law. These measures to use firearms are very important to avoid the loss

of lives, and all law enforcement officers must know these criteria. Furthermore, the ECtHR, in its Article 2, has demonstrated some of these requirements for using force, such as in defence of any person from unlawful violence, to have a lawful arrest or prevent the escape of a lawfully detained person or in action lawfully taken to quell a riot or insurrection. These measures are in the second paragraph of Article 2 of the European Convention on Human Rights, which protects the right to life. However, both courts have found that if any of these events occur, it is essential to determine if the state agents comply with these criteria or if there is a less harmful way to resolve the situation. Both courts have determined that the right to life is essential for the existence and compliance of all other human rights in a democratic state and must be protected at all costs.

According to the IACtHR, the state must train and capacitate law enforcement. Moreover, this court establishes as essential that the equipment that the state agents have must be materially adequate to their reaction in a proportional way to the events in which they should intervene. The lethal weapons must be restricted to the last resort to avoid deaths and injuries. This court determines that when there is a force deployment, the state agents must evaluate the situation and have a previous action plan. It is essential to avoid, as much as possible, the deprivation of the offender's life and try to arrest them. The use of lethal weapons is only possible when it is inevitable to protect life.

The ECtHR considers that in keeping with the importance of the provision of Article 2 in a democratic society, the court must subject deprivations of life to the most scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the state who administer the force but also all the surrounding circumstances, including matters as the planning and control of the actions under examination. Both courts establish the importance of having a plan of action, controlling the actions, training and capacitation. Also, the ECtHR highlights the importance of the circumstances of planning and control of the operation and whether it is necessary to deploy state officers. In this respect, it is required to instruct them about the use of firearms.

The IACtHR needs to acknowledge that when the use of force is imperative, this must be done in harmony with the principles of legitimate finality, absolute necessity and proportionality. This last principle means that the agents must apply criteria for differentiated use of force, resistance, and aggression by the subject and employ tactics

of negotiations as appropriate. The ECtHR shows that the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2. The three principles mentioned are applied in both courts when force is deployed. Although the ECtHR only refers to absolute necessity and proportionality, its case law can establish a legitimate purpose.

The IACtHR determines that when state agents use illegitimate, excessive and disproportionate force, causing the loss of lives, it is considered an arbitrary deprivation of life. The state agents must face the situation carefully, trying to avoid the loss of lives if it is possible and, as was mentioned by both courts, lethal force must be the last resort.

This court worries a great deal about the impunity of these events. The ECtHR is also concerned about the possibility that these situations can be reiterated. However, it does not talk about impunity but establishes that punishment is necessary for perpetrators to avoid the repetition of these acts.

The ECtHR finds that the state's primary duty is to secure the right to life. This includes creating a suitable legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms according to the relevant international standards. Concerning domestic law and lethal force, this court establishes that in line with the principle of strict proportionality of Article 2, the national framework must carefully assess the situation, which depends on the use of firearms. The national law that regulates policing operations must secure a system of suitable and adequate safeguards against arbitrariness, abuse of force and avoidable accidents.

About the substantive aspect, the IACtHR determines that forced disappearances imply an abandonment of the values that emanate from human dignity and the fundamental principles of the American Convention on Human Rights. Moreover, this court establishes that the disappearance causes a generalised state of distress, insecurity, and fear in the society where this disappearance has taken place. The ECtHR considers that a *"disappearance"* constitutes a violation not only of the liberty and security of the person but also of other fundamental rights. The importance of the case Velasquez Rodríguez V. Honduras can be seen in this tribunal because it quotes this judgment and establishes that the court affirmed that: *"the phenomenon of disappearances is a complex form of human rights violation that must be understood*

and confronted integrally."[920] The gravity of the violation of the rights attendant on a disappearance has led the United Nations Human Rights Committee to conclude about Article 6 of the International Covenant on Civil and Political Rights that state parties should take specific and compelling measures to prevent the disappearance of individuals. It should determine facilities and procedures to investigate thoroughly cases of missing and disappearing persons, which may involve a violation of the right to life.

In the first case of the ECtHR, Kurt V. Turkey, Amnesty International interposed a written statement which explained the characteristics of an enforced disappearance. According to Amnesty International, while disappearances often take the form of a systematic pattern, they need not do so.

The IACtHR considers that the obligation of guaranteeing security and maintaining public order inside its territory corresponds to the state as an obligation and, thus, has the right to use force rightfully for the restoration if necessary. The state obligation must comply with all the requirements for using force mentioned above. The conventionality of using force must be evaluated in every circumstance and the context of the facts, considering the principles of legitimacy, absolute necessity, and proportionality. In this way, impunity is avoided, and the repetition of these events is presented on a larger scale. This would not happen if there were no consequences for the state agents who use the force without considering these criteria.

The ECtHR determines that Article 2, which protects the right to life and establishes the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to which no derogation is permitted, as the IACtHR stated in this same category as Article 4. The circumstances in which deprivation of life may be justified must consequently be strictly construed. The aim and purpose of the Convention as an instrument for the protection of individual human beings also need Article 2 to be interpreted and applied to make its safeguards practical and effective. The states must not breach the provisions of the Convention in any way to protect the right to life and other human rights.

The ECtHR considers that people in custody are vulnerable, and the authorities are obliged to protect them. The obligation of the authorities to account for the treatment

[920] ECtHR. Case of Kurt v. Turkey. (Application 15/1997/799/1002). Strasbourg. 25 May 1998. Par. 68, 69.

of an individual in custody is particularly rigorous when that individual dies. This is also a standard of the IACtHR, which demonstrates mainly in the category of forced disappearances, determining the danger of people under the custody of the state that may be subjected to torture, ill-treatment or punishment. Moreover, the kidnapping of a person is a case of arbitrary deprivation of liberty that can lead to torture, inhuman treatment, punishment or even death. Furthermore, enforced disappearance violates the right to be detained and taken without delay before a judge and to interpose the necessary recourses to control the legality of the detention. This means that the arrested people have juridical guarantees that are not being fulfilled. The victims of forced disappearance are subjected to prolonged isolation and coercive interrogation, and this represents a cruel and inhuman treatment. This harms the physical and moral liberty of the person and the right to be detained with due respect to the inherent dignity of the human being.

Another important concept that the ECtHR states in these standards is that if it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, in principle, there is no necessity to use lethal force. Even if the failure to use deadly force results in the opportunity to arrest the fugitive being lost. In this way, the court is prioritising the right to life over the arrest of a person who does not present a threat to the lives of other human beings.

Furthermore, the right to a fair trial, to be heard in front of an impartial, independent and competent judge, the presumption of innocence, the possibility of legal counsel and an interpreter if it is necessary, and the right to defence, among other prerogatives, are observed in the Article 6 of the ECHR and Article 8 of the American Convention on Human Rights. These rights must be applied in every situation when a person is charged with a criminal offence, and the categories of violation of the right to life by security forces of this work violate these provisions.

Another interesting notion is that in the letter of the ECHR and in the Code of Conduct for Law enforcement of the OHCHR, which the IACtHR applies, it is established that when an offender is escaping, it is possible to use lethal force. However, as mentioned above, the case law of the courts has determined that it is necessary to protect the right to life and use less extreme measures to apprehend the subject. Moreover, both courts consider that if the person who is escaping does not represent a danger to another person's life or limb, it is preferable that there is no capture but that the suspect's life is preserved. This applies only in circumstances where this offender does not represent

a threat to the lives of others. In my opinion, it is vital to present the crimes committed by this offender because if it is theft, there is no absolute necessity to kill the person. However, if this person has committed murder and is suspected of continuing to kill, the death may be justified.

The Differences in this Aspect

Regarding the positive obligation of the state, a difference between the courts is the following: according to the ECtHR, this obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, considering the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Considering humans' unpredictable nature, controlling an officer's actions in a dangerous situation is complex. The IACtHR does not present this clarification.

Concerning the IACtHR, it highlights the importance of the right to life as the rector principle of all the other rights. Also, it determines the context of systematic violence and killing of forced disappearances that can be found in many of the cases of this tribunal. In this respect, this court establishes that force was targeted at a direct group in many instances. The IACtHR notes that when a pattern of extrajudicial executions tolerated by the state exists, a climate incompatible with adequate protection of the right to life is generated. This occurs if there is a pattern of extrajudicial executions targeted at those that the state names *"internal enemies",* which has been seen on several occasions in countries of Latin America.

An essential standard for this court is that when the right to life is not respected, all rights are meaningless. As a positive obligation, the state must provide the required conditions so violations of that inalienable right do not occur. Therefore, the state must prevent its agents' attempts to violate this right and other human rights.

The ECtHR finds that the instances described in paragraph 2 of Article 2 do not imply the intentional killing of an individual; it can also be an unintended outcome. This court remembers that the obligation to protect the right to life under Article 2, read in conjunction with Article 1, and the state's general duty is to secure everyone within its jurisdiction the rights and freedoms defined in the Convention.

The ECtHR determines that the responsibility of the state is not restricted to circumstances where there is significant evidence that misdirected fire from agents has killed a civilian. A killing by a state agent is not always intentional. The errors of state

agents may be engaged when the security forces in charge fail to take all feasible precautions in the choice of means and methods of a security operation. Although the intention is to minimise the loss of lives, incidentally, they may lose a life because of bad planning and preparation. In this case, the court can infer that insufficient precautions have been taken to protect the lives of the civilian population. This is why the courts highlight the importance of the capacitation, preparation, planning and the restricted use of firearms.

The ECtHR finds that the use of force by agents of the state in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. The ECtHR stated several times that it is detached from the events in issue and cannot substitute its assessment of the situation, different from officers who have honestly perceived danger to their life or the lives of others.

In the IACtHR, there are a few cases where the state recognises its responsibility for the crimes involved. This court considers that this constitutes a positive contribution to the development of the process and the validity of the principles that inspire the American Convention on Human Rights.

The IACtHR finds that the state has the duty of guaranteeing the right to life and must be clear at the moment to restrict domestic politics regarding the use of force. Moreover, the state must harmonise its national legislation with the principles of the OHCHR and the Convention and ensure that its security bodies, to whom the use of legitimate force is attributed, respect the right to life. Although the Basic Principles and the Code of Conduct of the OHCHR are very similar to the standards of the ECtHR, there is a difference as the latter court does not mention this instrument. At the same time, the IACtHR considers this instrument essential for law enforcement to use force. This can be because the IACtHR does not have the conditions to use lethal force in the letter of its Convention, as the ECHR determined in Article 2.2. Moreover, these exceptions are not in their homologue Article 4 of the American Convention on Human Rights, and this shows the difference in judging, for example, in the case of Neira Alegría, where there was a riot in prison and the IACtHR ruled against the state for the disproportionate use of force. The ECHR establishes that it is possible to use lethal force in case of quelling a riot or insurrection.

The ECtHR determines that it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of the events. This is possible, but the court must be cautious in determining if it was an error. In some of these cases, the tribunal tried to put itself into the position of the person who used the lethal force. The ECtHR determines that the intended use of deadly force is only one factor to consider when evaluating its necessity. In this way, it could decide if the person has the requisite belief and assess the necessity of the degree of force. The court has a detached vision of the facts because it was not there at the time of the events, but tries to reconstruct the facts in a way that can discover the necessity of the use of force and whether there was proportionality. The principal question to be addressed is whether the person had an honest and genuine belief that using force was necessary.

The IACtHR highlights that Article 4 implies the adoption of measurements on two slopes: a) the suppression of norms and practices that violate the provided guarantees in the Convention and b) the expedition of norms and development of practices conducive to the practical observance of such guarantees. This is a positive duty of the state that refers to adopting and incorporating the Convention into the domestic laws.

The IACtHR finds that when assuming the obligations of the Convention, the states' parties acquired a restriction of the state's powers. The obligation of Article 1.1 requires that the state organise its governmental apparatus to ensure the juridical implementation of the free and plain exercise of human rights.

The IACtHR considers that impunity promotes chronic repetition of the violations of human rights and the total helplessness of the victims and their relatives. As seen in its case law, this tribunal is worried about impunity. This is a necessary concept for Latin America, where there have been years of impunity for crimes against human rights and no punishment for the responsible. In some countries, there was even immunity for the perpetrators established by amnesty laws. The ECtHR worries about the lack of punishment for those responsible for these crimes, but does not develop the concept of impunity. This tribunal determines that repetition is possible if these crimes are not punished.

Moreover, the IACtHR confirms that the named razzias were police practices in Argentina in the nineties. These included identity inquiries and detentions by contraventional edicts of the police. The court establishes that the practice of razzias is incompatible with fundamental rights, including the presumption of innocence, the

existence of a judicial order to detain someone, the freedom of circulation, personal integrity and the obligation to notify the guardians of minors.

Considering that the state under Article 4 must respect the right to life of every person under its jurisdiction, it is relevant to establish that this obligation presents unique modalities for minors. The state must follow the American Convention and the Convention on the Rights of the Child. The condition of the guarantor of the state regarding this right compels it to prevent situations that could, by action or omission, affect the child's rights. In this condition of guarantor, the state is responsible for guaranteeing the individual's rights in its custody. Moreover, it must provide information and proof of their detention. This is a relevant observation of the court, considering that minors cannot be detained without communicating with their parents or guardians about their whereabouts. Minors must have special protection from the state because they are more vulnerable.

The IACtHR remembers that the state must adapt its national legislation to the American Convention and guarantee that its security bodies, to whom it attributes the use of force, obey the duty of respecting the right to life of those under its jurisdiction. The state agents must be trained, capacitated, and, overall, have knowledge about the rules of use of force of the Basic Principles and Code of Conduct of the OHCHR and the norms of the American Convention on Human Rights.

This Court dealt with a case of migration in its case law. It established that the state must provide appropriate training to face administrative infractions such as migration and the vulnerability of migrants. As was established before with minors, some groups are more vulnerable than others, and the knowledge of law enforcement is essential when a delicate situation occurs with these groups.

The IACtHR determines that the relatives of the victims have the right to know where the remains of the latter are. Knowing the truth is a requirement and a form of reparation, and the state must satisfy these fair expectations. International standards demand that the remains be delivered when the victim is identified.

This court remembers the positive obligation of the state to the right to life by establishing that this obligation implies that the state must respect the right to life and personal integrity and also adopt all the necessary measures to guarantee compliance with the general duty of Article 1 of the American Convention on Human Rights. Also, as it derives from Article 1, the court says that the state has special duties determining the particular necessities of protecting the subject of the law. The IACtHR

demonstrates that the states must guarantee the creation of necessary conditions so that the violation of the right to life does not occur and, therefore, must prevent their agents from attacking. This paragraph summarises precisely what has been presented above about the right to life and the use of force: the active protection of the right to life involves all state institutions, including those that must ensure security. It is contrary to the Convention if there is a deprivation of life which is a product of the use of force in an illegitimate, excessive or disproportionate manner.

Due to a special case that was taking place in the context of armed confrontation, the court established two principles of International Humanitarian Law. First, the principle of distinction refers to international and non-international armed conflicts where the parties in dispute must distinguish at every moment between civilian persons and combatants, aiming that civilians are not attacked. Second, the principle of proportionality is not the same as that that governs the use of force, but this establishes a limit to the finality of the war, which prescribes that the use of force must not be disproportionate.

The IACtHR states that there is no doubt in the assurance that the state has the right and the duty to guarantee its security, and every society suffers for infringing its juridical system. But no matter how serious specific actions and the guilt of the prisoners of determined crimes may be, it is not possible and lawful regarding the Convention and international standards to acknowledge that the power of the state may be exercised without any limit or that the state can take advantage of any procedure to achieve its objectives, without subjection to the law or moral. No state activity can be founded in the despair of human dignity.

The IACtHR finds that the detentions in forced disappearances include ill-treatment of those who are deprived of their liberty and, generally, are subjected to all kinds of torture and other cruel, inhuman and degrading treatment in violation of Article 5 of the Convention. The practice of disappearances has implied the execution of the detainees in secret, without a previous trial, followed by the concealment of the body to erase all material traces of the crime and achieve impunity for the perpetrators.

Regarding Article 1.1. of the American Convention on Human Rights, the court determines that this article contains the obligation contracted by state parties concerning each protected right. Therefore, every time the states violate the rights of the Convention, it implies a violation of this article. This provision is fundamental to determine if a violation of human rights recognised in the Convention can be attributed

to a state party. Article 1.1. put in charge of the state parties the duties of respect and guarantee in a way that every violation of the human rights stated in the Convention that can be ascribed to a state, according to the rules of international law to the action (positive obligation) or omission (negative obligation) to any public authority constitutes an imputable fact to the state that compromises its responsibility in the terms of the Convention.

According to Article 2 of the Convention (Domestic Legal Effects), the IACtHR determines that every violation of the recognised rights in the Convention fulfilled by an act of public power or of people whose acts validate the power they have by their official character is imputable to the state. However, the situations in which the state is obliged to prevent, investigate, and punish the violations of human rights or the assumptions in which its responsibility can be seen as compromised by the effect of the lesion on those rights continue. For example, an illicit fact that violates human rights that initially does not result in imputability directly to a state because the act of a particular person or the author of the infringement was not identified can lead to the state's international responsibility. This happens due to the lack of due diligence to prevent the violation or to treat it in the terms referred to in the Convention.

The IACtHR states that forced disappearances are a rupture of the Convention because it implies the abandonment of the values that emanate from human dignity and the principles on which the Inter-American System and the Convention are founded. The practice of disappearances creates an incompatible climate with the proper guarantee of human rights by the state parties of the Convention because the minimal norms of conduct that the security forces must follow are not followed, and this ensures impunity to violate human rights. This is one of the most critical standards that this court establishes about forced disappearances in one of its key cases, Velázquez Rodríguez.

The IACtHR considers that the duty of prevention includes all juridical, political, administrative, institutional, and cultural measures that promote safeguarding human rights.

In forced disappearances, the submission of detainees to official repressive bodies that, with impunity, practice torture and murder represents, by itself, an infringement of the duty of the state to prevent the violation of physical integrity and life. This means that if security forces of a state execute homicides of people or commit torture upon these, even when these facts cannot be proven by other means that are not testimonies of

witnesses, considering that in these cases, the remains are concealed to achieve impunity of the perpetrators, the state is responsible. This is important because there are few methods of proof without a body and other kinds of material evidence that become missing due to the perpetrators' acts. The instauration of the practice of disappearances by the government means, by itself, the desertion of the juridical duty of preventing violations of human rights perpetrated under the coverture of public power.

The IACtHR determines that the circumstances of the apparatus of the state tend to generate a climate in which the crime of forced disappearance can be committed with impunity. This court states that the disappearances had a very similar pattern, which started through the vigilance of the victims, followed by their violent kidnapping, many times in plain light of the day and populated places, by armed men dressed as civilians, who acted with apparent impunity in similar vehicles without official identification and polarised car windows, without or with false license plaques (like the case Panel Blanca).

The IACtHR acknowledges that the population got so used to this practice that it was considered a public and notorious fact. The kidnappings were perpetrated by military or police agents or staff under their direction. There was a systematic practice where these disappearances were taking place. Generally, the victims were considered dangerous people by the authorities of the state. The persons kidnapped were bandaged and taken to secret and irregular areas of detention, where they often were tortured and moved from one of these places to another. The people who were kidnapped were interrogated and subjected to humiliation, cruelty and torture. Some of these persons were finally murdered, and their bodies were buried in clandestine cemeteries.

The authorities systematically denied the facts of the detention, the whereabouts and the fate of the victims to their relatives, lawyers and people or entities interested in the defense of human rights, even the executive judges. It was impossible to interpose a recourse or any document in the justice system because the Judicial Power was with the apparatus of the state and did not acknowledge the possibility of disappearance. This attitude was shown even in the cases of people who later reappeared in the hands of the same authorities that systematically denied having them in their power or knowing their fate. A very low percentage of the people who disappeared later reappeared because the majority were assassinated.

The IACtHR considers that the state violates the duty of respecting the rights acknowledged by the Convention because it carries out actions directed to make involuntary disappearances, tolerates them, does not satisfactorily investigate them and does not sanction the responsible. Moreover, the perpetrators ensure the concealment of the body, so in this way, if there is no body to be found, there is no crime. This caused indetermination of the whereabouts of a person and established the possibility that the authors of a forced disappearance hid or destroyed the remains of the victim. The court adds that this is frequent in the cases of forced disappearances to ensure the absolute impunity of the perpetrators of the crime.

The court recognises the relatives of the disappeared persons (direct victims) as indirect victims of the crime. This is important regarding the anguish and torture that signifies for the relatives of the missing persons, not knowing about their fate and whereabouts. This is an essential standard that the IACtHR acknowledged in one of its cases, Panel Blanca, and started to determine that the relatives also have their rights violated, mainly Article 5, which is the prohibition of torture, inhuman and degrading treatment and punishment. Concerning the relatives of the victim, the court has considered that this crime violated the right to the physical and moral integrity of these, with the motive of the additional suffering that they have experienced as a product of the particular circumstances of the executed violation against their loved ones and the cause of posterior actions or omissions of the state authorities in front of the facts. This can go on forever if the remains are never found, which happens in most cases.

The IACtHR can hold the impairment to the physical and moral integrity of the direct relatives of the victims of specific violations of human rights by applying a presumption *juris tantum*[921] concerning mothers, fathers, daughters, sons, husbands, wives and permanent partners. The court emphasises the principle that, according to jurisprudence, the deprivation of access to the truth on the facts about the fate of a disappeared person constitutes a form of cruel and inhuman treatment for the close relatives.

The IACtHR considers that the seriousness of the crimes, the nature of the violated rights, the prohibition of the enforced disappearance of people, and the duty of investigating and sanctioning the responsible have reached the character of *Ius Cogens*. *Ius Cogens* is a concept of law that is an imperative norm that cannot be derogated.

[921] Presumption of law that orders admission as a proven fact in a trial if there is no proof to the contrary.

There cannot be exclusion or alteration in its content. Any law, norm, or act that is contrary to a *Ius Cogens* norm will be null as the Vienna Convention on the Law of Treaties established in Article 53: a peremptory norm of general international law is a norm accepted and recognised by the global community of states as a whole norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character.[922]

The IACtHR, the Inter-American Commission of Human Rights, the organs of the United Nations, and other universal and regional organisations protecting human rights have discussed the incompatibility of amnesty laws regarding serious human rights violations with international law and states' international obligations.

The IACtHR states that the separation of boys and girls from their families has caused specific effects on their integrity of *"special gravity, which has a lasting impact"*. The protection of the civil population in the armed conflict, especially children who are in a situation of grave vulnerability and risk, corresponds to the state. In some instances, the state agents acted on the sidelines of the juridical order using the structure and installations of the state to execute the forced disappearance of boys and girls through a systematic character of repression that was subjected to determine sectors of the population considered as subversives or guerrillas, or in some way contrary or opponents to the government. Also, the theft of babies of disappeared women who were pregnant at the time of their disappearance took place. These babies were delivered to other families, and still today, they are looking for their birth parents.

The ECtHR finds in a case that the authorities, before transmitting delicate information to the officers who were on the field, whose use of firearms automatically involved shooting to kill, should consider that they were bound by the obligation to respect and protect the right to life of the suspects. The authorities should exercise excellent care in evaluating the information before transmitting it. This is in line with the idea that firearms are the last resort, and the primordial objective is to protect the lives of all

[922] United Nations. *Vienna Convention on the Law of Treaties 1969*. Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. Article 53. Treaties conflicting with a peremptory norm of general international law ("Ius Cogens"). A treaty is void if it conflicts with a peremptory norm of general international law at the time of its conclusion. For the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a norm from which no derogation if permitted and which can be modified only by a subsequent norm of general international law having the same character.

human beings. The tribunal comes back to paragraph 2 of Article 2, where it is established that law enforcement officers' use of lethal force may be justified in certain circumstances. Nevertheless, as mentioned above, the use of force must be proportional to the state agents' situation and no more than *"absolutely necessary"*.

The ECtHR notes, as a matter of great concern, that the regulations on the use of firearms by the military police effectively permit lethal force to be used when arresting a member of the armed forces for even the most minor offence. These regulations are not published and do not contain clear protection to prevent arbitrary deprivations of life. Under these rules, it was lawful to shoot any fugitive who did not surrender immediately in response to an oral warning. Such a legal framework is fundamentally deficient and does not follow the level of protection *"by law"* of the right to life that is required by the Convention in present-day democratic societies in Europe. This is a problem for the court because it contradicts the Convention and Article 2.

This court reiterates an action under the provisions of the subparagraphs of Article 2.2. may be justified where it is based on an honest belief. For good reasons, this latter must be perceived as valid at the time but subsequently turns out to be mistaken. To hold otherwise would impose an unrealistic burden on the state and its law-enforcement personnel in executing their duty, perhaps to the detriment of their lives and those of others. It is impossible to ask law enforcement officers to be always sure of what they are doing when facing problematic and dangerous situations. For this, the court considers it relevant to determine whether the force used is compatible with Article 2 and whether a law enforcement operation has been planned and controlled. This operation must be designed in a way to minimise, to the greatest extent possible, recourse to lethal force or incidental loss of life. Moreover, the ECtHR has established that opening fire must be preceded by warning shots.

The ECtHR acknowledges that, coinciding with its case law, the court must analyse the planning and control of a police operation that results in the death of one or more individuals. The objective is to determine whether, in this case, the authorities were negligent in their choice of action and took appropriate care to guarantee that any risk to life was minimised. The court already stated that the use of lethal force by state agents in certain circumstances may be justified. However, Article 2 does not give carte blanche. This does not mean that security forces may use lethal force as they please. It is essential to establish unregulated and arbitrary action. The court reiterates

that national law is expected to sufficiently regulate policing operations within a system of acceptable and effective protection against arbitrariness and the use of force. The ECtHR states that a legal and administrative framework must define the limited circumstances in which law enforcement agents may use force and firearms according to the international standards developed in this respect. There should be no vacuum for security forces when performing their duties. Moreover, law enforcement agents must be trained and capacitated to evaluate whether firearms are essential based on the letter of the relevant regulations and with due regard to the pre-eminence of respect for human life as a fundamental value.

This court remembers that when interpreting Articles 2 and 3 of the Convention, it must be guided by the object and purpose of this instrument. The purpose is that the protection of individual human beings requires the Convention's provisions to be interpreted and applied to make its safeguards practical and effective.

The ECtHR considers that when an individual is taken into custody in good health but at the time of their release is found to be injured, it is incumbent on the state to provide a plausible explanation of how those injuries were caused. Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on the circumstances of the case. In particular, on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be determined to the requisite standard of proof that the detainee must be presumed to have died in custody. If the person has disappeared and has last been seen in the custody of the state, it is reasonable to assume that the state is at fault for their disappearance and, if that is the case, their demise. The ECtHR finds that if a person disappears in the custody of security forces and a period passes, it could be determined that the person died in the state’s custody. In this respect, although not decisive, the period that has passed since the person was placed in detention is a relevant factor to consider. Sadly, it must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that they have died. In Argentina, there were cases of persons arrested for a long time who were released at the end of the dictatorship. The passage of time may, therefore, affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead.

Article 2 safeguards the right to life by law and sets out the circumstances when deprivation of life may be justified. It ranks as one of the most fundamental provisions in the Convention, and no derogation is permitted. It presents the character *Ius Cogens*, as mentioned above. Together with Article 3, it also promotes one of the fundamental values of the democratic societies composing the Council of Europe.

The ECtHR remembers the case Timurtas V. Turkey, where the events in issue extended wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will emerge in respect of injuries and death occurring during that detention. Again, this court states that the burden of proof rests on the authorities to provide a satisfactory and convincing explanation of the injuries in case of disappearance or death.

According to the ECtHR, in its case law, the first sentence of Article 2.1 requires the state to refrain from intentional and unlawful killing and take appropriate steps to protect the lives of those within its jurisdiction. The state's obligation in this respect extends beyond its primary duty to secure the right to life by placing adequate criminal-law provisions to dissuade the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and sanctioning of infringements of such provisions. Article 2 of the Convention may also imply a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. If this crime occurred, the state violated the negative obligation of protecting the right to life. This concerns the omission of the state in safeguarding this right.

A relevant point is that for this positive obligation to arise from the state, it ought to know which individuals were in danger from the acts of other identified individuals. If these conditions are unmet, no positive obligation arises because it imposes an unrealistic burden on the state.

4. B. Procedural Aspect of the Right to Life

The Similarities in this Aspect

Both courts have similar standards regarding the procedural aspect and the investigation. They stated that it is an obligation of means, not results. Moreover, the state must assume this obligation, and the victims and relatives have the right to participate in the investigation with evidence, testimonies, or to observe the process.

Furthermore, if the authorities know about a crime, they must start the investigation immediately without waiting for the petitioner's case report. It is required by implication that there must be some form of effective official investigation when state agents' use of force has killed individuals. Moreover, the investigation must be carried out by all available legal means, including prosecution, identification, trial, punishment, and sanction of the responsible, especially if state agents are involved.

The IACtHR must analyse the use of force in every case, including the deployment of force by state agents that have caused death or injuries to a person. In this line of thought, the ECtHR establishes that a general legal prohibition of arbitrary killing by the agents of the state would be ineffective, in practice, if no procedure existed for reviewing the lawfulness of the use of lethal force by state authorities.

The IACtHR considers that when a state agent has caused a death or an injury, it corresponds to the state's obligation to provide a satisfactory and convincing explanation through adequate evidence.

Moreover, this court finds inadmissible dispositions such as amnesty, prescription, and the establishment of liability exclusions, which prevent the investigation and sanction of those responsible for grave human rights violations. They are all prohibited from contravening rights that do not admit derogation recognised by international human rights law.

Furthermore, the IACtHR demonstrates that when there are no effective mechanisms to investigate the violations of the right to life, a climate of impunity concerning the violations of human rights exists. In the category of extrajudicial executions, the court highlights a significant concern because there is impunity. In addition, this could lead to impunity for the conditions so that this type of event repeats itself. For this, the states must effectively investigate the deprivation of the right to life and punish all responsible parties, especially when state agents are involved (importance of the procedural duty of the right to life). If this investigation does not take place, it favours the public power.

The IACtHR notes that the state must investigate every situation where human rights are violated. The apparatus of the state must act in a way in which the violation of human rights does not remain unpunished and, if it does not reset, in a way that is possible (meaning that it is impossible to revive a victim who has been deprived of their life), to the victim in the fullness of their rights, can be claimed that the state has breached the duty of guarantying the free and whole exercise of the people subject to

its jurisdiction. The same is valid if a group or particulars act freely or with impunity to the damage of human rights recognised in the Convention, and the state tolerates this.

Concerning the procedural aspect, the IACtHR states that safeguarding the right to life requires an effective official investigation when persons lose their lives as a result of the use of force by state agents. According to the ECtHR, the inquiry must also be sufficient to inform a judicial finding of whether the force used was justified in the circumstances. This is crucial to ensuring criminal proceedings for any state agent prosecuted.

The ECtHR considers that the authorities' mere knowledge of the killing *ipso facto* (immediately) entitles them to an obligation under Article 2 of the Convention to conduct an adequate investigation. This is precisely what the IACtHR has established about starting an investigation *ex officio* (by their account) if the authorities know about a crime.

In an investigation, the authorities must act on their motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedure.

Moreover, the ECtHR adds that no domestic investigation can meet the standards of Article 2 if it does not determine whether the use of lethal force by agents of the state has gone any further than the circumstances demanded. This means that it was proportional and necessary. The investigation must also be effective so it can lead to a determination of whether the force used was or was not justified in the circumstances. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard. The ECtHR determines that the deliberate or intended use of lethal force is only one factor to be considered in estimating its necessity when deciding the responsibility of a state.

The IACtHR determines that the state has the duty of reasonably preventing human rights violations, of a serious investigation of the offences committed within the jurisdiction to the end of identifying the responsible, imposing the relevant sanctions and assuring adequate reparation to the victims. The IACtHR adds that besides the investigation necessary to determine the responsibility, it is essential to establish the facts, point out the grade and participation of each intervener, material or intellectual, and verify the type of responsibility. The actions of the state agents must adjust to the

principles of due diligence and humanity. This court establishes that the only way in which the actions of third parties have responsibility is if, in the concrete case, it results from the acquiescence or state collaboration in these circumstances.

Another similarity is with the domestic courts. The ECtHR states that the national courts cannot, under any circumstances, allow life-endangering offences to go unpunished. Through their judicial system and framework, the domestic courts must sanction the violation of human rights. The ECtHR's task consists of reviewing whether and to what extent the national courts may be considered to have submitted the case to the scrutiny demanded by Article 2. The objective is that the protective effect of the judicial system and the significance of the role it is required to play in preventing violations of the right to life are not undermined. On several occasions, the IACtHR has pointed out that the state has the juridical duty of reasonably avoiding human rights violations. It is relevant for the court to clarify the criminal proceedings in the domestic courts. However, concerning human rights allegations, it must be borne in mind that criminal law liability differs from the state's responsibility under the Convention. The competence of this court is confined to the Convention. The obligation under the Convention is based on its provisions, which must be interpreted in the light of the object and purpose of this human rights instrument, always having regard for any relevant rules or principles of international law.

Moreover, the IACtHR finds that the state is the main guarantor of human rights, so if these rights are violated, the state must resolve the matter at a domestic level and provide reparation to victims and relatives. This means that before responding to international instances, such as this court, if they do a fair trial and sanction the responsible, it is optional that the case gets to the Inter-American System. This derives from the subsidiary character that covers the international process in front of the domestic system of human rights guarantees. The IACtHR and the ECtHR are subsidiary courts that only attend to decisions when the domestic courts have not adequately treated the cases, and the victims or the relatives are dissatisfied with the decision. The victims and relatives must exhaust all domestic remedies before reaching the regional human rights courts.

The general legal prohibition of arbitrary killing, torture, and inhuman or degrading treatment or punishment by agents of the state would be ineffective in practice if no procedure existed for reviewing the lawfulness of the use of lethal force by state

authorities or for investigating arbitrary killing and allegations of ill-treatment of persons held by them.

The ECtHR needs to be distant from the criminal proceedings in national courts. The state's responsibility under the Convention is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. Even if the responsibility arises from the acts, organs, agents or servants of the state. For the ECtHR, reaching any findings as to guilt or innocence is not a concern. The IACtHR states that, based on the principle of complementarity, the jurisprudence of this court has developed the conception that every authority and organ of a state party to the Convention has the obligation of exercising *"conventionality control"*. As mentioned above, only if a case has not been solved at a domestic level, as it would primarily correspond to any state party of the Convention in the exercise of the conventionality control to judge the case internally, then if the victims and relatives are not satisfied with the handling of the case and the resolution, the case could get to the Inter-American or European System of human rights.

Finally, in cases of violation of the right to life by security forces, where an investigation is necessary and arises from the interpretation of the articles of the conventions, it is possible that no investigation was conducted or that the investigation was poorly handled. In those situations, the case can be interposed before the human rights tribunals if domestic courts do not condemn it.

The Differences in this Aspect

Regarding the procedural aspect, the IACtHR considers that as part of the state's recognition of responsibility, it should continue to conclude the investigation of the facts and punish those responsible for the crime. Moreover, the court determines that the relatives must have access and capacity to act in every instance of such investigation. The tribunal concluded that the investigation results must be publicly disclosed, and society should know the truth.

The state must seriously investigate violations committed within its jurisdiction. The investigation aims to identify the responsible parties, impose the pertinent punishment, and ensure the victims' adequate reparation.

The IACtHR continues by presenting that the duty of the state to investigate facts exists while there is uncertainty about the fate of the person who disappeared. In most cases of forced disappearances, the body is not found, and for many years, the whereabouts of the disappeared person can be a mystery. Even assuming that the legitimate

circumstances of the domestic judicial order do not allow the application of the correspondent sanctions to those who are individually responsible for crimes of this nature, the relatives of the victim have the right to know what the fate of the victim was and, in the case that is possible, where the remains of this person are. This represents a just expectation the state must fulfil with its means of reach.

The court determines that the eventual violation of human rights is effectively considered and treated as an illicit act that is susceptible to carrying sanctions against those who committed these infringements, as well as the obligation to compensate the victims for the prejudicial consequences. The state must assure the re-establishment, if possible, of the right violated, or in its case, the reparation of the damage produced by the violation.

The IACtHR repeated several times that the state must investigate every situation where a violation of human rights safeguarded by the Convention happened. Nevertheless, the court recognises that it can be hard to investigate the facts harmful to the person's rights in some circumstances. For example, in Argentina, it was very hard to get the testimony of people who disappeared because of what it implied psychologically and emotionally for them. As was established above, the obligation to investigate and prevent is an obligation of means or behaviour that must be fulfilled, although the investigation does not produce a satisfactory result. The court proved the abstention of the judicial power to attend to the interposed resources before the different tribunals in these cases. The criminal investigation at the time of the disappearance was not even carried out, and there was no procedure.

The IACtHR finds that the lack of investigation of these facts constituted a determining factor in the systematic practice of human rights violations and facilitates the impunity of those responsible.

This court states that a judgment is, *per se*, a form of reparation. The court establishes that the state must comply with its obligation to investigate the denounced facts, identify, judge, and punish the responsible parties, and carry out other kinds of commitments and judicial processes in charge of the state. As mentioned in the theoretical part, the IACHR has been very creative regarding the reparations to the victims and relatives. Among these are compensation, recognising the truth and making it public, naming a street after a victim or building a memorial, among other reparations.

The IACtHR acknowledges that to ensure effectiveness, the investigation must be directed considering the complexity of these facts and the structure in which the people involved are placed. In this way, it is possible to collect proof and track the logic lines of the investigation. The state must assume the duty to investigate as a juridical obligation and not as a simple formality condemned beforehand to be fruitless or as a mere administration of particular interests that depends on the processual initiative of the victims or their relatives or the private input of proven elements.

Regarding forced disappearances and the principles of international law concerning the continuity of the state, the responsibility subsists with the independence of government changes over time. This happens typically in Latin America when the facto government turns into a democracy, but the crimes committed in a dictatorship must be judged during the democratic government. Primarily, since the moment the illicit act is executed, responsibility is generated and declared. The military and police authorities, like the Government or Judicial Power, denied or were unable to prevent, investigate and sanction the facts and help those who were interested in finding out the whereabouts and the fate of the victims or their remains. The attempted legal cases were processed with evident slowness and disinterest, and some were finally dismissed.

The IACtHR found it challenging to prove that these disappearances had occurred and were imputable juridically to the state in question. Verifying the practice of disappearances was not enough; there was a lack of evidence that a person whose whereabouts are unknown was a victim of this practice. This court determines that the victim's relatives have not tried to use civil and administrative means, which does not diminish the state's responsibility for not addressing the consequences of violations in these cases. The obligation to repair the damage is a juridical duty of the state that does not exclusively depend on the processual activity of the victims. Many times, the relatives did not try judicial and administrative ways because they were afraid of having the same destiny as the victim.

About the procedural aspect, the ECtHR determines that for the investigation to be effective, the persons responsible for carrying out the investigation must be independent and impartial from those implicated in the events of the case in question. This includes the lack of hierarchical or institutional connection and practical independence because what is at stake is public confidence in the monopoly of the state’s use of force.

The ECtHR acknowledges that the state's obligation to carry out an effective investigation has been considered an obligation inherent in Article 2, which requires that the right to life be *"protected by law"*. The ECtHR determines that for maintaining public confidence in the adherence to the rule of law, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential. The domestic proceedings, including the trial stage, must satisfy the requirements of the positive obligation to protect the right to life through the law. The court's task consists of reviewing whether and to what extent the domestic courts, in reaching their conclusion, may be deemed to have submitted the case to the scrutiny required by Article 2 of the Convention.

According to the ECtHR, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. The ECtHR states that the investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Moreover, the domestic authorities have to ensure an investigation when a state agent has caused a suspicious death. In this context, promptness and reasonable expedition are required.

The ECtHR repeats that the obligation of Article 2, read in conjunction with Article 1, requires that there should be some form of effective official investigation when persons are killed as a result of the use of force by state agents. The purpose of this investigation is to secure the effective implementation of domestic laws that protect the right to life, overall, in cases involving state agents or bodies, to ensure their accountability for deaths that are their responsibility.

The investigation must be wide enough for the authorities in charge to consider the surrounding actions, such as planning and control of the operations, in addition to the actions of the state agents who used lethal force. In this way, it is possible to determine if the state complied with its obligation under Article 2.

The context of armed conflict makes the investigation harder to carry out. Nevertheless, the ECtHR established that the procedural obligation continues to apply in difficult security conditions. The court is not oblivious that obstacles may be placed when the investigation is carried out in circumstances of violence, armed conflict or insurgency. This context may compel the use of less effective investigation measures or may cause a delay in this. Nevertheless, even in difficult security conditions, all

reasonable steps must be taken to ensure an effective, independent investigation under the obligation of Article 2. Depending on the circumstances, it will be determined what form of investigation will achieve the purposes of Article 2.

The court highlights that video footage produced by the parties in a case is essential.

The ECtHR has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation of Article 2 on that account) and the fact that on several occasions, a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint as to its substantive aspect. The court acknowledges this essential standard and differs from its American homologue. It does not formally separate these two aspects of the right to life in a judgment. This is another of the main differences between these courts of human rights because, although the IACtHR has also investigated the procedural aspect of the right to life, usually, in the cases examined, it does so together with the substantive aspect and the procedural side, both condemned or absolved (typically condemned). The ECtHR judges the elements differently, which has occurred many times, resulting in one of the aspects being condemned (normally the procedural) and the other not (usually the substantive). There have been some cases in which both have been condemned or absolved, but the two facets are always considered separately.

The ECtHR shows that in assessing evidence, this tribunal has generally applied the standards of proof *"beyond a reasonable doubt"*. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. In forced disappearances, the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will emerge regarding the injuries and death happening during such detention. Indeed, the burden of proof may be considered as resting on the authorities to provide a satisfactory and convincing explanation.

The ECtHR's case law on the ambit of the procedural obligation is unambiguous. The essential purpose of such an investigation is to secure the effective implementation of domestic laws that safeguard the right to life. A quick response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts, even where

obstacles may prevent progress in an investigation in a particular situation. This investigation must also obtain adequate public scrutiny of its results.

The ECtHR notes that the procedural protection of the right to life in Article 2 of the Convention involves an obligation for agents of the state to account for their use of lethal force by subjecting their actions to some form of independent and public scrutiny capable of determining whether the force used was or was not justified in a particular set of circumstances.

The ECtHR determines that the applicant government argues that the missing persons must be presumed alive unless there is clear evidence to the contrary. This has been one of the biggest obstacles in the investigation of forced disappearances because the state was complicit in the kidnapping and detention of persons. This court highlights that there is no proof that any of the missing persons have been unlawfully killed. Nevertheless, in its opinion, the procedural obligation of Article 2 also arises upon evidence of a claim that an individual last seen in the custody of agents of the state subsequently disappeared in a context which may be considered life-threatening.

The ECtHR recalls that in the normal course of events, a criminal trial, with an adversarial procedure before an independent and impartial judge, must be regarded as furnishing the most substantial safeguards of an effective method for finding facts and attributing criminal responsibility. The fact that one suspect, amongst several, has succeeded in escaping the criminal justice process is not conclusive of a failure by the authorities.

This court views the failure to take measures as an infringement of the obligation to exercise exemplary diligence and promptness in the investigation and in dealing with such serious crimes. In some cases, the investigators failed to ensure that the investigation received adequate public scrutiny and protected the interests of the next of kin in proceedings. Also, this handling of the inquiry could only hurt the prospects of identifying the perpetrators and establishing the victim's fate.

Conclusion

As it can be established from this part, the ECtHR and the IACtHR have the same standards as a foundation: to respect and protect the right to life overall in a democratic state, their role as subsidiary courts and the use of lethal force as a last resort. Furthermore, they establish the protection of individuals under the state's custody and the harm they can suffer in a vulnerable situation. Moreover, absolute necessity and

proportionality are also part of the list when state agents use force, which is essential for both courts.

The standard that appears the most in these cases in the ECtHR is related to the obligation to protect the right to life under Article 2, which is taken in conjunction with Article 1 of the European Convention on Human Rights and its duty to secure the rights and freedoms established in the Convention for everyone in the jurisdiction of state parties. In my opinion, this court establishes that Articles 2 and 3 (Prohibition of Torture) rank as one of the most fundamental provisions in the European Convention on Human Rights. It enshrines one of the essential values of the democratic societies making up the Council of Europe. This is in line with what the IACtHR has acknowledged about the right to life and the importance of its protection in Articles 4 (Right to Life) and 5 (Personal Integrity), stating that all other human rights are violated without fulfilling the right to life.

In the procedural aspect, both courts find that the positive obligation of the state to investigate the violations of the right to life that arise from Articles 2 and 4 is an obligation of means but no results. The IACtHR adds that the obligation of prevention has the same character.

Furthermore, the court's task consists of reviewing whether and to what extent the domestic courts, in reaching their conclusion, may be deemed to have submitted the case to the scrutiny required by Articles 2 of the ECHR and 4 of the Inter-American Convention on Human Rights. I believe both tribunals coordinate in this concept about their role as subsidiary courts and explain that there is a usual misconception about a higher instance of domestic courts that is not their function.

The differences between the second part of Article 2 of the European Convention and Article 4 of the American Convention: while both of them are about the protection of the right to life, one of the main discrepancies can be found in how these courts decide in their judgments related with the violation of the right to life by security forces of the state parties in these norms. The ECtHR has three possibilities when force can be used, and as a result, the death of a person is justified, while the IACtHR does not have this in the letter of its Convention. Nevertheless, in several cases, the IACtHR has used the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR. That includes self-defence and other situations as possibilities for killing a person, which is justified. However, the diverse articles led both courts to decide differently in riots and

insurrections. I believe that the IACtHR has condemned the state for the disproportionate proportionality of security forces in cases of riots and insurrections. In contrast, the ECtHR has primarily not condemned the state in cases of insurrections because it did not find a violation of the security forces ' principles of proportionality and absolute necessity.

The Basic Principles and Code of Conduct for Law Enforcement of the OHCHR, quoted by the IACtHR, in their case law, are more concerned with protecting the life of any individual, even if that means killing someone to protect a person. Article 2.2. of the ECtHR shows that it is possible to kill a person and is justified if they are lawfully detained or in a riot or insurrection. In my opinion, this does not mean that the ECtHR cares less about life; as was stated before, its leading standard is the protection of life, but it has the possibility of justifying the death of persons. Furthermore, as mentioned above, both courts are separated from the letters of these instruments in case an offender escapes. They have considered in their case law that if the person poses no threat to the life of other individuals, it is preferable to lose the capture but not kill the suspect. Both courts have established this standard, although it is relevant to the person's crime.

The ECtHR acknowledges that investigations may be complex and delayed in violence, armed conflict, or insurgency circumstances. In this context, more effective investigative measures may need to be revised. Nevertheless, even in difficult security conditions, all reasonable steps must be taken to ensure an effective, independent investigation under Articles 2 of the ECHR and 4 of the Inter-American Convention on Human Rights.

The ECtHR determines that in the case of forced disappearances, the applicant government argues, first and foremost, that the missing persons must be presumed to be still alive unless there is clear evidence to the contrary. In my opinion, this has been one of the biggest obstacles in the investigation of forced disappearances because the state was complicit in the kidnapping and detention of persons. The IACtHR adds its concern about the impossibility of victims' relatives going to the judiciary to ask for help finding their loved ones because the judicial power was also complicit in the forced disappearances. This court demonstrates that the whole apparatus of the state was complicit in this crime.

The ECtHR emphasises the use of force and the treatment of a person in custody of the security forces. Meanwhile, the IACtHR has a large set of standards about forced

disappearances, considering that this court has more than 80 cases of this crime while the ECtHR has 26. I believe that the latter court still has essential standards for this crime. However, the case law of the IACtHR has been developed over many years and judgments and quoted by the ECtHR.

The ECtHR considers that there should be some form of effective official investigation when individuals have been killed because of the use of force by agents of the state. An essential standard for this court is that the state must ensure, at its disposal, an adequate response so that the legislative and administrative framework set up to protect the right to life is implemented correctly. Furthermore, it determines that the obligation imposed in Article 2.1. extends to a positive obligation on states to protect the right to life by law. Article 2.2 is not exclusively concerned with intentional killing resulting from the use of force by agents of the state but also aims to protect the right to life. Any breaches of that right must be repressed and punished. Moreover, this investigation includes the lack of hierarchical or institutional connection and practical independence because what is at stake is public confidence in the monopoly of the state's use of force. This court determines that for maintaining public confidence in the adherence to the rule of law, a prompt response by the authorities in investigating the use of lethal force may generally be regarded as essential. In my view, this shows the concern of this tribunal in maintaining the citizens' assurance of the rule of law and the public's confidence in the state. The ECtHR finds that for the investigation to be effective, the persons responsible for carrying out the investigation must be independent and impartial from those implicated in the events of the case in question. This is an essential standard for achieving justice, and this court repeats this in most cases regarding violating the right to life. I believe this court details every step of the investigation that the IACtHR does not establish in its standards.

The IACtHR states the reparation of material and immaterial damage, considering the latter not as mere pecuniary compensation but as moral damage that includes the suffering and distress of the victim, if they are alive, and their relatives or loved ones. The ECtHR also explores the intention of the state agent when using lethal force, the importance of dealing with these cases, and the purpose of the members of the security forces. This court determined that it was detached from the agent acting in the moment's heat and thought using force was necessary. For this, this court established that they should take a subjective approach as if they were in the place of the state agent.

The IACtHR is more worried about the possibility of impunity because of the laws of amnesty that have been spread all over Latin America after the dictatorships of the seventies and eighties. This court also establishes the necessity of an effective and impartial investigation when the state's security forces have violated the right to life. Still, in my opinion, the ECtHR has developed this standard even more.

The ECtHR considers the maximum relevance of an operation's planning, control, and execution, including the use of force, and repeats this principle several times in its standards.

The IACtHR attaches utmost importance to the violations of the rights of the relatives and people close to the victim, who also suffered from the death of the victim.

One of the main differences between the courts is that the ECtHR has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation of Article 2 on that account) and the fact that on several occasions a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint to its substantive aspect. In my view, the ECtHR establishes that the procedural obligation has its distinct scope of application and operates independently from the substantive limb of Article 2. The court acknowledges this essential standard and differs from its American homologue. It does not formally separate these two aspects of the right to life in a judgment. I believe that the IACtHR also investigates the procedural aspect of the right to life, but it does it together with the substantive aspect, both condemned and absolved (typically condemned). The ECtHR judges the elements differently, which often causes one of the facets to be condemned (normally the procedural) and the other not (usually the substantive). There have been some cases in which both have been condemned or absolved, but the two aspects are always considered separately.

3. Example Case that includes the five categories and how the IACtHR and the ECtHR would decide.

In this part, I will establish the facts of a fictional case that includes all the categories of violating the right to life by security forces. I will prove how I believe the courts would decide through a table. Based on my work and the standards I analysed, I

invented a case and imagined how the courts would decide. It may not be accurate because many proofs are missing, but it is an academic situation.

4. C. Facts of the Case

There was a riot in the Ministry of the State because the administrative employees established that they had poor labour conditions. This riot was maintained for 3 days. On the fourth day, the state intervened with the security forces. Then, the police forces entered the building. The protesters opposed leaving. The security forces alerted that if the protesters did not leave, they would shoot. The employees maintained their position. The police then started shooting and killed two people. The protesters, afraid, went upstairs to the second floor and made a barricade. The police started shooting through the barricade. At that moment, the protesters began to throw things that they had at hand and hit a policeman in the head, who was severely injured. The protesters went up to the third floor, and the police forces could not pass the barricade and go upstairs. At that moment, the security forces shot again, and the protesters surrendered. Many of the protesters were injured, and another one died. Then, the police took the employees of the Ministry out, took the wounded to the hospital and the rest to a police station. In the following days, one of the protesters' relatives stated that they could not find him. The police said that they did not know where he was. Later, it was discovered that this person left the building and was taken to a police station. He never appeared, and no investigation was carried out to determine the whereabouts of this person. In total, there were three dead persons and ten injured.

Table 1

Category	IACtHR	ECtHR
Disproportionate Use of Force	The court decided that the police disproportionately used force when it was not necessary, considering that the protesters were not armed. The police	According to Article 2.2 subsection 3, the court ruled that the security forces are justified in using force in case of a riot or insurrection.

	forces had firearms and used lethal force.	
Extrajudicial Execution	The court decided that the police forces violated Article 4, which protects the right to life. This does not comply with the principles of proportionality or absolute necessity.	The court ruled that the police forces violated Article 2.2 by shooting two persons without any justification.
Massacres	The court decided that there was no massacre or killing directed at a target group.	The court ruled that these events did not constitute a massacre.
Homicides committed with Police Brutality	The court decided that the police forces violated the right to life by killing three persons in an unjustified way while they were protesting.	The court ruled that the police forces violated the right to life by killing two persons with excessive use of force and without absolute necessity when these individuals were not armed and did not attack them.
Forced disappearances	The court decided that the state violated Article 4, the right to life, and Article 5, personal integrity, regarding the person who never appeared.	The state is responsible for the procedural aspect of the right to life for not investigating this person's disappearance.

The purpose of this case is to determine, in an academic exercise, how the courts could have decided in this case. The judgment of the courts is different regarding three

aspects. In the case of disproportionate use of force, the IACtHR considers that the approach of the police was disproportionate, considering that the protesters were not armed, unlike the security forces. Furthermore, the ECtHR decided that the security forces acted according to Article 2.2. of the ECHR. Therefore, the state has no responsibility. The courts differ in the extent of police brutality for condemning the number of deaths, depending on whether the individuals had attacked the security forces. The IACtHR condemns the three deaths, and the ECtHR considers the state responsible for the deaths, where there was no attack on the security forces, concerning the exceptions of Article 2.2. Furthermore, the IACtHR condemns the substantive and procedural aspects of forced disappearances and by its case law. At the same time, the ECtHR states that culpability is only for the latter element. In the case of massacres and extrajudicial executions, the courts decide in the same manner.

4. D. Conclusion

"Society is the form in which the fact of mutual dependence for the sake of life and nothing else assumes public significance and where the activities connected with sheer survival are permitted to appear in public."[923]

— Hannah Arendt, The Human Condition

As Hannah Arendt states, society is how we may realise the right to life and our survival. The state must ensure this right by respecting the international human rights law, providing the corresponding provisions for fulfilling it, and defending it from every possible deprivation.

As I focused on the study, it became more apparent to me that the courts have the same focus on protecting the right to life in a democratic society. Furthermore, despite their differences, they apply humanitarian standards to protect the lives of the persons.

It is essential to state that many cases overlapped two or more categories of violating the right to life by security forces, as explained in each case. These judgments could have been in different categories because several rights were violated. One case, Rodriguez Vera, included four of the five categories. I analysed each case in one category for academic purposes, explaining that it could be in another, but I chose the category which best adjusted to the standards.

[923] Arendt, Hannah. *"The Human Condition".* 2nd Edition. The University of Chicago Press. Chicago, London. 1998.

I believe it is necessary to determine if the work's theoretical and practical aspects are connected. According to the theoretical part, there is a dialogue between the IACtHR and the ECtHR. In the practical part, finding a conciliation between these tribunals concerning the standards analysed is possible. These courts quoted each other and are attentive and concerned about what the other tribunal establishes to apply these in their decisions or decide to go a different way. Furthermore, the theoretical part considers that these courts are independent of the other tribunals in international law because there is no hierarchical order. This horizontality allows these courts to decide according to their conventions on human rights on their terms. These can be seen in the standards applied and the comparison between them. The only predominant document is the United Nations Charter, which was drafted to protect human rights. The European and American Conventions expand these rights more entirely and thoroughly. Moreover, the theoretical part determines that the ECHR and the American Convention on Human Rights are similar in several aspects, considering that the latter took the former as a model because it was adopted sixteen years later. However, each court applies and interprets the provisions of its conventions according to the characteristics and specific situations of the continent where they have jurisdiction. There are also some differences, such as those shown by the articles that protect the right to life.

The origins of the conventions on human rights, including the right to life, are determined. In practice, the human rights conventions of these tribunals have followed the first notions about human rights and have established a complete collection of these in their instruments.

In summary, I believe the theoretical part follows the practical part because many authors have stated their thoughts based on the work of these courts. There are many opinions about the courts, such as how the ECtHR has been a pioneer in human rights and how the IACtHR has followed its example. Some authors highlighted the exceptional work of the latter. Still, these do not contradict the practical part because these are the authors' views about how each court works in their continent.

For this work, I believe it is necessary to tackle the notion that there are differences between these human rights tribunals regarding the scope of the state's responsibility for the agents' actions violating the right to life. Also, it can show how this aspect could be relevant when establishing protective standards under the principle of *"pro homine*" (in favour of the person). This means standards that favour everyone's fundamental

rights and freedoms. In the conclusion of the standards, I acknowledged that both courts considered the right to life an essential human right and that the high-level protection of this right in the democratic state is the aim of the two Conventions. It could be said that in the aspect of the principle *"pro homine,*" the IACtHR is more benevolent in protecting the right to life in every situation except when the life of another human is in danger. The ECtHR protects the right to life overall, but Article 2 has three situations when it is possible to justify the use of force and the subsequent death of a human being. These are in defence of a person from unlawful violence, to effect a lawful arrest or to prevent the escape of a person lawfully detained, and in action lawfully taken to quell a riot or insurrection. The exceptions for using force in the IACtHR, according to the Code of Conduct on the use of force and firearms for Law Enforcement Officials of the OHCHR, only establish the possibility of the death of a person when the life of another is in danger. However, I believe Article 2 of the ECHR is more complete than Article 4 of the American Convention on Human Rights because the IACtHR has to resort to the instruments of the OHCHR on law enforcement to establish a judgment if it is necessary to use lethal force. Furthermore, both courts establish the predominance of the right to life when offenders escape in their standards. They determine that security forces should let them go if they do not pose a threat to the lives of other people, instead of killing them.

In most cases, the ECtHR condemns the procedural obligation of the right to life but not the substantive element. In contrast, the IACtHR primarily condemns both aspects together. Moreover, the ECtHR presents the separation of the consideration of these two aspects as one of its standards when deciding the possibility of condemning one or the other (principally the procedural facet), and the IACtHR considers both aspects together when judging a case.

The tribunals acknowledge the necessity of respecting the right to life in a democratic society, that respect for the right to life is necessary to safeguard all other human rights, and that it is the base of all standards.

Furthermore, in my opinion, they share an overall dialogue regarding the similarities or differences between the courts, as mentioned above. There are many debates about how they decide, mainly the differences between Article 2 and Article 4 and the procedural and substantive aspects. However, they have the respect and protection of the right to life as a base in a democratic society. Furthermore, they have many similarities regarding domestic courts, the use of lethal force as a last resort, how the

state should investigate, trial and punish the perpetrators of the violation of the right to life by security forces, and the necessary, efficient and impartial investigation of these crimes. Also, in my view, both courts consider an essential standard to define the existence of a positive and a negative obligation of the state. Moreover, even the ECtHR quoted the IACtHR in cases of forced disappearances, considering that the latter court was the first to judge this crime and had vast experience, such as Velásquez Rodríguez V. Honduras—judgment 29 July 1988. Also, the IACtHR quoted the ECtHR in cases where the European tribunal was an expert in using force, such as the Case of McCann and others V. The United Kingdom, judgment 27 September 1995. These courts can learn a lot from each other and, luckily, are in constant dialogue about what they have decided in their case law, which can also support the development of their jurisprudence.

Moreover, it is necessary to determine whether one of these courts has a better way of handling these cases or a better decision method. I believe that in cases of forced disappearance, the IACtHR has been more efficient when deciding these cases because the ECtHR has not determined several facts, such as the notable systematic practice of forced disappearances that was taking place in Turkey. This latter tribunal has often not condemned this crime with the proof that they had, that although it was little, there was a pattern they should have considered. Also, the IACtHR has extensive case law regarding forced disappearances and has developed essential standards that have been paradigmatic and used as background in other international courts. Nevertheless, the ECtHR has always condemned these crimes' procedural duty, considering that the state did not investigate these violations. Furthermore, I believe the ECtHR is very detailed in its case law about the investigation steps and constantly repeats the necessity of an effective and impartial inquiry. This tribunal has also determined unique standards for planning and controlling operations concerning force deployment.

As I analysed the cases and the literature, I realised that slightly changing their decision-making process could have improved some aspects of the two tribunals' practice. These are some suggestions for these courts.

1- I believe the IACtHR could benefit from how the ECtHR separates the procedural and substantive aspects of the right to life. This would make the judgment complete and more thorough.
2- The Basic Principles and the Code of Conduct on the use of force and firearms in Law Enforcement of the OHCHR are fundamental for judging the use of force.

However, it could be good to change Article 4 of the American Convention on Human Rights, remove what explains the death penalty, and add some characteristics of this international instrument. Furthermore, the ECtHR could profit from including these instruments when deciding its judgments because it establishes a unique protection of the right to life when force deployment is necessary.

3- I believe the IACtHR could also add more to their decisions in the field of the importance of the control and planning of the security forces operations that are characteristic of the ECtHR and apply the possibility of a subjective position about the person belonging to the security forces who is facing a difficult situation when deciding about the life of the suspect, their life and the life of their partners. Also, the IACtHR could take the vast experience of the ECtHR in dealing with the use of force and the actions of the police in their judgments. The ECtHR examines the acts of the security forces in human rights and contemporary times.
4- In my view, in the case of the ECtHR, considering the approach *"pro homine"* of the IACtHR would be a good idea. This tribunal could interpret Article 2 in another light, not being so strict with the permission to use force about a person lawfully detained or in an action lawfully taken to quell a riot or insurrection because, as was shown in the cases of the IACtHR, sometimes there are attacks on inmates that demand some defence.
5- Moreover, it would be good for the ECtHR to take examples of the IACtHR regarding the regulations of amnesty or indulgence that debilitate justice for not being able to judge the perpetrators of these crimes.
6- If the ECtHR is presented with a new case, it could benefit from the extensive case law on forced disappearances of the IACtHRe, as the latter court has been exhaustive on this crime.
7- The IACHR should adopt a compulsory jurisdiction to ensure the compliance of its provisions in all American states and the evolution of human rights in America.

In summary, I believe there is no best method among the courts. They have made fair judgments about the proof they have considered and the context in which they have decided on these cases. It is essential to highlight that the number of cases that these courts get every year is a lot for one court to choose from, and in those conditions, they examine each case thoroughly and carefully to give a fair judgment. The IACtHR and the ECtHR have reasonable and humanitarian standards for their decisions. They could

take more characteristics from one to another to make better judgments. Although they can make mistakes, they are excellent courts that decide over the most essential categories of rights in the world: human rights and, overall, the right to life. They should continue punishing the states that allow violations of these latter rights in any possible aspect.

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Appendix I

Cases about the Violation of the Right to Life by Security Forces of the State

I. Disproportionate Use of Force by Agents of Security of the State

Inter-American Court of Human Rights

1. Case Neira Alegría and others V. Perú. Judgment 19 of January 1995.
2. Case del Caracazo V. Venezuela. Judgment 11 of November 1999.
3. Case of Penal Miguel Castro Castro V. Perú. Judgment 25 November 2006.
4. Case Casierra Quiñonez and Others V. Ecuador. Judgment 11 May 2022.
5. Case Huacón Baidal and Others V. Ecuador. Judgment 4 October 2022.

European Court of Human Rights

1. Case of Gülec V. Turkey. Judgment 27 July 1998.
2. Case of Andronicou and Constantinou V. Cyprus. Judgment 9 October 1997.
3. Case of Oğur V. Turkey. Judgment 20 May 1999.
4. Case of Ramsahai and Others V. The Netherlands. Judgment 15 May 2007
5. Case of Finogenov and Others V. Russia. Judgment 4 June 2012.
6. Case of Armani da Silva V. The United Kingdom. Judgment 30 May 2016.

II. Extrajudicial Execution by the Security Forces of the State

Inter-American Court of Human Rights

1. Case El Amparo V. Venezuela. Judgment 18 January 1995.
2. Case Genie Lacayo V. Nicaragua. Judgment 29 January 1997.
3. Case Barrios Altos V. Perú. Judgment 14 March 2001.
4. Case Las Palmeras V. Colombia. Judgment 6 December 2001.
5. Case Myrna Mack Chang V. Guatemala. Judgment 25 November 2003.
6. Case Carpio Nicolle and others V. Guatemala. Judgment 22 November 2004.
7. Case Huilca Tecse V. Perú. Judgment 3 March 2005.
8. Case Blanco Romero and others V. Venezuela. Judgment 28 November 2005.
9. Case Baldeón García V. Perú. Judgment 6 April 2006.
10. Case Montero Aranguren and others (Retén de Catia) V. Venezuela. Judgment 5 July 2006.
11. Case Servellón García and others V. Honduras. Judgment 21 September 2006.
12. Case Goiburú and Others v. Paraguay. Judgment 22 September 2006.
13. Case Escué Zapata V. Colombia. Judgment 4 July 2007.

14. Case Zambrano Vélez and others V. Ecuador. Judgment 4 July 2007.

15. Case Cantoral Huamaní and García Santa Cruz V. Perú. Judgment 10 July 2007.

16. Case Valle Jaramillo and others V. Colombia. Judgment 27 November 2008.

17. Case Kawas Fernández V. Honduras. Judgment 3 de April W2009.

18. Case Garibaldi V. Brasil. Judgment 23 September 2009.

19. Case Cepeda Vargas V. Colombia. Judgment 26 May 2010.

20. Case Familia Barrios V. Venezuela. Judgment 24 of November 2011.

21. Case Brothers Landaeta Mejías and others V. Venezuela. Judgment 27 August 2014.

22. Case Uzcátegui and Others V. Venezuela. Judgment 3 September 2012.

23. Case Tarazona Arrieta and others V. Perú. Judgment 15 October 2014.

24. Case Cruz Sánchez and others V. Perú. Judgment 17 April 2015.

25. Case Isaza Uribe and others V. Colombia. Judgment 20 November 2018

26. Case Villamizar Durán and others V. Colombia. Judgment 20 of November 2018.

27. Case Omeara Carrascal and others V. Colombia. Judgment 21 November 2018.

28. Case Vicky Hernández and others V. Honduras. Judgment of 26 March 2021.

29. Case Guerrero, Molina y otros V. Venezuela. Judgment 3 June 2021.

30. Case Integrantes and Militantes of the Unión Patriótica V. Colombia. Judgment 27 July 2022.

31. Case Deras García and Others V. Honduras. Judgment 25 August 2022.

32. Case Aroca Palma and Others V. Ecuador. Judgment 8 November 2022.

European Convention on Human Rights

1. Case of Ergi V. Turkey. Judgment 28 July 1998.

2. Case of Tanrikulu V. Turkey. Judgment 8 July 1999.

3. Case of Nachova and Others V. Bulgaria. Judgment 6 July 2005.

III. Massacres committed by Security Forces or with the Acquiescence of the Security Forces

Inter-American Court of Human Rights

1. Case Massacre Plan of Sánchez V. Guatemala. Judgment 29 April 2004.

2. Case of the "Massacre of Mapiripán" V. Colombia. Judgment 15 September 2005.

3. Case of the Massacre of Pueblo Bello V. Colombia. Judgment 31 January 2006.

4. Case Massacres of Ituango V. Colombia. Judgment 1 July 2006.

5. Case of the Massacre of La Rochela V. Colombia. Judgment 11 May 2007.

6. Case of the Dos Erres V. Guatemala Massacre. Judgment 24 November 2009.

7. Case Massacres of Río Negro V. Guatemala. Judgment 4 September 2012.

8. Case Massacres of El Mozote and lugares aledaños V. El Salvador. Judgment 25 October 2012.

9. Case Massacre of Santo Domingo V. Colombia. Judgment 30 November 2012.

10. Case Miembros of the Aldea Chichupac and comunidades vecinas of the Municipio de Rabinal V. Guatemala. Judgment 30 November of 2016.

11. Case Favela Nova Brasília V. Brasil. Judgment 16 February 2017.

12. Case Coc Max and others (Massacre of Xamán) V. Guatemala. Judgment 22 August 2018.

13. Case Massacre of the Aldea Los Josefinos V. Guatemala. Judgment 3 of November 2021.

European Convention on Human Rights

1. Case of Al-Skeini and others V. United Kingdom. Judgment 7 July 2011.

2. Case of Janowiec and others V. Russia. Judgment 21 October 2013.

3. Case of Georgia V. Russia. Judgment 21 June 2021.

IV. Homicides committed with Police Brutality

Inter-American Court of Human Rights

1. Case Bulacio V. Argentina. Judgment 18 September 2003.

2. Case Blanco Romero and others V. Venezuela. Judgment 28 November 2005.

3. Case Baldeón García V. Perú. Judgment 6 April 2006.

4. Case Garibaldi V. Brazil. Judgment 23 September 2009.

5. Case Vera Vera and other V. Ecuador. Judgment 19 May 2011.

6. Case Nadege Dorzema and others V. República Dominicana. Judgment 24 October 2012.

7. Case Rodríguez Vera and others. (Desaparecidos del Palacio de Justicia) V. Colombia. Judgment 14 November 2014.

8. Case García Ibarra and others V. Ecuador. Judgment 17 November 2015.

9. Case Díaz Loreto and Others v. Venezuela. Judgment 19 November 2019

10. Case Roche Azaña and others V. Nicaragua. Judgment 3 June 2020.

11. Case Olivares Muñoz and others V. Venezuela. Judgment 10 November 2020.

European Court of Human Rights

1. Case of Fanziyeva V. Russia. Judgment 18 September 1995.

2. Case of McCann and others V. The United Kingdom. Judgment 27 September 1995.

3. Case of Salman V. Turkey. Judgment 27 June 2000.

4. Case of Wasilewska and Kalucka V. Poland. Judgment 23 February 2010

5. Case of Giuliani and Gaggio V. Italy. Judgment 24 March 2011.

6. Case of Finogenov and Others V. Russia. Judgment 4 June 2012.

7. Case of Hassan V. The United Kingdom. Judgment 16 September 2014.

8. Case of Mocanu and Others v. Romania. Judgment 17 September 2014.

9. Case of Nagmetov V. Russia. Judgment 30 March 2017.

10. Case of Hanan V. Germany. Judgment 16 February 2021.

V. Forced Disappearances

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1. Velásquez Rodríguez V. Honduras. Judgment 29 July of 1988.

2. Case Godínez Cruz V. Honduras. Judgment 20 January 1989.

3. Case Fairén Garbi and Solís Corrales V. Honduras. Judgment 15 March 1989.

4. Case Aloeboetoe and others V. Surinam. Judgment 4 December 1991.

5. Case Gangaram Panday V. Surinam. Judgment 21 January 1994.

6. Case Caballero Delgado and Santana V. Colombia. Judgment 8 December 1995.

7. Case Garrido y Baigorria V. Argentina. Judgment 2 February 1996.

8. Case Loayza Tamayo V. Perú. Judgment 17 September 1997.

9. Case Castillo Páez V. Perú. Judgment 3 November 1997.

10. Case Suárez Rosero V. Ecuador. Judgment 12 November 1997.

11. Case Blake V. Guatemala. Judgment 24 January 1998.

12. Case "Panel Blanca" (Paniagua Morales and otros) V. Guatemala. Judgment 8 March 1998.

13. Caso Benavides Ceballos V. Ecuador. Judgment 19 June 1998.

14. Case of the "Niños de la Calle" (Villagrán Morales and others) V. Guatemala. Judgment 19 November 1999.

15. Case Trujillo Oroza V. Bolivia. Judgment 26 January 2000.

16. Case Durand and Ugarte V. Perú. Judgment 16 August 2000.

17. Case Cantoral Benavides V. Perú. Judgment 18 August 2000.

18. Case Bámaca Velázquez V. Guatemala. Judgment 25 November of 2000.

19. Case Juan Humberto Sánchez V. Honduras. Judgment 7 June 2003.

20. Case Molina Theissen V. Guatemala. Judgment 4 May 2004.

21. Case 19 Comerciantes V. Colombia. Judgment 5 July 2004.

22. Case of the Brothers Gómez Paquiyauri V. Perú. Judgment 8 July 2004.

23. Case De la Cruz Flores V. Perú. Judgment 18 November 2004.

24. Caso of the Sisters Serrano Cruz V. El Salvador. Judgment 1 March 2005.

25. Case Gutiérrez Soler V. Colombia. Judgment 12 September 2005.

26. Case Gómez Palomino V. Perú. Judgment 22 November 2005.

27. Case Blanco Romero and others V. Venezuela. Judgment 28 November 2005.

28. Case Baldeón García V. Perú. Judgment 6 April of 2006:

29. Case Servellón García and others V. Honduras. Judgment 21 September of 2006.

30. Case Goiburú and other V. Paraguay. Judgment 22 September 2006.

31. Case Penal Miguel Castro V. Perú. Judgment 25 November 2006.

32. Case La Cantuta V. Perú. Judgment 29 November 2006.

33. Case Heliodoro Portugal V. Panamá. Judgment 12 August 2008.

34. Case Bayarri V. Argentina. Judgment 30 October 2008.

35. Case Tiu Tojín V. Guatemala. Judgment 26 November 2008.

36. Case Ticona Estrada and others V. Bolivia. Judgment 27 November 2008.

37. Case Anzualdo Castro V. Perú. Judgment 22 September 2009.

38. Case González and others ("Campo Algodonero") V. México. Judgment 16 November 2009.

39. Case Radilla Pacheco V. México. Judgment of 23 November 2009.

40. Case Chitay Nech and others V. Guatemala. Judgment 25 May 2010.

41. Case Ibsen Cárdenas and Ibsen Peña V. Bolivia. Judgment 1 September 2010.

42. Case Gomes Lund and others ("GUERRILHA DO ARAGUAIA") V. Brazil. Judgment 24 November 2010.

43. Case Gelman V. Uruguay. Judgment 24 February 2011.

44. Case Torres Millacura and others V. Argentina. Judgment 26 August 2011.

45. Case Contreras and others V. El Salvador. Judgment 31 August 2011.

46. Case González Medina and relatives V. República Dominicana. Judgment of 27 February 2012.

47. Case Gudiel Álvarez and others ("Diario Militar") V. Guatemala. Judgment 20 November 2012.

48. Case García and relatives V. Guatemala. Judgment 29 November 2012.

49. Case Osorio Rivera and relatives V. Perú. Judgment 26 November 2013.

50. Case J. V. Perú. Judgment 27 November 2013.

51. Case Rochac Hernández and others V. El Salvador. Judgment 14 October 2014.

52. Case Rodríguez Vera and others. (Desaparecidos del Palacio de Justicia) V. Colombia. Judgment 14 November 2014.

53. Case Espinoza González V. Perú. Judgment 20 November 2014.
54. Case Comunidad Campesina of Santa Barbará V. Perú. Judgment 1 September 2015.
55. Case Galindo Cárdenas and others V. Perú. Judgment 2 October 2015.
56. Case Tenorio Roca and others V. Perú. Judgment 22 June 2016.
57. Case Herrera Espinoza and others V. Ecuador. Judgment 1 September 2016.
58. Case Pollo Rivera and others V. Perú. Judgment 21 October 2016.
59. Case Yarce and others V. Colombia. Judgment 22 November 2016.
60. Case Vásquez Durand and others V. Ecuador. Judgment 15 February 2017.
61. Case Gutiérrez Hernández and others V. Guatemala. Judgment 24 August 2017.
62. Case Vereda La Esperanza V. Colombia. Judgment 31 August 2017.
63. Case Herzog and others V. Brazil. Judgment 15 March 2018.
64. Case Munárriz Escobar and others V. Perú. Judgment 20 August 2018.
65. Case Terrones Silva and others V. Perú. Judgment 26 September 2018.
66. Case Isaza Uribe and others V. Colombia. Judgment 20 November 2018.
67. Case Alvarado Espinoza and others V. México. Judgment 28 November 2018.
68. Case Órdenes Guerra and others V. Chile. Judgment 29 November 2018.
69. Case Arrom Suhurt and others V. Paraguay. Judgment 13 May 2019.
70. Case Gómez Virula and others V. Guatemala. Judgment 21 November 2019.
71. Case Noguera and other V. Paraguay. Judgment 9 March 2020.
72. Case Acosta Martínez and others V. Argentina. Judgment 31 August 2020.
73. Case Garzón Guzmán and others V. Ecuador. Judgment 1 September 2021.
74. Case Family Julien Grisonas V. Argentina. Judgment 23 September 2021.
75. Case Maidanik and Others v. Uruguay. Judgment 15 November 2021.
76. Case Movilla Galarcio and Others V. Colombia. Judgment 22 June 2022.
77. Case Flores Bedregal and Others V. Bolivia. Judgment 17 October 2022.
78. Case Guzmán Medina and Others V. Colombia. Judgment 23 August 2023.
79. Case Cuéllar Sandoval and Others V. El Salvador. Judgment 18 March 2024.
80. Case Ubaté and Bogotá V. Colombia. Judgment 19 June 2024.
81. Case González Méndez and Others V. México. Judgment 22 August 2024.
82. Case Pérez Lucas and Others V. Guatemala. Judgment 4 September 2024.

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1. Case Kurt V. Turkey. Judgment 25 May 1998.
2. Case Çakıcı V. Turkey. Judgment 8 July 1999.

3. Case of Mahmut Kaya V. Turkey. Judgment 28 March 2000.
4. Case of Ertak V. Turkey. Judgment 9 May 2000.
5. Case Timurtas V. Turkey. Judgment of 13 June 2000.
6. Case İlhan V. Turkey. Judgment 27 June 2000.
7. Case of Salman V. Turkey. Judgment 27 June 2000.
8. Case of Cyprus V. Turkey. Judgment 10 May 2001.
9. Case of Avsar V. Turkey. Judgment 27 March 2002.
10. Case of Orhan V. Turkey. Judgment 6 November 2002.
11. Case of Tahsin Acar V. Turkey. Judgment 8 April 2004.
12. Case of Ipek V. Turkey. Judgment 17 May 2004.
13. Case of Akdeniz V. Turkey. Judgment 31 August 2005.
14. Case of Tanis and other V. Turkey. Judgment 30 November 2005.
15. Case of Gongadze V. Ukraine. Judgment 8 February 2006.
16. Case of Imakayeva V. Russia. Judgment 9 February 2007.
17. Case of Magomed Musayev and Others v. Russia. Judgment 6 April 2009.
18. Case of Medova V. Russia. Judgment 5 June 2009.
19. Case of Varnava and Others V. Turkey. Judgment 18 September 2009.
20. Case of Malsagova and Others V. Russia. Judgment 6 November 2009.
21. Case of Sadulayeva V. Russia. Judgment 4 October 2010.
22. Case of Akhmadova V. Russia. Judgment 24 September 2012.
23. Case of El-Masri V. The Former Yugoslav Republic of Macedonia. Judgment 13 December 2012.
24. Case of Janowiec and others V. Russia. Judgment 21 October 2013.
25. Case of Yusupova V. Russia. Judgment of 20 March 2017.
26. Case of Shavadze V. Georgia. Judgment 19 February 2021.
27. Case of Ukraine V. Russia (RE Crimea). Judgment 35 June 2024.