DOCTORAL (PHD) DISSERTATION

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

Supervisors: Dr. Anikó Szalai and Dr. Zsuzsa Szakály

Author: Sabrina J. Kaliman. PhD Candidate

University of Szeged

Doctoral School of Law and Political Sciences.

Date:

Szeged, September 2025

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: Organisation of American States

EU: European Union

ICJ: International Court of Justice

AU: African Union

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. 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 in their judgments related to the violation of the right to life by security forces. It also aims to determine whether there are differences and/or similarities in the standards applied by two key tribunals in 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 the security forces of the states.

This work will have five chapters. The first chapter will define the essential notions of this work and outline the characteristics of the courts that are the object of this study. The second chapter will cover the theoretical basis of this work, divided into five

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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.

subchapters. The third chapter will cover the various categories of violations of the right to life by security forces and analyse the judgments in each category from both courts. In this Chapter, the standards of each court regarding this crime will be determined. The fourth chapter will examine the standards of different cases regarding the state's security forces' violation of the right to life. In this chapter, the standards established in Chapter 3 will be compared to determine their differences and similarities. Finally, the fifth chapter will conclude with a section on the influence between the courts, a fake case, a summary of its key findings, and a conclusion about the notions presented in the work.

2. Research Problem

This study's research problem is to examine the ECtHR and IACtHR standards of judgment regarding violations of the right to life caused by the state parties' security forces. 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 issuing judgments in 1960, starting from the same date in both tribunals is necessary because this approach provides a more balanced comparison. 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, specifically concerning the violation of the right to life caused by state 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 state these similarities and/or differences to understand and analyse how these tribunals rule on this fundamental aspect of the right to life. Several works have been written about each category of violation of the right to life, as well as the

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

characteristics of each tribunal.[5] Moreover, some works compare these courts in different aspects.[6] However, my aim is unique because this research seeks to identify the similarities and differences between the standards regarding the state's security forces' violation of the right to life, as interpreted by the IACtHR and the ECtHR. This is a particularly sensitive subject because it involves 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 those by security forces. Moreover, this work focuses on the specific regional human rights courts in Europe and America.

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 and the European Court of Human Rights judgments.

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

-Determine the situation between the tribunals studied, establishing whether there is a dialogue or different criteria applied concerning the 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. "Algunos aspectos procesales y sustantivos de los diálogos recientes entre la Corte Interamericana de Derechos Humanos y el Tribunal Europeo de Derechos Humanos." In: *La América de los Derechos,* Santolaya. Pablo y Wences, Isabel (Coord.) Centre of Political and Constitutional Studies. P.565- 606. Madrid, Spain. 2016.

-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, as outlined in Article 4 of the American Convention on Human Rights and Article 2 of the European Convention on 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 against 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 pull over 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 incident occurred in June 2023 and triggered

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

https://www.telesurtnet/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/

several protests by people whom the French police had previously repressed. Another case is of a young man of 26 years 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 incident occurred on February 27, 2025.[9] These are just the most recent examples of the numerous violations and abusive force the state uses against its citizens.

Without questioning the sufficiency of 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 systems of 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, as established in Chapters 3, 4, and 5 of this work. Moreover, it is determined to analyse whether there is a dialogue or different criteria between these two regional tribunals of critical relevance.

This work presents the relevant conditions for both the academic and legal fields, in accordance with worldwide standards.

4. Some Characteristics of this Work

The focus of this research is the actions of state security forces that violate the right to life, as seen in the practice of the IACtHR and the ECtHR. 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 determine the states' responsibility, considering whether these have complied with the provisions of the European and American Conventions on Human Rights. I wanted to concentrate on violations of the right to life by security forces because I believe that this is a fascinating subject that is not examined in depth in the literature nowadays. Considering the numerous violations of this subject, it is crucial to research this issue. Furthermore, the court's decisions can have significant social implications, as seen in the case of Bulacio v. Argentina.[10] This

[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.

case 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. While studying human rights at the university, I became aware of this case, which led me to examine the behaviour of 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 that are the objects of this study. Selecting key cases to develop standards for academic purposes was necessary because each court issues numerous judgments on various categories. Furthermore, I used comparative law and its six methods.[11] 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. It is essential to determine that this research will examine the right to life and the deprivation of life by security forces, establishing five categories in which these situations may occur. 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 latter 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, the EtCHR, and the violation of the right to life by security forces.

[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.

Furthermore, 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 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.

Moreover, 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, encompassing both its substantive and procedural aspects. After the procedural element and the investigation, the court may impose legal consequences for the crimes committed by the responsible party, which the party must comply with. Generally, some reparations can be found in various forms, such as compensation and the pursuit of truth, among other methods. The judgment is also a form of reparation.

Ultimately, it is determined whether the security forces violate the right to life through their actions or omissions. 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 that condemns or absolves 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 made the decision it did. These patterns established in the court's judgments form the fundamental basis for its decisions and are based on the interpretation of 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 defines a

pattern as a form or model proposed for imitation. These definitions can establish a vital base for determining the standards to which the courts apply in their decisions.[12] This work needs to define the concept of standards to facilitate an understanding of the comparison between the judgments of the IACtHR and the ECtHR. I 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 is applied. Primary and secondary sources are used to collect the necessary data. Comparative law is also applied. Six different methods are included in this last category.[13] Furthermore, the case study method is essential for examining the judgments.

The qualitative method is vital for this research. Vasilachis de Gialdino determines the characteristics of this method by considering the concepts and definitions of several authors. She establishes that qualitative investigation, in terms of methodologies, perspectives, and strategies, encompasses different approaches and orientations. These diverse conceptions of reality, knowledge, and what can be known determine that there is not only one legitimate way of conducting a qualitative investigation, nor is a common orientation present in every social qualitative investigation.[14]

The author states that this is not a monolithic approach but a varied mosaic of perspectives on the investigation. The qualitative investigation is multimethodological, naturalistic, and interpretative. The investigators' approach in natural situations is to interpret the phenomenon in terms of the meaning that the people give to it. The qualitative investigation encompasses the study, use, and

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

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

[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] Vasilachis de Gialdino, Irene. "Chapter I: La investigación Cualitativa". In: *"Estrategias de Investigación Cualitativa".* Vasilachis de Gialdino, Irene (Coord.) Edit. Gedisa. Barcelona, Spain. P.P.23-60. 2006. P. 24.

recollection of various empirical materials, including case studies, personal experiences, introspective reflections, and others, which describe the usual and problematic moments in the lives of individuals and their meanings.[15]

This way of investigation is considered a way of thinking more than a collection of techniques and strategies. Regarding the components of this type of investigation, Vasilachis identifies three key elements: the data, the procedures for analysing the data, and the final report. The qualitative investigators are interested in the complexity of social interactions, as expressed in everyday life, and the significance that these actors attribute to these interactions.[16]

The methodological technique of documental investigation is used to conduct the research. The objectives are 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 enables, through the observation and analysis of documentation, a retrospective examination, understanding, and interpretation of the current reality.[17] These judgments enable the construction of a determined reality, and the purpose of this research is to validate the interpretations and justifications presented in the analysis. Starting from what is examined in the judgments, the standards used by both courts are 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 are compared. The primary documents comprise texts of doctrine related to these two tribunals, the right to life, and the case law of contentious cases before them.

The first chapter presents the objectives and the methodology of this work. For this chapter, documentary analysis was used. As the second chapter is a recollection of information about the theoretical basis of this work, the most suitable method to apply is documentary analysis, which examines doctrine and case law related to this subject. The third chapter analyses the case law of these courts about the violation of the right

[15] Ibid. P. 24, 25.

[16] Ibid. P. 34.

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

to life by security forces and classifies these judgments into five categories. For this, it was helpful to use case study and comparative law to understand how the courts decide on these cases. These judgments are divided into categories of violation of the right to life by the security forces of the state, as established in the theoretical basis of Chapter II, to make a more profound and dynamic comparison. Comparative law was employed in the third, fourth, and fifth chapters, and combining the six aforementioned methods is a key aspect of this research approach. Additionally, comparative law is well-suited for identifying and comparing differences and similarities. The fourth and fifth chapters compare the courts' standards, applying the comparative law method. Furthermore, the qualitative method is used in the five chapters.

The ECtHR and IACtHR judgments are used as primary sources. I understand the language of both courts' decisions, so I can effectively utilise these primary sources. Additionally, I incorporated many texts I had collected over the past few years as secondary sources in my research.

The text *"How to do Comparative Law"* by John C. Reitz[18] 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.[19] This research combines the methods mentioned earlier, considering the advantages and disadvantages of each technique.

Reitz offers nine principles of comparative law:

1. Consider the relationship between the study of comparative law and the study of foreign law.
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 to carry out a comparison involving legal subjects.

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

[19] 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.

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.[20]

Furthermore, Reitz establishes other basic principles of the comparative method, which 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 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.

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

9. Comparative studies should be undertaken in a spirit of respect for the other.[21]

It is relevant to outline my line of thought in creating the thesis structure. The idea is to establish the first theoretical part (Chapters I and II) with various aspects of the courts and the right to life, including the categories of violation of the right to life.

The methods I chose for this work are the necessary ones to develop this research. The case study is vital for examining the different judgments of the two courts in this research. The comparative law method is essential for comparing the standards established and determining the similarities and differences. Furthermore, documentary analysis is necessary for examining the texts and case law used in this work. The qualitative method is fundamental for approaching the subject, collecting the data, analysing it, and drawing conclusions about the findings.

I have also identified the state's obligations. The theoretical section (Chapters I and II) defines the background, challenges, essential notions, and concepts of human rights, with a particular focus on the right to life. The second part is practical (Chapter III), which examines key cases of the right to life being violated 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 (Chapters IV and V) is both theoretical and practical, as it compares the standards, divided into substantive and procedural aspects. This includes an example of a hypothetical case I invented, as well as an interesting academic exercise in which I examined how the courts would decide based on the analysis and comparison of the standards. Ultimately, this part summarises the key findings and insights gained from the research. It determines the influence between the courts, whether the theoretical and practical parts are connected or divergent, with the practical part aligning with the theoretical or the theoretical part providing more valuable ideas.

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

[21] Ibid.

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 were the objects of this research, rather than 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.[22]

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 Organisation of African Unity) 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.[23]

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.[24] This work focuses on comparing the IACtHR and the ECtHR, as their

[22] 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.

[23] 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.

[24] 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 Vol. 7* (2018). Brill Nijhoff. IHRL Review. P.P.1- 42. 2018. P. 30.

human rights violations and judgments are more similar to those of the African Court. This latter tribunal demonstrates that its cases have addressed various and specific forms of discrimination, colonialism, and its consequences.

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. The first decision of this tribunal was in 2009.[25] Another reason for excluding this Court from this research is that it is a relatively new Court that has been in operation for only 16 years, while the other two Courts are much older, with more cases and greater experience to explore and compare.

Considering all the points presented above, it is essential to highlight that the African Court of Human and Peoples' Rights is a relatively young court that lacks the significant trajectory of the European and Inter-American Courts. For this reason, this research is focusing on the IACtHR and the ECtHR as objects. Moreover, the cases presented before the African Court differ significantly in terms of the subjects addressed in the judgments of the IACtHR and ECtHR. This does not mean that the work could be advanced to the African Court as a future step in the research process.

It is relevant to examine Fatsah Ouguergouz's thoughts on the African Court.[26] 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.[27] This is an interesting perspective, considering that the African Court recognises individuals as legal subjects with their own juridical personalities, rights, and duties.

Karen Alter highlights the differences between the European Court of Human Rights, the American Court of Human Rights, and the African Court on Human and Peoples' Rights. Unlike the European and Inter-American human rights systems, most African countries have not accepted this court's jurisdiction, which likely contributes to the African Commission's reluctance to refer explosive cases to the court. The political limitations of the African Union's human rights system have arguably facilitated the

[25] Ibid. P. 35.

[26] 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.

[27] Ibid. P. 478.

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.[28] This author reiterates what was already mentioned about the differences in cases that the African Court on Human and Peoples' Rights has ruled on, specifically related to growth, governance, and poverty. Another difference is the jurisdiction, as African Countries are still reluctant to submit to the Human Rights Court and instead refer to other regional court cases regarding human rights. This may be because the African Court on Human and Peoples' Rights is still relatively new and accommodating. Still, in the future, more countries may rely on the jurisdiction of this court and accept its membership.

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 Organisation of American States established social and cultural standards to achieve just and decent living conditions for their people and protect their fundamental rights.[29]

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.[30]

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

[28] 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.

[29] 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.

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

Prevent and Punish Torture, the Inter-American Convention on Forced Disappearances of Persons, and the Convention to Prevent, Sanction, and Eradicate Violence against Women (Belem do Pará), among other statutes and regulations.[31]

The American Convention on Human Rights, also known as the Pacto de San José de Costa Rica, establishes that the Commission and the Court are the competent bodies to oversee affairs related to the compliance with the commitments made by the state parties to this Convention, and regulates the functioning of these organs. The American Convention on Human Rights was signed on November 22, 1969, and entered into force on July 18, 1978.[32]

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 June 29 and 30, 1979, at the Organisation of American States headquarters in Washington, D.C. The Court's headquarters are in San José, Costa Rica.[33] 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 Organisation of American States. The Commission has different types of competencies. This organ has political faculties, such as conducting onsite visits to state parties suspected of violating the rights outlined in the Convention, and preparing reports on human rights in these state parties. The Commission also has a quasi-judicial capacity to receive complaints from specific 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.[34] The Commission was established by Resolution III of the Fifth Reunion of Foreign Affairs Ministers, held in Santiago, Chile, in 1959.[35]

The IACHR is an autonomous judicial institution that aims to apply and interpret the American Convention on Human Rights. The court has the contentious function of resolving contentious cases and the mechanism of supervising judgments. Moreover,

[31] Ibid.

[32] Ibid. P. 7.

[33] Ibid.

[34] Ibid.

[35] Ibid.

this judicial organ has an advisory duty and the function of dictating provisional measures.[36]

The Court is composed of seven judges from member states of the OAS. The judges cannot participate in decisions involving cases from their countries of origin. In interstate cases, a judge can be appointed *ad hoc* based on the nationality of the states involved.[37]

The contentious function of the court includes determining whether a state has 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.[38]

Monitoring compliance with court resolutions requires information from the state about the activities implemented and the effects of such compliance within the period established by the court. Additionally, the court must collect the observations of the commission and those of the victims or their representatives. After this step, the court has the necessary information to determine if there was compliance with the resolution, guide the state's actions accordingly, and fulfil its obligation to inform the General Assembly about the state of conformity of the cases presented before it. Furthermore, if necessary, the court summons the state and the representatives of the victims to an audience to supervise the implementation of its decisions. The court can consider the commission's opinion on the subject.[39]

The advisory function of the court responds to questions formulated by the state parties of the OAS or the organs of this organisation regarding a) the compatibility of internal rules and b) the interpretation of the Convention or other treaties concerning the protection of human rights.[40]

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 individuals.[41]

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

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[36] Ibid.

[37] Ibid. P. 8.

[38] Ibid.

[39] Ibid.

[40] Ibid.P. 10.

[41] Ibid.

5. C. European Court of Human Rights

The European Commission and the European Court of Human Rights were established in Strasbourg with full judicial powers to investigate and remedy any alleged breaches of the rights outlined in the European Convention. The existence of these supranational bodies effectively translated 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,"* has made considerable progress in enthroning human rights.[42]

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.[43] This author praises the operation of the ECtHR and the Convention. He determines that the ECHR is more effective at protecting these rights than the Universal Declaration of Human Rights, which he considers 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 in interpreting and applying a comprehensive document of human rights, such as the Convention, has demonstrated its effectiveness in respecting and fulfilling human rights.

The ECHR stipulates in Article 1 that the contracting State shall secure the 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

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

[43] Ibid. P. 9.

relief at the national level for violations of their Convention rights before having to initiate the international complaint process before the court.[44]

The text *"Paralelo entre Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos"*[45] 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.

The ECtHR's nature and legal regime make it the highest judicial authority in Europe, guaranteeing human rights and fundamental freedoms. It is the organ responsible for 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.[46]

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.[47]

The responsibility of states for the non-compliance with the positive obligations of protection by national authorities justifies the duty of adopting the necessary measures to prevent and suppress the violations committed by individuals.[48] In the case of this work, those individuals are the security forces that depend on the state.

The headquarters of this Court are in Strasbourg, France. The Court comprises 46 independent judges appointed by the 46 signatory states. They last 9 years in their seat

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[44] 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."

[45] Fajardo, Ana María. *"Paralelo entre Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos".* 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).

[46] Ibid. P. 101.

[47] Ibid. P. 115.

[48] Ibid.

and are not eligible for re-election by the Consultative Assembly of the Council of Europe. Representatives of the 46 National Parliaments integrate this Assembly. These judges act individually and not in the representation of the state that elected them. They have plain independence, impartiality, and exclusive dedication. [49]

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.[50]

The ECtHR comprises the Grand Chamber, with 17 judges; five sections, each with 9 or 10 judges; the Commission of Admission, with three judges; and a Unique Panel of Judges, which decides the manifestly admissible requirements. A president, two vice presidents, and the presidents of the five different sections are chosen for a three-year term and are eligible for renewal. Each section´s administrative division is constituted for each specific case, comprising seven judges who ordinarily know and resolve the matters through judgment. They decide on admissibility and the merits of the subject.[51]

A Section is an administrative entity, and a Chamber is a judicial formation of the Court within a given Section. Each Section has a President, a Vice-President, and a number of other judges.[52]

A particularity is the figure of the National Judge, who is a judge appointed for the defendant state and is part of the Chamber that knows the matter. If the first chosen judge is unable to assist, the applicant state designates an *ad hoc* judge for this matter.[53]

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[49] Ibid.

[50] Ibid. P. 125.

[51] Ibid. P. 115.

[52] Council of Europe. European Court of Human Rights. *"The ECHR in 50 questions".* 2021. Strasbourg, France. P. 5.

[53] Fajardo, Ana María. *"Paralelo entre Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos".* 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). P. 125.

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. This Chamber establishes a revision of the judgment. This is an exceptional mechanism, not a second instance. There are a few cases that this Chamber has revised.[54]

The initiation of proceedings before the Grand Chamber takes two different forms: referral and relinquishment. After a Chamber judgment has been delivered, the parties may request referral of the case to the Grand Chamber, and such requests are accepted on an exceptional basis. The Great Chamber intervenes when one of the parties requests it, and these parties have three months to do so. A panel of judges from the Grand Chamber decides whether the case should be referred to the Grand Chamber for fresh consideration. Cases are also sent to the Grand Chamber when relinquished by a Chamber, although this is an exceptional occurrence. The Chamber to which the case is assigned can relinquish it to the Grand Chamber if the case raises a serious question affecting the interpretation of the Convention or if there is a risk of inconsistency with a previous judgment of the Court.[55]

Establishing how this tribunal works is essential to understanding the ECtHR cases. To summarise, these are the organs of the ECtHR. Applications received by the Court will be allocated to one of these formations:[56]

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).

[54] Ibid.

[55] Council of Europe. European Court of Human Rights. *"The ECHR in 50 questions"*. 2021. Strasbourg, France. P. 5.

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

4. Grand Chamber.[57]

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 a 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, as in the IACtHR.[58]

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 the merits of the cases to determine the standards.

Concerning the enforcement of the judgments, when the Court delivers a judgment finding a violation, the Court transmits the file to the Committee of Ministers of the Council of Europe, which consults with the country concerned and the department responsible for the execution of judgments to decide how the judgment should be executed and prevent similar violations of the Convention in the future. This will result in general measures, especially amendments to legislation, and individual measures where necessary.[59]

It is relevant to determine the changes that Protocol 11 to the European Convention on Human Rights established. The instrument entered into force on 1st November 1998.

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[57] Fajardo, Ana María. *"Paralelo entre Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos".* 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). P. 125.

[58] Ibid. P. 130.

[59] Council of Europe. European Court of Human Rights. *"The ECHR in 50 questions"*. 2021. Strasbourg, France. P. 10.

Among the main changes was the elimination of the European Commission on Human Rights, and the fact that applicants now have direct access to the new full-time Court. Another reform was directed to the Committee of Ministers, which no longer had jurisdiction to decide on the merits of cases, but continues to retain the role of monitoring the enforcement of the Court's judgments. A novelty was that the right of individual application is now mandatory, and the Court has automatic jurisdiction concerning all interstate cases brought before it.[60]

Another significant instrument that changed the ECtHR was Protocol 14, which entered into force in 2010. The main changes of this Protocol were the creation of a sole judge, who, together with rapporteurs, would declare cases inadmissible or archive those that had already been decided upon. Another modification is that the Committee of three judges can declare a lawsuit inadmissible by unanimity and decide in repetitive cases where there is a consolidated jurisprudence of the court. Additionally, it included the celebration of friendly agreements to conclude the proceedings in a more straightforward, flexible, and faster manner. The Committee of Ministers revises these agreements.[61]

A relevant procedure of this Court is the pilot judgments. Over the past few years, the Court has developed a new method to address the massive influx of applications concerning similar issues, also known as *"systematic issues"* - i.e., those that arise from the non-conformity of domestic law with the Convention. The Court has implemented a procedure that involves examining one or more applications of this kind while its examination of a series of similar cases is adjourned (i.e., postponed). When it delivers its judgment in a pilot case, it calls on the Government concerned to bring the domestic legislation into line with the Convention. The Court indicates the

[60] Drzemczewski, Andrew. "The European Human Rights Convention: Protocol No. 11 entry into force and first year of application." In: *"El Sistema Interamericano de protección de los derechos humanos en el umbral del siglo XXI".* P.P.357-379. 2003. P. 358.

[61] Parra Vera, Oscar. "Algunos aspectos procesales y sustantivos de los diálogos recientes entre la Corte Interamericana de Derechos Humanos y el Tribunal Europeo de Derechos Humanos." In: *La América de los Derechos*. Santolaya. Pablo y Wences, Isabel (Coord.) Centre of Political and Constitutional Studies. P.P.565-606. Madrid, Spain. P. 567, 568, 569.

general measures to be taken. It will then proceed to dispose of the other similar cases.[62]

Several authors have established their opinions about the procedure of pilot judgments. Elisabeth Lambert Abselgawad determines that the saturation of the Committee of Ministers, the main organ responsible for executing decisions, was one of the causes of the creation of this procedure.[63] The first case in which this procedure was applied was Broniowski v. Poland, decided in 2004. This case concerned the compatibility of an agreement that affected a large number of people (approximately 80,000). The Court agreed that the violation has its origin in a large-scale problem, resulting in dysfunction of the Polish legislation, and it could affect the future of many persons.[64] Consequently, the tribunal declared that general measures should be imposed at the national level. The Court decided to freeze the unfinished affairs of other cases pending the establishment of an internal mechanism for reparation. The number of unfinished affairs was a primordial criterion.[65]

A thought-provoking text about the pilot judgments is one of Costas Paraskeva's.[66] This author mentions the reforms contained in the package of measures adopted in May 2004, including Protocol No.14, aimed at tackling two main challenges confronting the ECtHR. First, the burden of screening out the vast number of unmeritorious applications, and second, the burden of delivering a judgment and assessing just satisfaction in repetitive or routine applications that are well-founded. It

[62] Council of Europe. European Court of Human Rights. *"The ECHR in 50 questions"*. 2021. Strasbourg, France. P. 10.

[63] Lambert Abdelgawad, Elisabeth. "El Tribunal Europeo de Derechos Humanos y la Técnica de las Sentencias Piloto: Una Pequeña Revolución en Marcha en Estrasburgo...". In: *UNED. Revista de Derecho Político. No. 69.* P.P.355-383. 2007. P. 358.

[64] ECtHR. Broniowski v. Poland. (Application no. 31443/96). Judgment 22 June 2004. Strasbourg, France.

[65] Lambert Abdelgawad, Elisabeth. "El Tribunal Europeo de Derechos Humanos y la Técnica de las Sentencias Piloto: Una Pequeña Revolución en Marcha en Estrasburgo...". In: *UNED. Revista de Derecho Político. No. 69.* P.P.355-383. 2007. P. 358.

[66] Paraskeva, Costas. "Human Rights Protection Begins and Ends at Home: The Pilot Judgment Procedure developed by the European Court of Human Rights". In: *Human Rights Law Commentary.* 2003.

was observed that the ECtHR devotes a significant amount of time to cases that are either inadmissible or concern repetitive violations.[67]

In summary, the seed of the pilot-judgments procedure was established in the reform of Protocol 14. Furthermore, in the case of Broniowski v. Poland, the ECtHR began to apply this procedure. I believe that this procedure provides a more efficient and faster way to judge cases when they share the same characteristics. This is beneficial for the Committee of Ministers and the ECtHR to adjudicate cases more quickly and efficiently, representing a significant step in the evolution of the regional human rights courts. However, it is necessary that the rules are well-established and that the same features are noted in a case to determine whether the pilot judgment should be applied. Furthermore, it could be a good idea for the IACtHR, which also has an overwhelming number of cases, to adopt this procedure as a model and apply it as well.

The cases presented in this research are not pilot judgments. However, there are several that present the same characteristics, such as the judgments of forced disappearances in Russia and Turkey. Nevertheless, at the time of these decisions, the ECtHR did not acknowledge a pattern that was repeated in these cases. Either way, the pilot judgments were adopted in 2004, and the key cases of forced disappearances were those that had previously received sentences or were not considered as pilot judgments at the time.

I believe that the cases of forced disappearances against Russia and Turkey in the ECtHR should be Pilot Judgments. That would help this tribunal in determining specific features of these sentences and applying them in all other judgments about similar situations that occurred in the southeast of Turkey and the Chechen Conflict in Russia. For Turkey, a notable example is Timurtas v. Turkey, and for Russia, Imakayeva v. Russia, which illustrate the key characteristics of the cases and the standards applied in the decisions. Furthermore, the case of McCann v. United Kingdom could be a good pilot judgment for the standards regarding the right to life, police brutality, and the excessive use of force by state security forces. Additionally, it could be suitable for determining standards regarding the planning and control of force deployment in the operations of security forces.

Moreover, it could be beneficial for the IACtHR to apply this procedure. It has been established in the ECtHR that this expedites the resolution of judgments and allows the tribunal to examine cases with the same characteristics and violations more

[67] Ibid. P. 1

quickly. Given the high volume of cases presented before the Inter-American Court, this could help the tribunal rule on decisions in a brief period, given its prior experience with the same subject. This will help with the overload of cases, which is a significant problem for both courts. An example could be the case of Velasquez Rodríguez v. Honduras, which would have helped to judge other instances of forced disappearances in Latin America, considering that these share the same systematic pattern and converge in the standards applied. Another good example of a possible pilot judgment is Penal Miguel Castro v. Peru, particularly in situations involving the elimination of target individuals and prison riots. Finally, the case of Bulacio v. Argentina establishes essential standards about the arbitrary detention of persons and the abuse of force by the police.

5. D. Perspectives about the IACtHR and the ECtHR

Introduction

This subchapter examines the perspectives of various authors on these courts, including 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 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 essential to identify another aspect to describe the views of specific authors 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 and Paivi Leino. 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

[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.

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 ECHR. These authors describe how the ICJ has been affected by the proliferation of international courts and the inconsistency of their jurisdiction. The ECtHR determined that such a fundamental difference in the respective tribunals' role 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 states is mandatory, differing 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

[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.

[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.

and the ECtHR represent the new international courts through their conventions and methods of interpretation, thereby driving 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 use the different notions and functions of the ICJ and the ECtHR as examples. This is a significant approach to examining differences in a horizontal hierarchy, such as the international courts. The authors explain why the ICJ is not entirely consistent with other courts and how international tribunals can interpret 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, encompassing or almost continent–wide, essentially political international organisations that protect human rights. This could serve as an example for other continents. The transfer of European and universal values occurred, but – partly due to different social circumstances – other regional systems also achieved excellent and significant development in human rights protection.[73] Raisz notes that the ECtHR was the first tribunal for human rights and the one that developed and protected them. Nevertheless, she also notes that the African Court and the IACtHR have evolved in their jurisdiction and achieved significant progress in protecting human rights.

Raisz establishes that Interaction – or cross-fertilisation between human rights tribunals - is an interesting development in 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, admittedly similar but unquestionably not adequate, on 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 appears to be a

[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.

[73] Ibid. P. 1.

[74] Ibid. P. 2.

[75] Ibid.

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 examining. Judges rarely explain their motives; jurisprudence has the task of discerning the logic behind them, and so do the interactions of international judges.[76] In the author's opinion, the interaction between tribunals is unplanned, occurring during the assessment of 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 tasks between the Inter-American Commission and the Inter-American Court followed the Strasbourg concept. 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 commonly used in the ECtHR than in the IACtHR; however, the latter has a higher number of cases involving advisory opinions. In both courts, there are a few cases involving states versus other states.[78] The IACtHR receives fewer individual petitions, as the Inter-American Commission on Human Rights presents cases before the court to represent individual, collective, or NGO complaints.

Interim or provisional measures serve as a preventive measure, mainly to prevent the violation of Articles, or, as the Rules of Procedure of the Inter-American Commission state, to avoid irreparable harm to persons in general. The IACtHR has developed the law on this topic more extensively than Europe has. When applying these interim measures, San José can primarily focus on the cases against Turkey and Bulgaria in Europe. Unfortunately, the IACtHR itself has had 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

[76] Ibid. P. 2.

[77] Ibid. P. 3.

[78] Ibid.

[79] Ibid. P. 4.

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 III 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 significantly further than that of Europe's or the ICJ's. In the case of Mamatkulov and Askarov v. Turkey, 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 that fails to fulfil certain obligations.[82] Although this work focuses on contentious cases, it is interesting to note what the author establishes about provisional measures, which are more 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—is much stronger. The parts of its representatives have the right to participate at any stage of the procedure, comment, or even mention articles of the American Convention that the Inter-American Commission ignored in its report when it was forwarded to the IACtHR. In Europe, where there is both a written and an oral part to the procedure (hearings), but the former is much more emphasised, the victims' position is significantly weaker.[83] 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.

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[80] Ibid.

[81] Ibid.

[82] 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.

[83] Ibid. P. 5.

Concerning the remedies, there exists a variety, 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.[84] Europe, representing the concept that the state must determine how to provide a remedy, adheres to declaring the injustice as an adequate moral indemnification; simultaneously, it is more favourable for the victims in terms of 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 associated with them will also be transferred to Europe shortly.[85] The reparations are the next step after the legal consequences, including the punishment of the responsible party. The IACtHR has established many reparations throughout its case law, including obliging the state to name a street after a victim of a crime.

The right to life is a field that San José, due to its unique circumstances, had more opportunity to address. As Strasbourg did not have to address the question until the end of the 1980s, it is evident that it later took note of what San José did. This reference has become 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 encountered more variations of the violation of the right to life in recent years.[86] The situation that the author describes directly relates to the many cases of forced disappearances that the IACtHR has to resolve, starting with Velásquez Rodríguez v. Honduras in 1988. To this day, there are more than eighty cases in this category. The ECtHR drew on the example of the American Court when, ten years later, it began to adjudicate this crime.

The establishment and consolidation of the continuing situation theory are, at least partly, due to interaction. The doctrine of *"continuing violation"* is accepted and

[84] Ibid. P. 5,6.

[85] Ibid. P. 6.

[86] Ibid. P. 7.

applied in the Inter-American system. It means that once the country agrees with the court's jurisdiction, subsequent actions or inactions are subject to review, even if they arise from an event that occurred before acceptance.[87] This is an exciting concept transfer from the ECtHR to the IACtHR. Still, it may encounter difficulties with the state and the court's legitimate legislation regarding events that occurred before it became 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.[88] As the IACtHR has expressed, in the case of a continuing or permanent violation that begins before the state accepts 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.[89] This means that the investigation by the state must continue, even if the facts occurred before the state was a party to the Convention, considering the right of indirect victims (relatives of the person) to obtain information about the fate and whereabouts of the direct victim.

The IACtHR has established that a state can be held responsible if it has failed to fulfil its obligation to investigate the facts of the case, identify the responsible parties, and prosecute and punish them. In the Velásquez Rodríguez v. Honduras case of 1988, one of the first cases before the IACtHR, the court established a breach of the American Convention regarding 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).[90] 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 governments but, more significantly, the states (including all their powers, organs, and agents). The continuing

[87] Ibid.

[88] Ibid.

[89] Ibid. P. 8.

[90] Ibid.

violation theory is a way of thinking that 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. Therefore, it is a value transferred from one continent to another.[91] A. A. Cançado Trindade's way of thinking 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 in cases where the government's investigation has not yielded results due to negligence or acquiescence on the part of the state. The IACtHR and the ECtHR have established that the state must continue to investigate, identify the responsible parties, and attempt to punish them.

The role of the Inter-American and European Human Rights Tribunals is significant in the general development of international law, particularly in the evolution of human rights protection at the 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 among international fora, the courts take the initiative and pay attention to the jurisdiction of others. The transfer of values has led to a more unified approach to human rights protection worldwide.[92] The work of regional human rights tribunals is essential for the development of human rights, and this can be better achieved through dialogue between the IACtHR and the ECtHR, as no superior organ can establish the basic principles governing these rights. And it remains true even when every continent has unique features and circumstances.[93] Each court must develop linked decisions, but adjust them to the characteristics and situations of each continent.

Anikó 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 it to its Continent, context, and circumstances. Furthermore, the author has effectively compared some aspects of

[91] Ibid. P. 8,9.

[92] Ibid. P. 9,10.

[93] Ibid. P. 9,10.

these courts. I agree with Raisz that although the IACtHR has followed the model of the ECtHR, it has developed its own standards and characteristics.

The author, Luis Barrionuevo Arévalo, outlines the benefits and drawbacks of establishing international courts.[94] 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 to it. 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.[95] The situation with the proliferation of international courts is that, unlike national courts, there is no hierarchical order in which one court can establish that its statute or convention is more important than those of other courts. This can be a problem, as seen in the case presented by the author to the International Court of Justice and the ECtHR, but it is also a benefit. Due to the lack of hierarchy and the horizontal nature of international law, the IACtHR and the ECtHR can establish a dialogue and cite each other to decide on cases that help protect and evolve human rights. Furthermore, they can tailor human rights to the characteristics of each continent and, if necessary, apply different criteria without needing to respond to other courts for their decisions. The ECtHR has also dismissed interpretations of international agreements or general international law rules that aim to create exceptions to the obligations of contracting states under the ECHR.[96] Concerning this, the author highlights the multiplicity of international courts, which affords greater latitude for experimentation and exploration of new ideas, potentially leading 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

[94] 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.

[95] Ibid. P. 56.

[96] Ibid. P. 57.

and strengthen the international legal system.[97] This is especially significant for the work of the IACtHR and the ECtHR and their constant influence on each other.

Barrionuevo Arévalo, like Koskenniemi and Leino, highlights the importance of the proliferation of international courts, as well as their advantages and disadvantages. According to these texts, it is possible to determine that the ICJ has 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 concerning the ICJ is different. The human rights courts protect human rights as outlined in their conventions and individuals' rights against human rights violations committed by a specific state. The ICJ must decide on various legal situations regarding several international instruments, and the cases are limited to disputes 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".*[98] This author establishes that if saving lives and securing broad reparations to victims are appropriate measurements of the effectiveness of any such supervisory bodies, then arguably no other system has been more successful than the Inter-American system.[99] Here, the author highlights the efficacy demonstrated by the Inter-American System in preventing violations 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 was in place, comprising the American Declaration on the 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

[97] Ibid. P. 60.

[98] 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.

[99] Ibid. P. 857.

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.[100] The author presents the idea that the American Convention attempted to be a comprehensive instrument of human rights, determining its compliance and establishing values not inherent to America. The situation on this continent can be explained. Unlike the stable and consolidated judiciaries of Europe, most countries in Latin America have a history of fluctuating between periods of dictatorship and democracy. Because of this, the drafters of the Convention aimed to establish the maximum amount and quality of rights to encourage 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 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.[101] 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, including its comprehensive on-site visits and the drafting of reports on human

[100] Ibid. P. 866,867.

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

rights in several countries, which have had a significant impact on the countries' human rights situations. Furthermore, the author emphasises the importance of the settlements that the Commission has established, which have been highly 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 led to highly creative and generous reparations 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.[102] The Commission's load of work increased 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 numerous cases to the IACtHR and arranged extrajudicial settlements to avoid overburdening the court's workload.

However, *"working"* visits in recent years by the Commissioner and the staff member responsible for the country have, to some degree, supplanted the more cumbersome and expensive on-site visits by the entire Commission. It can be expected that future country visits and ensuing reports, instead of examining the *"global"* human rights situation in the country concerned, will be far more focused on addressing and formulating recommendations concerning specific human rights practices.[103]

Goldman highlights the challenges that the Commission and the IACtHR must confront. 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 seven 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.[104] The Court and the Commission have an

[102] 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.

[103] Ibid.

[104] Ibid. P. 883.

overwhelming number of cases to adjudicate, making it challenging to keep up with the large volume of instances these human rights organs receive. A similar situation can be observed in the ECtHR, where one of the significant challenges is that the court struggles to resolve an overwhelming number of cases quickly due to the limited number of judges. Even if these courts have a way to discriminate between which cases reach the last instance, there are still numerous cases that do not.

The failure of most state parties to the American Convention to adequately implement the instrument's rights and guarantees under domestic law, or to fully comply with the Commission's and Court's orders and decisions, 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 parties themselves. Under the American Convention, state parties not only pledge to secure all persons subject to their jurisdiction in 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 from 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.[105] However, this is not as significant as it seems. Democratic states do not always comply with every court decision that requires them, in some instances, to conduct a practical investigation into human rights crimes and identify, prosecute, and punish 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.[106] It is worth noting that within the Council of Europe, noncompliance with judgments of the ECtHR is subject to sanctions, including exclusion from the regional

[105] Ibid. P. 883,884.

[106] Ibid. P. 884.

system.[107] This could be resolved if the domestic courts adjust their legislation to conform 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 violations 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 were to present compulsory jurisdiction, and states were obliged to be parties to the court, as is the case with the ECtHR. The states would have to deal with the consequences of a different nature for being excluded.

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 uphold their human rights obligations under the American Convention.[108] 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 exerted pressure on Latin American countries regarding their human rights obligations, despite having voluntarily decided not to be part of the Convention.

[107] Ibid. P. 885.

[108] Ibid. P. 887.

In my opinion, Goldman significantly determines the advantages and disadvantages of the IACtHR. Furthermore, this author acknowledges one of the main problems faced by this court and the ECtHR: the overload of cases and the difficulty in deciding cases in a timely manner. This is why decisions often take considerable 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, the author effectively explains the political and legal causes behind the possible standards applied by each human rights court.

An article by former judge A. A. Cançado Trindade of the IACtHR, *"Towards Compulsory Jurisdiction: Contemporary International Tribunals and Development in the International Rule of Law,"*[109] is a thought-provoking text. This author establishes that the international rule of law is expressed not only at the national level but also at the international level.[110] The growth of international adjudicative organs extends beyond peaceful dispute settlement, indicating the gradual development of a judicial branch within the international legal system. The author emphasises the significance of an international rule of law that emerged with the proliferation of international courts following World War II. In a globalised, interconnected, and communal world, it is necessary not only to protect rights through national law but also through 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, which decide not to be part of this international jurisdiction or participate in some of the international courts, although not all of them. One example is the United States, which is a party to several international treaties established primarily by the United Nations, but not a party to the American Convention on Human Rights or 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.[111] This author highlights that human rights preexist their formal establishment in international human rights law.

[109] Cançado 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.

[110] Ibid. P. 235.

[111] Ibid. P. 236.

Furthermore, for A. A. Cançado 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 horizontal dimension of 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 conventional protection mechanism at issue, but also, furthermore, it would fatally impede its possibilities for future development.[112] When states accept membership in the American Convention or the European Convention, they assume a responsibility to protect 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 cease to comply with the Convention's provisions within their jurisdiction, which would be detrimental to 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 ought to be restrictively interpreted.[113] The implicit limitations may pose a problem in the compliance of states' obligations concerning human rights, as they must understand that they are required to do so, but may still choose to 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,

[112] Ibid. P. 241.

[113] Ibid. P. 242.

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.[114] 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[115] 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; b) on the condition of reciprocity; c) for a specified period; and d) for specific cases.[116] 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 others. The states cannot impose any conditions or restrictions later.

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[114] Ibid.

[115] 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.

[116] Cançado 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.

Regarding the ECtHR, the entry into force of Protocol Nº 11[117] affords another conspicuous example of automatic compulsory jurisdiction.[118] A. A. Cançado Trindade's statement expresses great concern about the mandatory jurisdiction of international courts and the compliance of states 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 elevating contemporary international adjudication into a new universalist dimension, transcending the peaceful settlement of international disputes on a strictly inter-state basis. They have thereby enriched contemporary Public International Law.[119] The case law of these courts has enriched international law by establishing standards and contributing to the evolution of human rights law and international public law.

A. A. Cançado 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.[120] The 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 that respects and protects human rights 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, having emerged at a time when a new international human rights tribunal was established: the African Court on

[117] 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.

[118] Cançado 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.

[119] Ibid. P. 255.

[120] Ibid. P. 256.

Human and Peoples' Rights.[121] A. A. Cançado 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.[122]

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.[123] 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, adhering to the state consent expressed at the time of their adoption, but rather evolutive, taking into consideration the advances made in the corpus of human society in the protection of human rights over the years.[124] It was already established that human rights case law is constantly evolving. This means that human rights are interpreted in light of the time period to which they apply. The IACtHR has even determined that the American Declaration of the Rights and Duties of Man must be construed in light of 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 have evolved through time and must be interpreted accordingly. The human rights that protect people evolve with them and their necessities.

A. A. Cançado Trindade establishes essential notions for international human rights law, but the most significant, in my opinion, are two. First, there must be a global rule of law. This means there must be respect for, compliance with, and protection of international law, and, most importantly, human rights. Many states are reluctant to

[121] Ibid.

[122] Ibid. P. 258.

[123] Cançado 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.

[124] Ibid. P. 354.

give up part of their sovereignty to adjudicate under international law. As the author acknowledges, human rights preexist positive law. All states parties to the Charter of the United Nations (currently 193) 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, along with their interpretation, must adapt to the context, circumstances, and specific situation in the determined period in which they are applied. This way, international human rights law will continue to evolve and adapt to the new circumstances in a constantly changing, globalised world. Another engaging text to include in this study is Karen Alter's work on the new international courts.[125] The author states that there are currently 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.[126] This work states that such characteristics correspond with the IACtHR and the ECtHR. The predetermined rules are the American Convention on Human Rights, the ECHR, the statutes, and the rules of procedure of the tribunals. These courts make binding decisions that are the subject of the contentious cases 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 judges cannot be removed except for malfeasance and that the working conditions for judges cannot be altered, as states are unhappy with specific 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 each country nominates its candidate of choice, international courts are also independent in that they are virtually impossible to stack. The political

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

[126] Ibid. P. 7.

environment in which they work may be politically fraught.[127] The states cannot remove a judge because they disagree with the judgment. Furthermore, the independence and impartiality of the judges are ensured due to their diverse backgrounds and nationalities. 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, it is a much less significant factor in international judicial politics than in domestic judicial politics.[128] There is a substantial difference between the IACtHR and the ECtHR because judges from American and European countries have different perspectives. Even within each court, judges from various countries on the same continent have their own views and backgrounds. According to the author, the idea is that the judges of international courts are impartial because they cannot 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.[129] The author establishes the difference between confidence in international courts and national courts. In the latter, it is possible to critique the judges for their decisions due to their potential political involvement. This is impossible in international courts because judges from different countries render the judgments. According to the author, international courts are more likely to achieve state compliance with their judgments because they know this decision has been made independently and impartially. Additionally, they have a political interest in being perceived as a state that adheres to international law, which enhances its global image and secures its economic and political interests. Furthermore, they cannot avoid complying with the decision of an international court to which they have submitted their jurisdiction and are a party. The delegated jurisdiction is seeing more cases for states than its domestic courts.

[127] Ibid.

[128] Ibid.

[129] Ibid. P. 15.

The author states that the *"new style"* involves international courts with far-reaching compulsory jurisdiction and access for non-state actors, private litigants, and/or supranational prosecutorial bodies to initiate litigation.[130] The author identifies the characteristics of the new international courts, which she establishes as those that no longer accept only states 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 IACtHR through the Commission), but can only interpose cases against states, and only these can be parties.

The author establishes that the Organisation of American States allows 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 distinction between the IACtHR and the ECtHR, highlighting their characteristics as either 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 claims.[131] The IACtHR's option to participate in this has resulted in it having far fewer members than the ECtHR, which the Council of Europe requires to submit a mandatory report. Also, although the ECtHR allows private actors to interpose demands before this court, both tribunals still have only states as parties. However, the ECtHR has evolved more 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 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 gatekeeper for the court. It is the model copied by the IACtHR. Still, the Inter-American Court has made it hard for states to withdraw consent once given, and the

[130] Ibid. P. 17.

[131] Ibid. P. 17,19.

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 access for private individuals.[132] 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 involving non-state actors, granted 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 monitor how the IACtHR develops, particularly if it alters 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 a significant change for the Inter-American System of Human Rights, especially considering the substantial work that this Commission is tasked with doing.

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.[133] This is why the IACtHR should implement these changes: to increase litigation and expand its membership.

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 likely to inspire compliance and confidence among states and individuals because they are not subject to political or economic interference, as 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 individuals within their jurisdiction can file their cases about human rights violations before the IACtHR. This will ensure the protection of human rights and the possibility of this in all American states. I believe

[132] Ibid. P. 27.

[133] Ibid. P. 37.

the opportunity to present individual petitions is also a necessary change in the American court system for 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.[134] 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.[135] This was a case of forced disappearance, and in the domestic jurisdiction, it was judged by military discipline. This is inside the same forces that violated the right to life. This contradicts the principles established by this court regarding impunity and the necessity of a fair trial, as outlined 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 protects the right to life. This court is opposed to amnesty laws and judgments of military jurisdiction that do not follow the standard procedures 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

[134] 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.

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

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.[136] Mexico did not comply entirely with the judgment of the IACtHR that established the investigation, trial, and punishment of those 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 has compulsory authority. The mandatory jurisdiction of the IACtHR applies to all cases concerning the provisions of the American Convention on Human Rights. The decision of the IACtHR had the character of *res judicata*, meaning that a matter is considered to have been judged and cannot be rejudged. 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 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.[137] The judgment of the IACtHR is binding for all the states that have agreed to ratify the Convention and become parties to the court. For this, the Supreme Court of Mexico acknowledges that its judgments are binding on all state organs and judges. The state must comply with the judgment of the IACtHR because it has accepted the court's compulsory jurisdiction, and the court respects this country's reservations. If the state has become a party to the court, the authorities must not disregard its judgments. Furthermore, the state cannot judge a case involving the military as perpetrators by a military court under its domestic law. The criminal court must judge this case. If not, allowing impunity is against the standards of the IACtHR. As for cases to which Mexico is not a party, the reasoning and jurisprudence of the IACtHR serve as guidance for the

[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. P. 202.

[137] Ibid.

Mexican judiciary. The Supreme Court added that it was not in its jurisdiction to review a judgment of the IACtHR.[138] The Supreme Court establishes a significant concept: in all 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 of 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 significantly reduced due to decisions of the Inter-American system.[139] This is a significant contribution of the IACtHR. As will be established in Chapters III, IV and V, 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 one against which the accusation is made. For this reason, military courts are not permitted to adjudicate cases involving the military. This provides impunity for the perpetrators and a lack of justice for the victims. Furthermore, in my opinion, the author's statement about the compliance of the IACtHR's judgments 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 believe that the author's acknowledgement of the court's influence on the domestic jurisdiction of state parties is an essential concept that should be applied to every domestic judgment involving human rights provisions.

[138] Ibid.

[139] Ibid. P. 204.

Diana Contreras-Garduño establishes a similarity between the human rights conventions.[140] 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 IACtHR.[141] This author reiterates that the American Convention on Human Rights has used the ECHR as a model and that the predominance of civil and political rights protection exists. However, both Conventions outline significant concepts regarding economic, social, and cultural rights, but there is an apparent preeminence in the protection of civil and political provisions. This is another difference from the African Charter on Human and Peoples' Rights, which outlines 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, if necessary, 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 member states, and addressing high-priority thematic areas.[142] The Inter-American Commission has functioned effectively, with several obligations and duties that the author describes, including on-site visits to 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 are required to submit reports on various human rights issues. 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's vital work, which has

[140] 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.

[141] Ibid. P. 598.

[142] Ibid. P. 599.

developed within the Inter-American System and plays a crucial role as a filter between the petitioner and the court. Moreover, the commission oversees the presentation of claims before 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.[143] 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 are 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.[144] The commission is overburdened with work due to its numerous functions. It is relevant to highlight that this organ's reports are binding for the state parties, and the commission will pursue complaints of these if a case of human rights violation is not referred to the court. In this way, and with friendly settlements, avoiding the overload of claims interposed before the 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 continue to follow up on the case until its reports are fully compliant.

[143] Ibid. P. 602.

[144] Ibid.

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.[145] Unlike the ECtHR, claims are interposed to the IACtHR 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 on these in the final judgment.

The IACtHR's judgment is not subject to appeal. 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 the state six months from the date the judgment is issued to comply with its decisions. Since the Convention is silent on any monitoring compliance mechanism, the court, at its initiative, may request the state to report on the measures it has adopted to comply with the judgments.[146] There is no explicit system in place for the court to monitor judgments and ensure compliance by the state parties. However, the court may ask for reports from the states to determine what they have done to comply with the court's decisions. This is necessary for the court because, as established in its case law, the primary objective 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 chosen to be part of this court, it is bound to comply with established decisions, even if it disagrees with them. The judgments are not subject to appeal in this international court and have the character of *res judicata*. Moreover, the parties can request an explanation of the scope of the judgment's meaning to understand why the court decided as it did.

[145] Ibid. P. 607.

[146] Ibid. P. 607, 608.

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, victims' rights, Indigenous people's rights, transitional justice and amnesty laws, and the vindication of economic, social, and cultural rights, among others.[147] 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, the prosecution and punishment of those responsible for human rights violations, and the public disclosure of 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 reiterated its stance on the issue of sanctioning impunity and amnesty laws. Transitional justice has also been a significant concern, as several dictatorships have come to an end and democratic governments have emerged. The author also mentions the clearing of economic, social, and cultural rights, which, as established above, are not the predominant notion of this court but have been determined to be significant concepts in these areas. 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.[148] These critiques refer to the notion of the court as an activist. This is a peculiar way to describe a court that protects human rights, as it is evident that its primary role is to guarantee these rights. Every human rights court has a little bit of activism in it. Although reparations are the remedy when the situation cannot return to its pre-violation state (as in the case of the right to life), they help relatives achieve closure regarding the breach of human rights. Moreover, reparations, which can take many forms, are provided for all human rights violations.

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

[147] Ibid. P. 608.

[148] Ibid.

solving cases of a similar nature. In short, the system needs more transparency.[149] The idea that the court does not establish a uniform way of deciding cases with the same characteristics undermines its effectiveness. If this court establishes a uniform pattern to settle cases with similar characteristics, such as enforced disappearance, it could resolve these cases more promptly. As mentioned above, the ECtHR has a system that establishes standards for cases with similar characteristics, referred to as Pilot Judgments. Transparency in a regional human rights system is necessary for the confidence of states and individuals. 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 IACtHR has set up standards of reparations which have guided national reparation programmes and have been embraced by other international tribunals, such as the ECtHR and the International Criminal Court.[150] The quality and number of reparations established by this tribunal have been relevant and have guided other courts in their application. 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 critiques of this court. I believe that a central notion of the author, with which I agree, is the importance of the Inter-American Commission on Human Rights and the significant work it 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

[149] Ibid. P. 611.

[150] Ibid. P. 609.

predominance of political and civil rights as an inheritance of Western ideology, they have also 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.[151] Their tasks include examining matters related to the interpretation and application of regional human rights conventions and other documents concerning human rights, as well as determining individual complaints submitted by individuals, groups of individuals, NGOs, or states regarding human rights violations.[152] 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 cases against states in accordance with the provisions of their respective conventions.

Furthermore, this author establishes that human rights courts interpret conventions and treaties teleologically in an evolutionary manner, contributing significantly to the formation of the international *corpus juris* of human rights.[153] These human rights are established in the conventions, but as was mentioned, they are living instruments. The interpretations of these provisions, along with 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 interstate disputes. The human rights courts decide 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.[154] 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 the specific object of their authority. A significant difference that the regional human rights courts present in comparison to the older courts is that individuals can interpose claims against the state parties. The IACtHR develops this through the Commission. In the ECtHR, there is a

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

[152] Ibid. P. 416.

[153] Ibid.

[154] Ibid. P. 417.

direct way for individuals, NGOs, or other international organisations to interpose allegations.

Legal transplantation is evident in the establishment and functioning of these courts, as the different groups of courts, which follow and adopt specific models, are readily noticeable. The models of African and Latin American regional economic integration organisations were the European Economic Community and the European Union, which also apply 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 decisions they make.[155] Concerning legal transplantation, the author presents significant ideas about this figure of the ECtHR, which was the first and has become a model for 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 on the fragmentation of international law were emphasised at the end of the 1990s, particularly 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.[156] This could be the case with the IACtHR and the ECtHR, which have different articles on which they base their decisions and various standards for deciding a case. Furthermore, the IACtHR is based on the model of the ECtHR but differs from it in several aspects, which is natural in a situation of legal transplantation where the court begins by following a model but may establish its own concepts, notions, and characteristics. Each of them applies its different conventions in different continents with diverse features.

Lamm establishes that the different interpretations of international law can be primarily traced back to the absence of a hierarchical order among international courts. Regarding human rights, courts can establish a horizontal order, which may lead to differing conclusions when interpreting certain norms.[157] This will be shown in the third and fourth chapters, which will analyse the courts' standards and determine the similarities and differences. Additionally, the concept of horizontality between these

[155] Ibid. P. 418.

[156] Ibid. P. 419.

[157] Ibid. P. 420.

courts is crucial because each can decide differently, depending on the Convention under which it is based and the jurisdictions in which it applies its judgments. It will be interesting to determine whether these courts engage in dialogue or use different criteria when ruling on their decisions, considering that they are separate courts that decide on human rights matters. 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, namely the European Court of Human Rights and the Inter-American Court of Human Rights, frequently refer to each other's decisions. Moreover, in the legal practice of these two human rights courts, some convergence can be discerned.[158]

Lamm establishes interesting concepts regarding the relationship between regional human rights courts and national courts that must comply with the provisions of the Conventions. The regional human rights courts ensure compliance with treaties and exercise control over the legislation and legal practices 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.[159] The cooperation of the state with the human rights courts does not always comply, for example, with the provision of necessary documents, which can raise suspicions about the actions or omissions of such a state. However, these courts are in fundamental contact with the contracting states.

Lamm identifies key concepts about the human rights courts and their characteristics. I believe that the central notion is the evolution of international law, which can be seen in these courts, where individuals may find protection for their human rights. Furthermore, the author acknowledges the concept of legal transplantation, which is vital to this work, particularly in the context of the two courts that are the subject 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 applied by this court, the evolution of human rights, and the

[158] Ibid.

[159] Ibid. P. 421.

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, which show only one side of the conflict. States are often reluctant to disclose information, which can create a problem when these tribunals examine cases and make decisions.

It is interesting to present some notions of the text about social change in the IACtHR of Martha Gutiérrez.[160] The author states that the regional human rights courts are no longer viewed solely as forums for resolving international conflicts but are recognised as key players in shaping domestic legal and political landscapes. The cases of these courts contribute positively to the consolidation of the rule of law by affirming that even the most potent political actors are not above the law.[161]

The impact of these courts extends beyond delivering justice to individual victims through measures of reparations and guarantees of non-repetition. It also includes providing jurisprudential tools and precedents for social movements and actors advocating for rights, both within and outside the state apparatus.[162]

Gutiérrez determines that historically, human rights functioned as powerful tools for resisting authoritarian regimes; today, they serve as crucial instruments for addressing entrenched structural inequalities in the region. The history of international human rights law is intrinsically linked to the need for a global response to abuses by states that systematically violate the rights of their citizens, and Latin America has played a pivotal role in this history.[163]

Gutiérrez highlights the necessity of the IACtHR in a continent that has experienced dictatorships and transitions to democracy. For states, it is easier to comply with pecuniary reparations than those that require changes to their judiciary, legislature, or constitutional reforms. With its judgments and reparations, the IACtHR has the objective of achieving equality in countries with complex histories, primarily for minority groups such as the indigenous people. Gutiérrez determines that while the orders of this court are not always fully implemented, their impact remains significant. Systematic decisions influence case law, generate symbolic effects, strengthen

[160] Gutiérrez, Martha. "Inter-American Human Rights System and Social Change in Latin America". In: *Laws Vol. 14, No. 14*. P.P.1-16. Switzerland, 2025.

[161] Ibid. P. 3,4.

[162] Ibid. P. 4.

[163] Ibid. P. 9,12.

networks of rights defenders, and raise awareness of the issues that states must address.[164] It is fair to state that the IACtHR and the ECtHR play a role in driving social change within their respective jurisdictions, particularly through the application of human rights and their evolution in domestic governments and courts. This has helped individuals to have their fundamental rights and freedoms protected and respected, and these courts have contributed to the evolution of human rights in a positive way. However, there is still much work to be done. For example, achieving full compliance with judgments by states and incentivising individuals to continue their efforts to fight for the respect of their human rights, despite the challenges they face.

It is significant to consider a new text from 2025 by Sara Watalany Silva dos Santos and Gabriel Moraes de Outeiro on the conventionality of control.[165] The authors state that the technique of conventionality control is exercised through the imposition of an international norm over a domestic one, as well as by analysing the effectiveness of the more beneficial paradigm norm and the interpretation the IACtHR gives to this norm.[166] The conventionality control produces several effects, both at the international and domestic levels. From a general perspective, the judgments of the IACtHR have binding effects on all signatory states of the American Convention on Human Rights, directly and obligatorily for the condemned countries and indirectly for the other state parties. From an internal perspective, declaring a norm unconventional implies invalidity and inapplicability.[167]

The conventionality control is a tool for implementing international human rights standards in states subject to their jurisdiction, which involves analysing the compatibility of domestic acts of commission or omission in light of these international standards. It can be exercised at both the global and domestic levels. The authors highlight some characteristics of this tool concerning the Inter-American System: as of 2006, the obligation of states to exercise conventionality control *ex officio* was formally inaugurated; decisions of the domestic judiciary which does not follow the

[164] Ibid. P. 13.

[165] Watalany Silva dos Santos, Sara and Moraes de Outeiro, Gabriel. "Conventionality Control in the Inter-American Court of Human Rights". In: *Revista de Direitos Humanos, Vol.1, No. 1.* P.P.34-50. Marabá, 2025.

[166] Ibid. P. 36.

[167] Ibid. P. 37.

Convention can be declared unconventional; the control of conventionality must take into account not only the American Convention but also all human rights treaties relevant to the matter in question; all authorities, powers and bodies of the state must carry out the control of conventionality and there is no specific model for exercising this control.[168]

Conventionality control aims to prevent the application of standards that conflict with the American Convention on Human Rights. It is a duty and a positive obligation of the state parties to adopt the provisions of the Convention and to adapt them in a way that no domestic law or norm contradicts this instrument. It is necessary to highlight that the IACtHR and the ECtHR have a complementary role as subsidiary courts and are not higher instances of the domestic tribunals. According to Article 2 of the American Convention on Human Rights, state parties must adapt their domestic law to the provisions of the Convention, and they cannot fail to comply with the rules of international law by alleging norms of domestic law as justification. The provisions of the American Convention on Human Rights are superior to domestic law in a hierarchical and vertical sense. The judgments of the IACtHR and the ECtHR present effects not only for the condemned state but also for all other state parties of the Convention, because what has been decided for one can be applied to the rest.

Another thought-provoking text is the one by Jilliene Haglund and Francesca Parente on damages and reparations in the IACtHR.[169] The authors state that translating harm suffered as a result of human rights violations into a monetary award is a complex process, and there is substantial variation in the amounts awarded by the IACtHR to victims of human rights abuses. This court follows general criteria for establishing the quantities and has broad discretion to determine the exact amounts of awards.[170]

The authors explain the type of reparations that the IACtHR provides about Article 63 of the American Convention on Human Rights.[171] These are pecuniary damage, non-

[168] Ibid. P. 46,47.

[169] Haglund, Jullienne and Parente, Francesca. "Balancing justice: Damages awarded by the Inter-American Court of Human Rights". In: *The Review of International Organisations*. Ed. Springer. P.P.1-30. March 2025. United States, 2025.

[170] Ibid. P. 2.

[171] Organisation 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 63: 1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that

pecuniary damage, and costs and expenses. Pecuniary damages are material awards that have direct monetary value and represent the financial consequences of the violation, including the loss of income suffered by the victim, expenses incurred by their next of kin, and any consequential damage showing a direct causal connection with the violation. Non-pecuniary damages, such as moral damages, encompass damages for the harmful effects of a violation that are not directly financial, including emotional distress and suffering caused to the victim and their close relatives as a result of the human rights violation. Costs and expenses refer to legal and travel costs incurred as part of pursuing a case.[172]

The authors state that the IACtHR considers the amount of suffering endured by different types of victims in different circumstances. For this, the violations of the right to life and to the right to humane treatment (Articles 4 and 5 of the American Convention on Human Rights) are associated with larger pecuniary and non-pecuniary damages awarded by the IACtHR.[173]

Furthermore, when assessing the amount of pecuniary damage to be awarded, the human rights courts consider the implications, particularly the threat to legitimacy that non-compliance and potential backlash pose, in determining the value of awards. The IACtHR can find it strategically beneficial for the institution's legitimacy to consider the limited financial resources of violating states and temper awards of monetary compensation.[174]

In the case of the IACtHR judges, they have an interest in fairly compensating victims of human rights abuse to make victims whole. The situations established in this work are those in which it is not possible to reset to the conditions that existed before the violation of the right (for example, the death of a person), which is the first form of

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the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. 2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. Concerning a case not yet submitted to the Court, it may act at the request of the Commission.

[172] Haglund, Jullienne and Parente, Francesca. "Balancing justice: Damages awarded by the Inter-American Court of Human Rights". In: *The Review of International Organisations.* Ed. Springer. P.P.1-30. March 2025. United States, 2025. P. 6.

[173] Ibid. P. 10.

[174] Ibid. P. 11.

reparation that the courts have determined. The court relies on prior case law, as well as the principle of equity, in assessing the value of awards. Economic and political considerations influence the state's award of monetary damages.[175]

Haglund and Parente conduct an exhaustive analysis of the characteristics and considerations that guide the judges of the IACtHR in determining the amount of monetary compensation for countries that have been condemned. These considerations encompass both judicial implications and the economic and political characteristics of the state parties. This text presents a thorough examination of the awarded pecuniary damage; however, a deeper analysis of this topic in this research would open up a branch to another subject that is not within the scope of this study. Nevertheless, it was interesting to determine some essential notions of this work. The authors state that this can be extrapolated to the ECtHR. Furthermore, it is vital to highlight that although the IACtHR has awarded several compensations for pecuniary damage, its reparations for non-pecuniary damage have been innovative and adequate for the crimes committed. This court has determined several reparations for non-pecuniary damage that have an impact on the domestic law and politics of the states, as well as the lives of victims and their relatives.

A significant work is that of Szymon Janczarek and Nikita Kolomiets about the execution of judgments in the ECtHR.[176] The authors identify the key actors involved in the execution of judgments. Primarily, the respondent state and its bodies have to comply with the decisions. Additionally, the Committee of Ministers, which supervises this execution, and the ECtHR, which identifies the problem to be resolved and sometimes guides how to address it, assess the progress of the execution. Other actors involved are the Council of Europe, other international organisations, as well as NGOs and national human rights institutions. By the principle of subsidiarity, respondent states remain free to choose how they discharge the obligation, under

[175] Ibid. P. 27,28.

[176] Janczarek, Szymon and Kolomiets, Nikita. "Execution of Judgments of the European Court of Human Rights: Actors, Substance and Procedure." In: *ICL Journal 2025, Vol. 19, No. 2.* Ed. De Gruyter. P.P.181-211. 2025.

Article 46 of the ECHR, to abide by the final judgments of the court in any case to which they are a party.[177] [178]

A state as a whole is responsible for the prompt and effective execution of the ECtHR judgments. Within its institutional structure, specific measures shall be adopted by competent domestic authorities. Sometimes the body responsible for the Convention violation is different from the body remedying it. Sinergy among all the domestic actors is highly important.[179]

The Committee of Ministers acts on behalf of the Council of Europe and is composed of Ministers of foreign affairs from the Member States, or their representatives. The work of this Committee is thus political, allowing recourse to political leverage to deal with cases of non-execution. It applies legal rules and has a quasi-judicial character. According to the authors, studies demonstrate that the hybrid character of supervision — comprising political, quasi-judicial, and technocratic elements — results in a higher rate of compliance than in the Inter-American system, where the IACtHR directly monitors compliance.[180] I believe that this hybrid system for monitoring sentences

[177] Ibid. P. 184,185.

[178] 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 46: Binding force and execution of judgments. 1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. 3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee. 4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1. 5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

[179] Janczarek, Szymon and Kolomiets, Nikita. "Execution of Judgments of the European Court of Human Rights: Actors, Substance and Procedure." In: *ICL Journal 2025, Vol. 19, No. 2*. Ed. De Gruyter. P.P.181-211. 2025. P. 185.

[180] Ibid. P. 187.

could be more effective. Still, it is a subject for another study to compare the execution of the judgments in both courts to determine if it is more efficient than the judicial model of the IACtHR.

In the process of supervising the execution of judgments, the Committee is assisted by the Department for the Execution of Judgments of the ECtHR, which is part of the Directorate General for Human Rights and Rule of Law of the Council of Europe. The Committee rarely disagrees with the Department's advice. This Department provides technical advice and support to states through targeted activities, including legal expertise, roundtables, bilateral meetings involving all relevant national actors, and training activities. This Department is a guardian of the system's reliability: potential concerns about the effectiveness of peer supervision in the Committee are being mitigated by the strong and independent Department.[181]

To execute the judgments of the ECtHR, the states adopt individual or general measures. Individual measures consist not only in paying just satisfaction but also in ensuring that the violation has ceased and the injured party is put, as far as possible, in the same situation as if the violation had not taken place. General measures include preventing new violations and addressing ongoing ones.[182] As determined in the text about damages by the IACtHR, as analysed by Haglund and Parente, the first reparation that these human rights courts attempt to apply is to restore the situation and conditions that existed before the violation. When this is not possible, they opt for repairs of a pecuniary or non-pecuniary nature, under the state's charge.

The authors determine the individual measures that state parties must apply. Just Satisfaction may be awarded by the ECtHR for pecuniary or non-pecuniary damage to the applicant, to compensate for the harmful consequences of a violation. The other measures that states may apply include an open list, such as reopening domestic judicial proceedings, resumption of investigations, improvement of detention conditions, restoration of property, reunification of families, or release of unlawfully detained persons. The ECtHR may establish specific reparations in each case. These depend on the circumstances of each particular situation. This court and the IACtHR look to achieve *restitutio in integrum.*[183]

[181] Ibid. P. 188.

[182] Ibid. P. 196.

[183] Ibid. P. 196, 197, 198.

Prevention of similar violations of the Convention can be achieved in various ways, depending on the circumstances of the case and the legal system of the respondent state. Thus, in some cases, translation and dissemination of a Court judgment, thanks to its direct effect, would be enough for successful execution. In other instances, execution may even require amendments to the Constitution.[184]

This text is significant for understanding the differences in supervision, judgment execution, and reparations between the IACtHR and the ECtHR. The system of the ECtHR is effective due to the Committee of Ministers' exclusive focus on this matter, as well as their supervision and relationship with state parties. However, the Inter-American Commission and the IACtHR also had a practice of recognising responsibility in many situations. The Department for the Execution of Judgments of the ECtHR shares functions with the Inter-American Commission on Human Rights. However, the hybrid method of the ECtHR has very defining and specific qualities that could be helpful to implement in the IACtHR. I believe that, due to the margin of appreciation and the varying characteristics in the execution of sentences, the state parties to the ECtHR have more flexibility in applying individual and general measures to comply with judgments than the IACtHR. Furthermore, as the authors determined, the dialogue between the domestic organs of the state is essential to ensure compliance with a sentence and provide reparations. Reparations that involve changing domestic laws, even constitutions, may face greater resistance from state parties due to their reluctance to cede sovereignty to these courts.

Summary

Many of the texts examined in this section discuss the specific characteristics and features of the IACtHR and ECtHR as stated by different authors with diverse perspectives. The aim was to develop essential notions and visions on these tribunals, as not every aspect of them can be established in this research due to the specific character of this work's objective. However, it was significant to develop different views about these courts and contribute to a better understanding of how these tribunals function, organise, and decide.

[184] Ibid. P. 199.

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 basis of my research will be necessary to establish essential concepts, such as the substantive and procedural aspects of the right to life and the obligations of 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 provides a theoretical framework 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 outline the fundamental concepts related to the right to life and its development. 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 the 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 every person simply by being human. It is inextricably linked to a 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 of 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*".[185] Furthermore, Article 4

[185] 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."*[186] The Declaration of the Rights of Man and the Citizen came into existence in the summer of 1789, born of an idea proposed by 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.[187] These articles originated from the outcomes of the French Revolution and the ideas of the Enlightenment, as espoused by Rousseau, Montesquieu, and 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. The Bill of Rights, ratified by the United States Congress on December 15, 1791, is a foundational document for human rights in the country. This document contains twelve amendments that establish various human rights, including civil rights and liberties for individuals, such as freedom of speech, press, or religion, as well as property rights.[188] 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."*[189] The Senate passed this amendment in June 1866 and ratified it in July 1868. The letter of the U.S. Constitution is more explicit in its protection of the right to life, which is established directly in its text. 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".*[190]

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[186] Ibid. Article 4.

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

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

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

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

Thomas Paine, the author of *"The Rights of Man",* is a pivotal figure who significantly influenced the development of the United States Constitution. This book was the first to introduce the concept of "*human rights."* Ed Bates determined that he spread the idea of human rights.[191] Although the concept of human rights had not yet been coined at that moment, his work was essential for the development of the human rights theory and the subsequent work of 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 is 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 person or persons in the world. According to this author, the man (there is no mention of women in these initial notions, but it is understandable that it also refers to the feminine sex) had, by nature, a power to preserve his property, which includes his life, liberty, and estate, against the injuries and attempts of other men.[192] It is remarkable how this author determines the right to life in the absence of a concept of human rights. Locke based his ideas on the natural rights that are every person's prerogative, inherent in 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.[193] The ideas of the Enlightenment and its philosophers and idealists were spreading worldwide, marking the first attempt at a theory of human rights. The central notion was that individuals were born with natural rights that belonged to them, and nobody could infringe upon them. The idea was to transform natural rights thinking into positive law, which ended in the Universal Declaration of Human Rights in 1948. These authors were way ahead of their time. The theoretical part of the French

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

[192] Ibid. P. 5,6.

[193] Ibid. P. 6.

Declaration, the United States Constitution, and its Bill of Rights were significant. Still, it had 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 the efforts of women's rights campaigners such as Mary Wollstonecraft. As mentioned, the first human rights documents referred to men without mentioning 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.[194] This remains notable even today, as many countries have adopted international law treaties but fail to apply them. The ECtHR and the IACtHR were mechanisms by which the European and Inter-American systems sought to ensure compliance 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 (a predecessor of the United Nations) and its Charter were established in 1919, and it stated 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 established the Permanent Court of Justice (a predecessor to the International Court of Justice) in 1922. 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 legitimate government of the territory in question, and not matters over which foreign individuals or governments could legitimately intervene.[195] This is a response to why the Permanent Court of Justice did not work as planned. The League of Nations was established in the aftermath of the disasters and human rights violations during the First World War. Sadly, it failed to secure world peace when the world entered World War II. Nevertheless, it established interesting concepts about human rights.

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

[194] Ibid. P. 13.

[195] Ibid. P. 15.

rights of the individual.[196] Following the Second World War, a significant revolution in codifying and implementing human rights began. The United Nations was established in 1945, the International Court of Justice was founded in the same year, and the Universal Declaration of Human Rights was adopted in 1948. This latter document was not binding; however, due to 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 adopted in 1966 and became 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.[197] The Australian Government established this in response to the United Nations General Assembly Resolution 833.

A thought-provoking text is one by B.G. Ramcharan. He highlights Article 6 of the International Covenant on Civil and Political Rights.[198] The author establishes that this article states 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.[199] This article defines the

[196] Ibid. P. 16.

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

[198] 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.

[199] 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

essential characteristics of the right to life as a primordial right and part of the *Ius Cogens*.[200]

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.[201] 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.[202] This aligns with the ECHR and the American Convention on Human Rights, which stipulate that their provisions should be consistent with the domestic laws of the state parties.

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invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

[200] 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 recognised 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.

[201] 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.

[202] Ibid. P. 29.

Another interesting author, Rhona K. M. Smith,[203] 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 the 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.[204] 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 state parties relinquish some of their powers to participate in them, submit to their decisions and provisions, and thereby protect human rights.

Maurice Cranston establishes some interesting notions about human rights. He says that human rights are a relatively new term for what was formerly known as *"the rights of man."*[205] In the 1940s, Eleanor Roosevelt promoted the concept of *"human rights"* after discovering, through her work at the United Nations, that men's rights, including women's rights, were not universally understood in some parts of the world.[206] 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 already occurred, but women's rights were still poorly enforced. Roosevelt understood that men and women were unequal under international law. 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 comprehensive human rights thesis before the Second World War and anticipated 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

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

[204] Ibid. P. 1.

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

[206] Ibid.

actions that are never permissible, certain freedoms that should never be invaded, and certain sacred things.[207] This comprehensive definition of human rights encompasses the right to life. 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,[208] It is determined that, according to the dictionary of the Royal Spanish Academy, "Vida" (life in Spanish) originates from the Latin word "Vita".[209] A more accurate conception could be that it is the space that exists from the birth of a person, animal, or plant until it dies. In a purely naturalistic concept, it can be said that the right to life is the right to one's own physiological and biological existence.[210]

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.[211]

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.[212]

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[207] Ibid. P. 12.

[208] 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.

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

[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. 79.

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

[212] 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.

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 that, in case of conflict of laws, the more beneficial norm for the human being.[213]

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

1. C. Right to Life in International Instruments

This part examines the right to life and its representation in various 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."*[214] It is essential to highlight that this article demonstrates 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,[215] which gives this right a mandatory character to protect it. 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."*[216] This was the first binding protection of this right at the international level, as it 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 in the International Covenant on Civil and Political Rights, grounded in the Universal Declaration of Human Rights, is comprehensive and thorough in its examination of the inherent nature of this right and the corresponding obligation to protect it. Furthermore, it stipulates that no one can be deprived of their life arbitrarily. This is the situation presented in this research.

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

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

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

[216] Ibid. Article 6.

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 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."*[217] Currently, human rights are viewed as interdependent and inseparable from one another.

Elizabeth Wicks is an engaging author for this subchapter. She determines the right to life in several international instruments.[218] 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. Additionally, the author views the right to life as a pre-existing concept, stated as a right to protection within this Convention.[219] This author develops the concept of life in the ECHR and establishes that, in contrast with other perspectives to be determined below, Article 2 refers not only to the prohibition of being killed arbitrarily but also 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 objective of this Convention is to protect the right to life. In cases where this is not achieved, an adequate investigation is necessary to determine who is responsible for violating this right. This is the procedural aspect of this right. The procedural and substantive elements will be explained in detail below. Furthermore, an interesting notion is that life, as a concept and fact, preexists, making this right positive in the Convention.

Wicks determines that the focus seems to be less on life versus death than on protecting everyone from actions that put their lives at risk and thus fail to respect them

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[217] 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.

[218] 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.

[219] Ibid.

adequately. Hence, although the ECtHR refuses to give a conclusive answer to the question of when the protection of life begins and has not yet had the opportunity to decide when it ends, its approach to Article 2 has indicated a particular focus on the nature of the right and the concept protected within it.[220] This author highlights that, according to the ECtHR, there is a violation of the right to life even if the death was not achieved. Still, there was an attempt to infringe upon this right, or it could be a consequence of the actions of people who knowingly acted against it. Life is not only about avoiding death. The right to life encompasses several key aspects.

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.[221] 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 the context of its case law, the IACtHR has determined that 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*."[222] It is immediately apparent that this manifestation of the right to life explicitly refers to concepts implied in other human rights documents, namely 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"*.[223] 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

[220] Ibid.

[221] Ibid. P. 204.

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

[223] Ibid. Article 5.

life by the African Commission on Human and Peoples' Rights has focused upon some of the positive obligations essential to a full realisation of this right.[224] Although this court will not be part of the comparison of this work, it is relevant to determine the protection afforded to the right to life under the 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. Respect for the right to life and the inviolability of the person are vital to this court. That is why the African Commission acted positively to realise this right. It is essential to recognise that in a Continent characterised by extreme poverty, the positive obligations associated with the right to life, which tend to ensure a dignified existence, are of paramount importance.

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.[225] The importance of the dignity of the human person was established and developed by Hannah Arendt, who determined the relevance of human rights even before they were formally named as such. Arendt addresses several issues related to human rights. However, its political theory is centred around the issues that had their roots in the failure of the people's rights to ensure human dignity.[226]

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

[224] 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.

[225] 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.

[226] 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*. Ed. Bloomington. March. P.P.61-73. 1996. P. 63.

that Costa Rodríguez seeks to demonstrate that the jurisprudence of the IACtHR has expanded the concept of the right to life. This represents the rescue and reaffirmation of the principle of the indivisibility of human rights and the dignity of the person. These two principles could be considered the axis of transformation of this right. The idea is to offer an expanded concept of the right to life that encompasses not only civil and political rights, but also economic, social, and cultural rights.[227]

I agree with the author about the importance of a person's dignity in fulfilling this human right. Moreover, human rights are cohesive, 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.[228] 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 an essential right, human dignity is the foundation underlying fundamental rights.[229] This author asserts the inviolability of human dignity and its status as *Ius cogens*. Furthermore, it refers to human dignity as the foundation for human rights. This concurs with what has been established as a fundamental aspect of human dignity, inherent to the right to life.

Elizabeth Wicks adds interesting notions about human dignity. She notes 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 explicitly linked with enforcing a right to life. Both national and international courts have been prepared to interpret life as requiring the facilitation of dignity.[230] This author also links respect for human life with the inherent dignity of the person. This author mentioned before that the IACtHR has established a dignified life as a characteristic

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[227] 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.

[228] 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.

[229] Ibid. P. 168.

[230] 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.

of this right in its case law. According to Wicks, interpreting life requires the facilitation of dignity. This dignified life is closely related to economic, social, and cultural rights, as well as 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 is necessary to continually seek to act in a manner that accords the appropriate respect for the dignity inherent in all human life.[231] 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 pertains to the protection and security of economic, social, and cultural rights, ensuring 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 explicitly establish the importance of the intrinsic dignity of the human being in their texts, but this can be inferred from 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 analysing the role of the IACtHR in protecting the right to life.[232] 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.

[231] Ibid. P. 217,218.

[232] 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[233], 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.[234]

It is relevant to examine the ideas presented in Rodolfo Figueroa García-Huidoboro's text regarding the five different conceptions of the right to life.[235] 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.[236]

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 another person arbitrarily. This conception of the right to life distinguishes the right to life from life.[237]

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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[233] 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.

[234] Ibid. P. 161

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

[236] Ibid. P. 262.

[237] 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 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 lack juridical relevance because they do not regulate the conduct of third parties.
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.[238]

Although García Huidoboro establishes the different conceptions of the right to life, he determines that the fifth is the only one that comprehends the right to life. The author replies that for him, the only way to understand the right to life is as the right that people not be killed arbitrarily. He establishes as a synthesis that the right to life means a) the primary obligation of not killing another person arbitrarily, b) positive secondary obligations to prevent somebody from being killed arbitrarily. Several obligations must be determined; eventually, positive obligations are directed at satisfying and complying with the right that should be chosen.[239]

I want to clarify that the author presents compelling arguments regarding the various 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 focus on the fifth conception, which is not being arbitrarily deprived of life.

I selected several authors for this section to illustrate the differing perspectives on the dignity associated with the right to life. Costa Rodríguez, whose line of thought I follow, believes that the intrinsic dignity of human beings is inextricably linked to a person's right to life. Although García Huidoboro establishes conceptions based on the idea that the first and second conceptions of the right to life are linked to dignity, he

[238] Ibid. P. 264.

[239] Ibid. P. 299,300.

criticises this 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 consider all perspectives and ideas; for that, it is interesting to examine authors who hold different lines 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.[240] 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.[241] The author establishes that the right to life is not absolute, like Wicks. There are certain specific circumstances where infringing this right is possible. These circumstances must be defined with utmost care and precision in international human rights instruments. 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 right to compliance in cases of justified lethal force or a public emergency, such as 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 on a contextual analysis of whether a particular death is arbitrary under the circumstances.[242] The word *"arbitrarily"* is found in Articles 4 of the American Convention on Human Rights and 2 of the ECHR, which establish the right to life and stipulate that nobody can be arbitrarily deprived of it. This word also appears in almost every document that establishes and protects 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 becomes more complicated in the case of

[240] 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.

[241] Ibid. P. 412,413.

[242] Ibid. P. 415.

war, where it presents a scenario that makes it difficult to determine whether an arbitrary deprivation of life has occurred.

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.[243] As mentioned, war is a complex scenario to determine 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 casualties. 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.[244] 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 delve into this subject in depth. 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

[243] Ibid. P. 416.

[244] Ibid. P. 419,421.

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 to the concept established by Wicks and Predescu regarding 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 an *"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.[245] The deaths in war must be justified explicitly in terms of military necessity. Combatants may kill enemies who are armed or whose lives are incidentally unavoidable in 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 applies the concept of absolute necessity, as established by the ECHR in its exceptions to the right to life, and differentiates it from the law of war, stating that violence or targeting does not have to adhere to this standard. Furthermore, the author establishes the importance of human rights in warfare. He determines that it is necessary to have an adequate understanding of the laws of war and that human rights must apply in times of armed conflict, alongside these laws. Applying human rights in armed conflicts would lead to a more humanitarian approach to warfare and, hopefully, the protection and respect of these rights in such circumstances. The ECtHR has established in its case law that the obligation to investigate the violation of the right to life (in the 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

[245] Ibid. P. 424,425.

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

Costa Rodríguez relates Article 4 to Article 9 of the American Convention on Human Rights, which establishes the prohibition of arbitrary arrest, detention, or exile.[246] Several cases of arbitrary deprivation of life 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.[247]

The book *"American Convention: Life, Personal Integrity, Personal Liberty, Due Process and Judicial Recourse"* by Cecilia Medina Quiroga[248] 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."*[249]

The subject of the right to life has a rich literature that explores various 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 concept of the evolution and development of the right to life in this chapter serves as an introduction, as the general views on 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 of the state's obligation to investigate the violation of the right to life (due process) and the

[246] 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.

[247] Ibid.

[248] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005.

[249] Ibid. P. 65.

various forms of reparation for this right, which 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 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."*[250]

Some essential notions about the evolution of the right to life, as violated by security forces, are established in the book *"The Police and International Human Rights Law"*, edited by Ralf Alleweldt and Guido Fickenscher.[251] These editors are the authors of the first chapter, which discusses the police as 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.[252] 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.[253] As established

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

[251] Alleweldt, Ralf and Fickensher, Guido. "Chapter I: Introduction: The Police, a Key Actor in Human Rights Protection." In: *"The Police and International Human Rights"*. Ed: Springer. Alleweldt, Ralf; Fickensher, Guido. DSF: German Foundation for Peace and Research. P.P.1-7. Switzerland, 2018.

[252] Ibid. P. 1.

[253] Ibid.

above in this work, the cases being examined in this research encompass 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 on the right to life and the prohibition of torture.[254] It is essential to highlight that the effective investigation into violations of the right to life is one of the ECtHR's most outstanding aspects in 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.[255] 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.[256] 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

[254] Ibid. P. 3.

[255] 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. P.P.7-20. Switzerland, 2018.

[256] Ibid. P. 8.

vulnerable, and the police suffer the most significant pressure to obtain confessions from detainees.[257] 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 treatment of persons in state custody has been a concern in the case law of the ECtHR and the IACtHR.

Another author who provides essential aspects about the ECtHR is Luzius Wildhaber.[258] 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 the relevant structures and procedures are in place to enable individual citizens to assert their rights and freedoms.[259] The work of the human rights regional courts is to examine complaints made by individuals against countries where their human rights have been violated, and there has been no corresponding judgment for the responsible party or an effective investigation into 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 demonstrated its capacity to grow in tandem with societal developments. It develops through the interpretation of the court.[260]

The ECtHR is understandably wary of extending its case law on positive obligations. First, one must be convinced that morals have evolved and that knowledge is reflected in the rules and practices of most contracting states. The court will then interpret the terms of the Convention in light of that evolution.[261]

The author's innovative approach to understanding the evolution of the court in a rapidly changing globalised world, driven by technology and shifting political and economic circumstances, contributes to the development of human rights as a crucial 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

[257] Ibid.

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

[259] Ibid. P. 83.

[260] Ibid. P .84.

[261] Ibid. P. 87.

related to their case law, how they interpret the Conventions, and the standards they apply.

The author emphasises that the separation of powers is a vital element in the Convention system, 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 interference or any lack of independence on the part of the court.[262] The author emphasises the need for an independent court that is not entangled in the state's internal politics. The notion that the court is independent and impartial is essential for state parties to comply with its 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 ECtHR 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.[263] The author reiterates what has been established regarding the treatment of persons under the state's custody with dignity, referring to the importance of this principle, as Costa Rodríguez and Hannah 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, as applied by the ECtHR, is occasionally used to describe the Convention's conformity with specific interferences, intrusions, and limitations imposed by national authorities on the enjoyment of certain rights and freedoms.[264] The interference is considered legitimate if it constitutes a necessary measure in a democratic society for specific purposes. The tribunal requires evidence that demonstrates a reasonable proportionality between the measures taken and the purpose pursued.[265]

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[262] Ibid.

[263] Ibid. P. 88.

[264] 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.

[265] Ibid. P. 253.

There is a hierarchy of legal tutelage assets. Establishing that the right to life is the primary right to be protected 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 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 relate to the protection of the right to life under 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 perspectives from different authors on the interpretation and application of these standards in the regional human rights courts.

2. B. The Examination of the Relevant Articles

This section examines the Convention's 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 these articles are applied in the judgments. This is vital because these provisions will serve as sources for determining standards and comparing the two 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; however, the following five

paragraphs concern 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."*[266] 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."[267]

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

[266] 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.

[267] 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.

Convention were primarily opposed to the death penalty, but there was no consensus among the states at the time the Convention was written. For that, the primary idea is to eliminate the state's opportunities to deprive people of their lives as much as possible.

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 ensure the effective enjoyment of the right.[268]

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 August 6, 1990, and came into force for each state after ratification. To this day, eight states have ratified the Protocol.[269]

Medina Quiroga establishes that subsection 1 of Article 4 consecrates every person's right to life; therefore, nobody can be arbitrarily 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, which the same article determined. The death penalty has been prohibited in several countries in the last few years. For example, it is permitted in certain states of the United States that are not parties to the American Convention on Human Rights. However, it is part of the Organisation of American States. Furthermore, I believe that the death penalty in the case of a person who has committed a crime is a form of *"eye for an eye"* from the Hammurabi Code, an ancient law that, although beneficial in ancient times, has become obsolete in modern times.

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 in legitimate defence, whether the life to be protected is owned or belongs to a third party. The circumstances that lead to a legitimate defence are not explicitly mentioned in Article 4 of the American

[268] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005. P. 76.

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

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 result of the legal use of force in the pursuit of legitimate purposes.[270] 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 its agents and establishing an independent and impartial organ that proceeds with the control and regular application of these measures without discrimination.[271] The investigation into violations of the right to life must be conducted independently and impartially. 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 demonstrate confidence in the possibility of the people responsible being held accountable and sentenced.

Medina Quiroga highlights that the IACtHR has emphasised the importance of punishing perpetrators who violate 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."*[272] The duty of guarantee supposes the free and whole exercise of the people's rights and fundamental freedoms within 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

[270] Ibid. Par. 78.

[271] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005. P. 80.

[272] Ibid. P. 81.

Convention. In this way, it will be determined whether it constitutes an infringement of a human right that is compatible with the Convention. Firstly, it is necessary to examine whether there was a norm that authorised the use of force by the respective agent and whether the force was used to achieve a permitted purpose under the law. Secondly, if the measure that results in the deprivation of life is *"necessary in a democratic society"*. It is vital to examine whether the measure was conducive and proportional, and whether an alternative existed to achieve the objective.[273] 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"*.[274] 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.[275] This was mentioned above and is also reflected in the American Convention on Human Rights, specifically in 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

[273] Ibid. P. 82.

[274] 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.

[275] 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.

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 lawfully taken for the purpose of quelling a riot or insurrection.*[276] This part of the text is crucial in determining the differences in the standards applied to resolve cases related to the violation of the right to life by security forces in Europe and America. The American Convention does not have a similar part.

I believe Article 2 of the ECHR is more comprehensive than Article 4 of the American Convention on Human Rights, without this being a matter of each court's specific work. However, Article 2 enumerates the occasions when the right to life may be violated, which is a significant issue in determining whether to condemn an accused state. 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."*[277] It states 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 Humane Treatment.

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

In this section, judgments regarding the violation of the right to life are analysed. In this way, it is possible to gain insight into 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,

[276] 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.

[277] Ibid. Article 3.

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 that there was a violation of Articles 4 (Right to Life), 5 (Right to Personal Integrity), and 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.[278] It is necessary to highlight that both obligations of the state are shown here: the positive, which includes the protection of the right to life, and the negative, which supposes the inviolability of this provision.

Another critical judgment of the IACtHR is the Panel Blanca (Paniagua Morales and Others) case, as it expands the concept of the victim.[279] 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, according to the court, who did not need to show that there was an affective relation, since consanguinity was enough.[280]

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.[281]

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

[278] 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.

[279] Ibid. Par. 85.

[280] Ibid.

[281] 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: *El futuro del sistema interamericano de protección de los derechos humanos, IIDH*. Ed. J. E. Méndez and F. Cox. P.P.155-166. Costa Rica, 1988. P. 157.

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 European Convention.[282] [283] 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 involving violations of the right to life by security forces demonstrate the punishment for deficient and inadequate investigations of the breach. This means that this tribunal establishes the guilt of the authorities responsible for punishing 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.[284]

An engaging text about Article 2 of the ECHR is Robert Esser's *"The Police and the Right to Life."*[285] 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, particularly concerning the preventive perspective of police action.[286] This is a peculiar decision by 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, rather than 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

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[282] 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. P.P.7-20. Switzerland, 2018. P. 15.

[283] 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.

[284] ECtHR. Case of McCann and others v. United Kingdom. (Application no. 18984/91). Strasbourg. Judgment 27 September 1995.

[285] 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. P.P.43-60. Switzerland, 2018.

[286] Ibid. P. 45.

"deprivation of life" does not, under specific and narrowly defined circumstances, amount to a violation of the Convention mentioned before, and these circumstances are the ones established in Article 2.2.[287] 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. Additionally, the deprivation of life established in Article 2.2 of the ECHR is subject to careful scrutiny and is limited to the specific conditions outlined in that article. 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 must be interpreted in a manner that is independent 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 an interference with the right to life. This event is held for accidental killings by police forces.[288] [289] 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 whether 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 determines that the reasons justifying the deprivation of the right to life, as regulated by Article 2, paragraph 2, provide abstract *"minimum"* guidelines for the daily work of police. The Convention mentions the defence of any person from unlawful violence. According to the jurisprudence of the ECtHR, the situation must be assessed *ex ante*. The principle of proportionality must be considered seriously. The

[287] 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.

[288] 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. P.P.43-60. Switzerland, 2018. P. 46.

[289] 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."

court has not yet clearly referred to the issue of whether the killing of a person to protect material goods can be justified under Article 2, paragraph 2.[290] The answer is obvious: protecting the right to life takes precedence over any material good. As mentioned above, in the hierarchy of tutelage assets, the right to life takes precedence over all other rights, 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 provides when establishing the use of force. Still, these principles must be applied in these situations.

Another justification mentioned in Article 2.2 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 justifications of *"limitations"* to 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.[291] It is essential to establish the significance of these exceptions under Article 2 of the ECHR because when the ECtHR decides on a case, it must apply them with criteria and evidence to avoid wrongly condemning or acquitting a person who is alleged to have committed a crime. Although these exceptions are not specified in Article 4 of the American Convention on Human Rights, the IACtHR has consistently applied the principles 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 pose a danger to other

[290] Ibid. Article 2.

[291] 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. P.P.43-60. Switzerland, 2018. P. 48.

people's lives, it is best that the individual escape and not take their life. An insurrection or riot is a complex situation in which security forces are under intense pressure, making it difficult for them to manage their actions effectively. However, according to the court, they may apply force, but they must 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 to prevent escalation must be considered when 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.[292] The planning, operation, and deployment of force, as well as 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, paragraph 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 III, 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 that a violation of Article 2 of the Convention occurred in the killing of three terrorists: it did not constitute a use of force that was necessary, as prescribed by Article 2, paragraph 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.[293]

Another engaging author, Stephen Skinner,[294] 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

[292] Ibid.

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

[294] 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).[295]

In this sub-chapter, the McCann case is highlighted, as it is considered the first case involving the condemnation of 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 decisions of the IACtHR and ECtHR, as well as the norms of the American and European Conventions, to determine situations and judgments in which security forces fail to 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 applying these articles.

3. Substantive and Procedural Aspects of the Right to Life

3. A. Introduction

It is essential to recognise that cases involving the violation of a right have three key aspects. The first aspect is the substantive 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, which can lead to sanctions and punishments for those responsible, as well as the provision of reparations to the direct and indirect victims of the crime.

[295] Ibid. P. 41.

Furthermore, the IACtHR generally establishes the violation of both substantive and procedural aspects. 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, the actions or omissions of these agents can lead to deaths. It is essential to highlight these cases to encourage these forces to be more cautious in their future situations. 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 must indeed act under considerable pressure, but they must be prepared and avoid any unnecessary deaths or use of force. 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 certain conceptions regarding the substantive and procedural aspects of the right to life within the context of protecting 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 the substantive elements of human rights, 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, A. A. Cançado Trindade,[296] 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 (i.e., those that provide for protected rights) but also to procedural norms, particularly those relating to the

[296] Cançado 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.

right of individual petition and the acceptance of the contentious jurisdiction of international judicial organs of protection. Such conventional norms, essential to the efficacy of the global security system, ought to be interpreted and applied in a manner that renders their safeguards truly practical and effective, bearing in mind the unique character of human rights treaties and their collective implementation.[297] 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.[298] 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."*[299] The Declaration establishes this notion because it determines the human being as the object of human rights, regardless of their nationality. 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

[297] Ibid. P. 241, 242.

[298] 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.

[299] 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.

protection.[300] This author highlights the American Convention on Human Rights as the most complete instrument for defending human rights, considering its substantive aspects regarding rights and how the institutional element works. Also, Goldman determines that an integral part of the Convention 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 note that the American Convention aimed to be comprehensive because rights were not recognised in the American countries, and this instrument sought 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.[301] 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 nationals are treated poorly, while 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, not only by nationals of that country. However, it is also necessary that nationals are treated with dignity and that their human rights are respected and protected. Fortunately, 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 any state of nationality or residence.[302] The present work includes

[300] 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.

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

[302] Ibid. P. 14.

examples of foreign courts' judgments denouncing the violation of human rights related to another country, such as Armani da Silva v. United Kingdom in the ECtHR or Gelman v. Uruguay in the IACtHR.

Substantive Aspect of the Right to Life and Its Role in International Law

An interesting author, B.G. Ramcharan, establishes that international law initially developed as a body of norms concerning and benefiting states and governments. Protecting the individual's rights was of secondary concern in its early history. However, in modern times, there has been a growing global insistence that states, governments, institutions, and laws exist to serve the people, and a persistent universal outcry for the human rights and fundamental freedoms of the individual to be respected and guaranteed.[303] 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. Ramcharan establishes that states were the primary subjects of this development in the early stages 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.[304] 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 served as the basis for asserting that a restrictive interpretation should be applied to the concept of the right to life in traditional international law, primarily focusing on protection against international or arbitrary deprivation of human rights by government agents. The author emphasises that it is not life itself, but the right to life, that is to be protected by law. This legal concept implies that no one

[303] 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.

[304] Ibid. P. 3.

may be deprived of their life except on the condition prescribed by law.[305] 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, rather than life itself, is protected, giving rise to a distinct legal concept. These notions can also be applied to the IACtHR. This legal concept is established in the ECHR. As was examined above, Article 2.2. 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.[306] 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, provided it is subject to specific conditions.[307] This concept, as presented by the author, is crucial to understanding the substantive aspect of the right to life, its protection, and the circumstances under which it may be infringed. 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, for example, are those established in Article 2.2 of the ECHR, which includes self-defence, a concept also recognised in the Code of Conduct for the Use of Force by Law Enforcement Officers of the OHCHR, which the IACtHR applies. The right to life is the primary and most fundamental right, but it is not absolute, as it can be taken away under certain conditions and circumstances. However, these circumstances infringe on the right to life and must be explicitly addressed in the instruments that protect it. 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

[305] Ibid. P. 4.

[306] Ibid. P. 7.

[307] Ibid. P. 12.

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 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.[308] 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, Ramcharan reiterates that it is part of *Ius Cogens*, which means that the exceptions to these rights are limited. 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 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

[308] Ibid. P. 15.

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.[309] This comprehensive compilation of requirements for adequately controlling exceptions to the right to life aligns with the jurisprudence of the ECtHR and the IACtHR. Even the latter uses the UN Code of Conduct for Law Enforcement Officials as an instrument. Furthermore, these principles are necessary to ensure that, although the right to life is not absolute, it will be respected and protected correctly by countries, and exceptions to this right will be subject to the most careful scrutiny. The principle of proportionality is established in the case law of both studied courts, and it is essential for determining the state parties' responsibility. Furthermore, 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 under any circumstances. The ECHR establishes in its Article 15[310] 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[311] states

[309] Ibid. P. 21.

[310] 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.

[311] 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

that this right is not suspended during war or other public emergencies threatening the nation's life.[312] 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 this right must not be suspended, even in the case of war or armed conflict, considering such circumstances as lawful acts of war. If another person attacks a person in a war, this can kill them in self-defence. Moreover, in their articles, the conventions 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 complex aspect for the protection of the substantive element of the right to life. 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. Additionally, the primary objective is to safeguard civilian lives.

Substantive Aspect of the Right to Life and the Action of the Security Forces

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.[313] This author explains that

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 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.

[312] 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.

[313] 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.

in human rights courts, there are always two versions of the violation of the right to life: the applicant's version and the state's version. 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 enforcement operations. Through its judgments, the ECtHR has interpreted the right to life under the European Convention as involving 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.[314] Skinner determines both aspects of the right to life examined in this work. Due to these two dimensions, the ECtHR and the IACtHR have expanded the right to life and facilitated its evolution 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.[315] 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 lethal 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 resort. The second element of the substantive aspect is the

[314] 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.

[315] Ibid. P. 70.

necessary domestic framework for the action of state agents. This is related to the state's obligation to adjust its domestic law in accordance with 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 a landmark case, marking the beginning of the ECtHR's decisions regarding the violation of the right to life in general. This court has constantly reiterated that Article 2 enshrines a 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.[316] [317] 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, established by Article 2 to protect the right to life in a democratic society as a fundamental value, is one of the most frequently cited 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.[318] The IACtHR has followed a similar approach in its case law, expanding the concept of the right to life and establishing the fundamental necessity for its protection, as outlined in 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,

[316] Ibid. P. 71.

[317] 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.

[318] 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.

basing these standards on 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. Additionally, the European Court has broadly developed its case law on the importance of well-planned operations and the necessity of effective control over 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 which is an essential provision of the European Convention, Article 2 explicitly provides for a proportionate balance between collective interests and concerns.[319] It is necessary to highlight that, to my understanding, and unlike 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, retains its meaning as an essential value only if it is intended to save a human life.

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. Although the ECtHR takes mistakes and stress into account, it opens the possibility of bringing in killings that were not objectively necessary within the scope 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.[320] 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 in accordance with the ECHR, the evidence, and the principles of proportionality and absolute necessity, and its conclusions are 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

[319] Ibid. P. 84.

[320] Ibid. P. 85.

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 argues that, within the broader ECHR framework, lawful arrest, as outlined in Article 5 (Right to Liberty and Security), requires the aim of bringing the arrestee before a court for trial.[321] 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 an 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.

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.[322] Once again, this author 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.[323] 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.[324] In addition to the perceived absolute necessity, the security forces must believe that they are acting within the sphere of the exceptions outlined in

[321] 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.

[322] Ibid.

[323] 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.

[324] Ibid. P. 304.

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 killing them, it is necessary to resort to less extreme measures. These possibilities are explored in Chapter III, including the apprehension of suspects before they commit the crime or engage in 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.

Dignity and Substantive Aspect of the Right to Life

Ramona Nicoleta Predescu establishes interesting notions about human dignity in both human rights tribunals. Article 5 of the American Convention on Human Rights, which pertains to the right to humane treatment, stipulates that all persons deprived of their liberty must be treated with respect for the inherent dignity of the human person. The 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.[325] 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, encompassing the rights to humane treatment and the prohibition of torture, ill-treatment, and punishment. These rights were mentioned in Subchapter Two because it is related to cases of the state's security forces violating the right to life.

The author continues by stating that A. A. Cançado 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 the opinion that the right to life of a human being also implies a right to live with dignity.[326] In its interpretation of Article 2, the ECtHR is less prone than the IACtHR to consider a person's dignity as a characteristic of the right to life.

[325] 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.

[326] Ibid. P. 169.

Although the European tribunal recognises this right, it does not establish that the right to life entails living with dignity. The tribunals have different interpretations of this concept.

Predescu states that even though human dignity is not explicitly mentioned in the European Convention on Human Rights, its role is determinative in the practice of the European Court of Human Rights. 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.[327] 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 in a humane manner. These tribunals differ in the inherent 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 the 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 those responsible for 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 by police forces and the responsibility of the state for these, is connected with the violation of the right to a fair trial. This is because the kidnapping or homicide of persons in the cases subject to 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 for the detention to be legal, it must comply with the requirements stated in the Convention. Article 6 of the ECHR[328] and

[327] Ibid. P. 172.

[328] 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

Article 8 of the American Convention on Human Rights[329] 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

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.

[329] 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.

fundamental characteristics to respect human rights and impel 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 this right. Penal sanctions must be imposed for taking life arbitrarily, and civil remedies should also be available against those responsible for perpetrating such acts.[330] The author establishes not only the procedural duty related to the right to life, which refers to an immediate, impartial, and effective investigation of infringements of this right, but also the subsequent step, which involves legal consequences. These apply to the penal sanctions and civil remedies for 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 the relatives of the victim 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 Articles 2 and 4 of the American Convention on Human Rights.

Development of the Procedural Aspect and Its Relationship with the Substantive Element

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".*[331] The ECtHR has developed the procedural dimension based on the same declaration regarding the importance of the right to life in the ECHR and the democratic societies that comprise the Council of Europe. To make the 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 in cases involving incidents in which lethal or life-threatening force has been used. The concept of a democratic society is a factor that underpins and delimits the importance and reach of the right to life.[332] The author highlights the obligation to conduct an effective, adequate, and impartial investigation,

[330] 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.

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

[332] Ibid. P. 96.

as mandated by Article 2, as a procedural aspect of the right to life. As mentioned above, this aspect is not explicitly stated in Article 2. Still, the ECtHR has established it as an essential part of the right to life through its interpretation of 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 dual significance, both as an end in itself and as a means to an end. The duty to investigate has evolved into a key component of the ECtHR´s narrative regarding what a high contracting party has done in response to an incident involving lethal or potentially lethal force, establishing necessary standards for state investigations and forming a distinct basis 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 substantive aspects of Article 2.[333] 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 the necessary steps and requisites of a formal crime investigation. 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 outcome of 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. Still, it identified the importance of independence and publicity, as well as the requirement that the investigation be capable of determining whether 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.[334] The case McCann v. United Kingdom is mentioned, which is a key case for violating the right to life by security forces, and this right in general in the ECtHR, as it was the first and the one

[333] Ibid. P. 97.

[334] Ibid. P. 103.

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 IACtHR is not named, but this applies to that tribunal as well), lies in determining whether the use of force was justified under the circumstances presented. It is not the duty of the regional human rights court to determine whether state agents are guilty of wrongdoing. That is the work of the domestic tribunals. The human rights courts must decide if the investigation was effective, impartial, and exhaustive, and whether it was established 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 had to rely on information provided by state parties, even though they were not its only source of information. In particular, the ECtHR relies on 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 making Article 2 effective at the state level, but also as a means of ensuring that state processes are sufficient 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.[335] 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 occurs when the case reaches the court, but before that, there was no investigation or a poor investigation that did not include 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's ability to address the

[335] Ibid. P. 105.

substantive dimensions of Article 2.[336] The author refers to the separation of 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, as it had to determine whether 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 of evidence. Furthermore, it is highly suspicious when a state refuses to disclose significant documents to the court, and that is taken as proof. Additionally, the substantive aspect is linked to the procedural because, through this investigation, it is possible to determine whether 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 problems in cases against Turkey, which had been hampered by insufficient evidence.[337] 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.

Requisites of an Effective Investigation

The procedural dimension of Article 2, as applied to cases involving lethal and potentially lethal force in the domestic policing and law enforcement context, has been developed by the ECtHR to encompass several key 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 of an inquiry's effectiveness reflects the fundamental importance of evidence-gathering in supporting the construction of an account of events that accurately represents what occurred.[338] The second limb of effectiveness concerns independence, both in principle and in practice. This requires an investigation into legal structure and hierarchy, as well as actual activity and operational ability, to be carried out by an

[336] Ibid. P. 106.

[337] Ibid.

[338] Ibid. P. 107.

authority separate from those involved in the incident.[339] The first two essential elements in an effective investigation are adequacy and impartiality, both of which 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 element 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.[340] The third requisite established by Skinner is transparency and scrutiny. These concerns stem from the scrutiny that the people must have regarding the level of transparency in the investigation. The people must be assured of an effective and impartial investigation that is subject to their scrutiny. Furthermore, this is related to the state's accountability and responsibility in investigating the crime. The victim's relatives (indirect victims) must be part of the investigation and called whenever 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 the 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. The importance of when an investigation starts and how long it lasts is that it must be commenced and undertaken by the state without excessive delay, that is, "*a requirement of promptness and reasonable expedition"*.[341] 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.

[339] Ibid. P. 113.

[340] Ibid. P. 115, 117.

[341] Ibid. P. 118.

Moreover, there are cases where the state handles the investigation poorly, repeatedly closing and reopening the case. This is harmful to achieving an adequate investigation. The requirement for a prompt response from the state when it becomes aware of a crime is one of the most frequently cited standards in the case law of the ECtHR. Furthermore, the state must initiate an investigation *ex officio* when it becomes aware of the commission of a crime, especially if the state's security forces are involved.

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 under the right to life.

Furthermore, according to the ECtHR's case law, the investigation must allow sufficient public scrutiny, which will vary depending on 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 for maintaining citizens' trust in the credibility of the rule of law and for avoiding any appearance of tolerance for illicit acts.[342]

The text of Skinner has vital importance in determining the standards of the ECtHR in cases of violations of the right to life by security forces, particularly in its procedural aspect, considering that this tribunal has condemned this aspect in the majority of its judgments. This will be demonstrated in the third chapter of this thesis, where the cases are analysed. The ECtHR takes the effective and correct investigation of allegations of human rights violations very seriously, which means it considers the procedural aspect of the right to life under Article 2.

Evolution of the Procedural Aspect of the Right to Life

Another chapter I want to highlight in the book "*The Police and International Human Rights"*[343] 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 violating human

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

[343] 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. P.P.83-102. Switzerland, 2018.

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 inevitably leaves the police open to the accusation that a culture of impunity protects officers from the rule of law.[344] Police officers may establish that they did not commit a crime because they were doing their work. This connects the two courts' objectives in this work, as the IACtHR has extensively established its rejection of impunity and amnesty laws.

The protection of human rights presupposes the existence of a regulatory framework, including legislation, regulations, and institutional capacity, which puts into practical effect the principles established in the jurisprudence of international courts.[345] A raft of international instruments, monitoring bodies[346] and state-funded and voluntary agencies[347] have issued guidance on how standards should be complied with.[348] 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 cases involving security forces before the IACtHR. Furthermore, a legal, administrative, and institutional framework for domestic practice

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

[345] 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. P.P.83-102. Switzerland, 2018. P. 85.

[346] For example, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), www.cpt.coe.int; the 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

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

[348] 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. P.P.83-102. Switzerland, 2018. P. 86.

and courts is essential to condemn the crime perpetrated by security forces before the case must be referred to the regional human rights courts. Suppose the domestic courts do not adequately legislate human rights conventions and appropriately investigate and condemn the case. In such an event, this case will be referred to the human rights courts after all domestic avenues have been exhausted.

The ECtHR began addressing the lack of an effective investigation and the procedural aspect of the right to life in nearly all judgments in the last years of the twentieth century. This can be seen in decisions where 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.[349] The state may be responsible for a crime even if it occurs without its knowledge and acquiescence, but fails to conduct an adequate investigation. The standards named by the author are those established by Skinner to ensure an effective and impartial investigation, in accordance with the procedural duty to uphold the right to life. Furthermore, it is vital to clarify that the investigation does not begin with the initiative of the next of kin, but rather when the state becomes aware of the existence of a crime. The state cannot leave the investigation to the next of kin and must initiate it 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 states that Tunç´s v. Turkey judgment represents a retreat from a requirement that had been in place 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 those who are potential violators. Similarly, independent management and direction arrangements must be in place.[350]

[349] Ibid.

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

[351] 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 participate in the proceedings.[352] Impunity has been signalled, mainly in the IACtHR, as the lack of an effective investigation into the crimes perpetrated by security forces. This results in a lack of justice for both direct and indirect victims, as well as 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 harm caused by impunity to communities. There is some overlap between collective reparation, the need to protect against impunity recurring, and principles relating to the right to reparation.[353] After considering the legal consequences for the responsible party, 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 forms of reparations, including the judgment itself. Furthermore, the community must be informed about 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 decision in 2007, there has been limited progress by 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

[351] ECtHR. Ramsahai and others v. Netherlands. (Application no. 52391/99). Judgment 10 November 2005.

[352] Ibid.

[353] 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).

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 are required for institutional and capacity-building programs to improve the regulation of law enforcement, such as establishing new bodies, enhancing communication between law enforcement departments, and protecting against collusion.[354] The author identifies several problems that have arisen since 2007 in conducting effective investigations into homicides committed by security forces. Nevertheless, it is necessary for the human rights courts to acknowledge the procedural duty of an adequate and impartial inquiry in their case law, and for states to 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 due to political issues or the inability to confront influential players within the security forces. If this does not occur, the state will be responsible for failing to comply with the procedural aspect of the right to life.

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.[355] 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 impunity is generated when the state fails to fulfil its obligations. Furthermore, the states before the human rights courts have accepted their instruments for protecting human rights and have assumed responsibility for violating these rights in both their substantive and procedural aspects. As the investigation is an obligation of means and behaviour, the

[354] 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. P.P.83-102. Switzerland, 2018. P. 98.

[355] Ibid. P. 88.

state must provide this by all means and make it adequate and exhaustive, even if it cannot punish or identify the responsible party. 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."*[356] An independent and impartial organ with sufficient resources must conduct an efficient investigation and ensure the process is completed within a reasonable time.[357] These are the same procedural duties and the necessity of effective and impartial investigation standards regarding the ECtHR, which have been established and apply to the IACtHR.

Article 4 of the American Convention on Human Rights and its interpretation must clarify some investigative obligations. In both courts studied, a procedural obligation is to determine whether the state failed to comply with its responsibility to investigate, process, and sanction, and to identify who can be recognised as responsible for 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.

Characteristics of the Procedural Aspect of the Right to Life

Another interesting aspect of the procedural limb is the one proposed by Eva Brems.[358] This author establishes that in numerous fields of the ECtHR case law, the court has added a procedural layer to the scope of substantive Convention rights by deriving state obligations (which will be examined in the following section) of a procedural nature from substantive ECHR provisions. This development has occurred under most

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

[357] 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.

[358] 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.

Convention rights with varying degrees of detail and consistency.[359] This relates to the procedural duty that stems from the interpretation of the ECHR articles, 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 both *ex ante* and *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, as well as the availability and quality of remedies for those who claim to have suffered a human rights violation. [360] 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 a procedure. This applies in particular to *ex-post* procedures, such as investigations into alleged human rights violations and the availability of remedies for those who claim to have suffered a human rights violation. The procedural obligation under Article 2 pertains to the positive obligation to investigate suspicious 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.[361] The ECtHR and IACtHR have established a breach of procedural duty due to the lack of an effective and impartial investigation into the alleged human rights violation. These courts have provided reparations for the victims or relatives of those whose right to life has been violated. 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.

[359] Ibid. P. 138.

[360] Ibid.

[361] Ibid. P. 140,141.

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 outlined in Article 2 must be subject to public scrutiny.[362] These characteristics of the procedural element have been determined before and will be examined in depth 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 is suspected of perpetrating 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 that 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 whether a substantive element was violated. Furthermore, the court may draw substantive inferences from observing the procedural obligation.[363] 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 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 key notions regarding the procedural aspects of the right to life before the ECtHR.[364] She determines that Article 2 requires a High Contracting Party to carry out an effective investigation into any death by lethal force.[365] The author defines a standard about the right to life that is repeated in the case

[362] Ibid. P. 149-158.

[363] Ibid. P. 159.

[364] 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.

[365] Ibid. P. 704.

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 ECtHR 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.[366] This author concludes that the court has emphasised the necessity of adequate provisions of the Convention within a domestic legal framework. It is essential to the notion that not only is it 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; however, if these violations do occur, it also sanctions and punishes the infringements of the Convention's provisions.

Chevallier-Watts highlights that the court emphasises four key components of an effective investigation: being given official sanction, independence, openness, and expediency.[367] These characteristics have been established and explained above in the analysis of Skinner's text.

The author determines that the Court's requirement that authorities must have taken the reasonable steps available to them to secure evidence concerning the incident already imposes stringent requirements that can be adjusted on a case-by-case basis, considering the specific facts and circumstances surrounding the death. Nevertheless, the Court has not dispelled the idea that an authority may be obliged to revive an investigation.[368] 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,

[366] Ibid. P. 707.

[367] Ibid. P. 711.

[368] Ibid. P. 712.

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 effectively pressure states to ensure future accountability, while also considering the balance between sovereign authority and individual rights under the Convention. The ECtHR 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.[369] The court must strike a balance 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 in its interpretation of this procedural aspect of Article 2 since the 1995 case of McCann v. United Kingdom, when 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 consistently struck a balance between the state's obligation to investigate crimes committed by its agents and the right to life, ensuring a practical and impartial investigation. Chevallier-Watts recalls the purpose of the court, which is to provide effective remedies for the violation of the right to life. In this way, the court can pressure states to comply with their procedural and substantive obligations 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, respecting the rule of law and the principles of liberal democracies.

Differences between the Military and Police Forces

In another text, Chevallier-Watts outlines additional essential notions regarding 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

[369] Ibid. P. 721.

latter, the Court has a *"tendency to find that the police have not failed in their Convention duties."*[370] This is a tricky problem for the ECtHR, but it is understandably a generalisation of cases by the author. However, it is possible to infer from this court's case law that it tends to condemn more cases involving the actions of military agents than those involving the 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 agents 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.[371]

It is essential to determine that this court has established the state's responsibility in cases 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 threat to commit this crime. Furthermore, as case law is constantly evolving and adapting through time, the ECtHR can decide differently in cases that happen in diverse 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 cases involving military lethal force. 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

[370] 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.

[371] Ibid. P. 308,309.

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.[372] The author identifies a distinction between police force operations, which are standard daily operations, and military deployments, which are not frequent. Furthermore, the primary purpose of the police is to arrest and charge suspects, which differs from the military's aim. This should eliminate the threat posed by 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 acknowledges 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, possessing access to more powerful weaponry. Therefore, the risk of loss of life is more significant.[373] 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 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 address the notion established by the author of the different approaches to judging cases by the ECtHR, particularly when military and police forces are involved. Generally, military operations are more dangerous because they require a greater use of force, which can result in more deprivations of life.

Several newer signatories differ significantly from others due to political tensions, geography, regional educational standards, ethnic diversity, 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 solely due to factors inherent to that

[372] Ibid. P. 311.

[373] Ibid.

State.[374] Chevallier-Watts also mentions that there are new state parties where military deployment is a standard practice. The court must consider the conditions of each country when assessing a judgment to avoid creating an unfair disadvantage for some state parties. Each case of military deployment of force and its outcome, including loss of life, must be examined in light of 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 notions of politics and state sovereignty into a process of scrutiny that reflects the current climate and balances the authority of governments with the concepts of rights and freedoms.[375] 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 attacks on the security of the state does not allow the authorities to deploy lethal force indiscriminately. According to the author, the court must strike a balance between the state's 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 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 at all times.

The Application and Elements of the Procedural Aspect of the Right to Life

According to Alastair Mowbray,[376] 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.[377] This author highlights the tribunal's creativity in developing several components of the

[374] Ibid. P. 313,314.

[375] Ibid. P. 316.

[376] 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.

[377] Ibid. P. 39.

right to life in its jurisprudence. It is interesting to note the evolution that this court had regarding the investigation of homicides perpetrated by security forces, which led to the establishment of the autopsy as a requirement. The involvement of relatives in the investigation is a standard requirement in both courts. The tribunal's creativity regarding the IACtHR has also been mentioned. The right to life requires all possible protection, and tribunals must strive to ensure 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 a juridical duty that the agent to whom the violence can be attributed must fulfil, 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.[378] 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 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 be a part of the rights to life and personal integrity, which are interlinked. If this obligation is not complied with, it violates these rights.[379] This author establishes that this procedural duty also applies to the right to personal integrity. Additionally, it determines that amnesty laws or similar laws are not admissible in human rights courts, where the procedural duty to respect the right to life or personal integrity is mandatory for state parties to comply. Furthermore, the author establishes that this procedural aspect of an effective investigation is also applied even when the death has been unintentional, as established in the case law of the ECtHR. Even if it was not the outcome expected by the state

[378] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005. P. 103.

[379] Ibid. P. 100.

security forces, the investigation must be carried out to secure confidence in the rule of law and comply with the provisions of the conventions in their 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 basis 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.[380] An investigation into the crime must be conducted first. 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 of Blake v. Guatemala, the judgment of January 24, 1998, in which the court ruled it was incompetent. This was because the IACtHR established that it was unqualified to determine whether there was a violation of 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 occurred before the date of acknowledgement of the contentious competence of the IACtHR by the State of Guatemala.[381] 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 issue of the lack of investigation into the potential rights of Mr. Blake's relatives. 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.[382] The problem of lack of competence does not signify that an adequate 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 occurred before the Convention entered into force, revisiting the case to

[380] Ibid. P. 101.

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

[382] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005. P. 110.

determine how the investigation was conducted is necessary. If there was no investigation, as in the 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 why this has been extended to other cases where the court had competence, abandoning the idea of the investigation obligation.[383] The author establishes that if the court has competence, it must never deny an effective and impartial investigation to the direct and indirect victims of the crime, which is a procedural duty arising from 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 v. Guatemala, Judgment of March 8, 1998, the ruling declared the violation of the right to life of the victims because it was proven that there 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 Commission under Article 8 of the Convention.[384] Blake's case

[383] Ibid. P. 111.

[384] 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.

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 the presumption of innocence in every case.

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, and all the people who had participated in the events."* [385] In this case, it is documented that the obligation of guarantee differs from the obligation of repair, establishing that the victim of a human rights violation can renounce the due compensation, and the state is not required 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.[386] The author establishes the state's obligation 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

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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.

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

[386] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005. P. 110.

the victim does not want compensation as reparation, they can renounce it; however, the state must still hold the person responsible for the crime accountable, regardless.

Another aspect that needs clarification is the nature of the obligation to investigate. For Medina Quiroga, knowing the truth is an integral part of the reparation process. According to this, the responsibility to investigate has two purposes: to prevent and to satisfy through prevention.[387] The IACtHR establishes in its case law that the obligation to prevent encompasses means and behaviour, as well as the commitment to investigate. For Medina Quiroga, the responsibility to investigate includes the obligation to prevent as a purpose. The aim is to prevent human rights violations before they occur; if they do occur, the state must investigate the matter. The investigation aims to establish a precedent and prevent similar situations from happening again. Furthermore, the author acknowledges the truth as a form of reparation mentioned before, as it is the judgment.

Medina Quiroga determines that an indispensable attribute of the state is the guarantee of the right, which includes reparation. The right to life requires the state to have mechanisms and procedures in place for reparation in the event of a violation. The reparation typically will consist of monetary compensation, but other modalities may be required.[388] The IACtHR orders a financial reparation for the relatives of the deceased victim, which is usually established at a later stage in the background ruling. Despite the compensation, the court may order additional reparations, such as enshrining the crime of disappearance in a country's domestic legal system. Another form of reparation is to find the remains of the victim and deliver them to the relatives.[389] Other ways include establishing a memorial for people who lost their lives. The reparations may take various forms, depending on the specific circumstances of each case.

The author's summary from their perspective is that the obligation to protect the right to life requires the state to take a set of dissuasive actions, including prevention, control over deprivation of life by third parties, and reparation for violations of 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

[387] Ibid. P. 114.

[388] Ibid. P. 115.

[389] Ibid.

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.[390] This author's central notion is preventing violations of the right to life. This prevention encompasses all the means at the state's disposal. 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, regardless of their form. The state must compensate for both material damage (pecuniary) and non-material damage (non-pecuniary), such as the indirect suffering of victims who are unaware of their loved ones' fate and whereabouts.

In conclusion, since the IACtHR began issuing judgments related to the violation of the right to life, significant developments have occurred in various aspects of the matter. 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 determines whether the state is responsible, without considering the possibility of amnesty or impunity. Another improvement has been the reparations 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 by the state parties has been effective and impartial, and that the state investigates, processes, and sanctions *ex officio*. If this does not occur, the court will hold the state accountable for failing to conduct an effective investigation.

The importance of an effective investigation for the ECtHR has been well established in the procedural aspect of ensuring the right to life is not violated. Additionally, the procedural elements include an impartial and independent investigation, which can be grounds for condemning the state. Moreover, the fight against impunity is significant because if it is not established, the perpetrators may remain unpunished. For this, an effective and impartial investigation of the security forces' actions concerning human

[390] Ibid. P. 118.

rights violations in each state is needed. The concept of impunity is complex because each state may have its own rules regarding pardon or amnesty for certain criminals, as has happened in many countries in Latin America.

Effective investigation and the courts' rulings on these crimes are vital. There are several requisites for an effective investigation, and the security forces must fulfil all of these for the court to establish that it has been impartial and adequate. 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 the celerity parameter tracking. The Tribunal elaborates on these patterns in its interpretation of Article 2 of the ECHR. There are many cases in which it is determined that a procedural obligation concerning an efficient investigation has been violated. 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 examines the procedural and substantive aspects of human rights in relation to the domestic courts of the state parties, as well as the authors' concept of a *"process-based review"* of the procedural aspects. This part relates the procedural and substantive aspects of human rights, as applied by the IACtHR and the ECtHR, to the work and prerogatives of domestic courts.

An engaging author to analyse in this subchapter is Robert Spano.[391] 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.[392] This author establishes the substantive process of the court, directed at engaging the state parties and ensuring compliance with human rights provisions. This means that these countries should adapt their domestic laws to conform 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

[391] 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.

[392] Ibid. P. 475.

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.[393] The pilot judgment procedure is a technique used to identify the structural problems underlying repetitive cases in many countries. This procedure is highly effective for the ECtHR in promptly assessing cases with similar 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 presented by the ECtHR is the margin of appreciation, which balances individual rights with national interests and resolves any potential conflicts of interest. These procedures are designed to ensure the effective implementation of the substantive aspects 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 of the Convention, the States Parties are the primary providers and guarantors of Convention rights.[394] It was essential for the Conventions to establish a comprehensive catalogue of human rights, which were seen as a compulsory set of rights that must be complied with from the moment they were established. Following the evolution of regional human rights courts and the development of international human rights law, these institutions are seen as vital for state parties to comply with and ensure the rights of 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 reach the regional human rights courts because the state parties have failed to protect 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 to the current procedural embedding phase is both empirically

[393] Ibid. P. 477.

[394] Ibid.

correct and normatively justified, and that, looking to the future, this shift may be beneficial for the Convention system's sustained effectiveness in protecting human rights across Europe.[395] The author determines that there was a time when substantive aspects were embedded 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.[396] 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. 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 the ground level.[397] This author highlights the difficulties and critiques the ECtHR's concerns regarding interference in domestic law. It is essential to remember that when a state is a party to the convention and the court, it must relinquish some of its powers and sovereignty to ensure the court's judgments are compliant, which may be contrary to 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 domestic justice in the court. The court has tried to remedy this by exhausting domestic

[395] Ibid. P. 480.

[396] Ibid.

[397] Ibid. P. 486,487.

remedies. In this way, when individuals have witnessed human rights violations, they must first seek a remedy through every instance of domestic law before interposing in the ECtHR. A similar situation can be observed 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 with its decisions. 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 interpretive criteria that the ECtHR has provided to state parties for deciding cases related to violations of 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.[398] 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.

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 its democratic society, not just in any democratic society, but specifically in its own.[399] 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 use this argument to make decisions that contravene the Convention's provisions. For this reason, the court must analyse these cases with the utmost care and scrutiny to determine whether the domestic court has made a necessary decision 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

[398] Ibid. P. 487.

[399] Ibid. P. 489,490.

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.[400] The author concludes that although the ECtHR can attribute specific obligations to state parties to apply the Convention, the process-based review aims to achieve a practical procedural embedding phase, thereby expanding the protection of human rights at the 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 the ECtHR 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 ultimate purpose of the process-based review is to ensure the protection and guarantee of human rights in European states. However, it is essential to establish that there must always be a balance between the objective criteria of the states and the provisions protecting human rights. The author aims for domestic courts to protect human rights effectively and for the number of cases reaching the ECtHR to decrease in the future.

Another interesting author for this subchapter is Thomas Kleinlein, who developed the procedural aspect of the ECtHR.[401] He determines two modes of proceduralisation. The first one encompasses the explicit procedural rights, including a duty of due diligence regarding investigation and prosecution, as well as hearing an interested party before making a decision. 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.[402] Kleinlein states that the procedural duties have become part of the right in question, and when reviewing this right, this aspect must be taken into consideration. There is not only a substantive element in the right. However, the letter of the Conventions does not mention this

[400] Ibid. P. 492.

[401] 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.

[402] Ibid. P. 93.

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.[403] This is the mode that Robert Spano describes in his work, and it is related to the process-based review. The ECtHR determines that domestic procedures are revised, which in turn impact the decision on the merits of a case. Furthermore, the quality of how domestic courts decide cases influences the substantive review by 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 in deciding a case and revising the Convention.

The Court entrenches minimal human rights protection standards and reimposes them on domestic authorities. Proceduralisation does not imply a retreat from or deterioration of international human rights as fundamental values, nor a decline in the rule of law. This process can enhance human rights protection and reinforce procedural values as an integral part of the rule of law.[404] Kleinlein and Spano agree that the integrated procedural review ensures that state parties internalise the protection of human rights. This will enable more informed domestic decisions regarding the implementation of human rights under the Convention and prevent the overload of cases at the ECtHR.

This section analyses the substantive and procedural aspects of human rights, 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 and upheld. These elements enhance the courts' work by identifying various situations where the right to life may be violated. Furthermore, each court decides on these aspects differently, as stated above.

[403] Ibid.

[404] Ibid. P. 106.

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 failing to investigate 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 rectify such infringement.

When the security forces of the state commit an arbitrary or illegal deprivation of life, the state is violating the negative 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 violates its positive 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 is a party to the Convention on Human Rights and is held accountable by the human rights courts 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 state's responsibility to respond through its security forces. The jurisdiction of the courts encompasses only state parties, and they are the only ones who can be accused; therefore, it is reasonable that they respond to the acts or omissions of their security forces that have caused harm and violated one of the provisions of the conventions.

As many works explore the positive and negative obligations associated with the right to life, I will examine the literature concerning human rights tribunals in this context. 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 authors, who are familiar with the IACtHR but understand concepts related to the ECtHR. The first text will focus on the right to life, explicitly addressing both the positive and negative obligations that derive from this right.

The origins of the state's positive and negative obligations can be traced back to the French Declaration of the Rights of Man and the Citizen. 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.[405] These can be seen as seeds of the state's positive and negative obligations regarding human rights, as the state must ensure the enjoyment of the individual's natural rights. Furthermore, the state has the duty not to limit a person's rights, and the law has stated the only limits to these. Additionally, people can always have the liberty to do as they wish, provided it does not harm another person in the pursuit of their freedom.

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

This section outlines the positive and negative obligations associated with the right to life. All human rights generate both positive and negative obligations for state parties to the human rights tribunals; however, this section focuses 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 their responsibilities in upholding respect for this right in all circumstances. The author notes that the protection of prisoners and detainees also receives attention in international law organs, and specific situations of gross human rights violations are being addressed.[406] 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 emphasises the importance of caring for prisoners and detainees in the state's custody, which is responsible for their care.

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

[405] 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.

[406] 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.

treatment of prisoners and detainees, norms regarding torture, disappearances and arbitrary summary executions.[407] 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 individuals under state custody is extensively considered. 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.[408] This is why international conventions and human rights courts are so essential. These must impose their provisions' positive and negative obligations regarding the state's duty to protect and respect human rights. Additionally, the courts' tasks are to ensure the safeguard of these rights for the individuals of the state parties, and that these latter secure this protection through their positive and negative obligations regarding 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. The excessive use of force by law enforcement officials is a particularly acute problem.[409] 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 exhibit 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 practices within the United Nations, the European Commission, and the Inter-American Commission tend to suggest that the right to life

[407] Ibid. P. 7.

[408] Ibid.

[409] Ibid.

has both negative and positive dimensions, and that the latter encompasses the right of everyone to preserve and enjoy their 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.[410] It is worth noting that the European Commission ceased to exist in 1998; however, it made significant contributions to human rights during its tenure. The concept established by the author is essential for understanding that both the European and Inter-American Systems impose negative and positive obligations on 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 the states parties concerned to choose their method of implementation within 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 extends beyond merely respecting human rights. Still, the state parties have also undertaken to ensure that this enjoyment is available to all individuals under their jurisdiction. This aspect requires specific activities by the state parties to enable individuals to exercise their rights.[411] This part explicitly delineates the state parties' positive obligations regarding the right to life. The text states that legislative and constitutional measures are insufficient. 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 protection through positive obligations and restraining omissions through negative commitments.

The author also explains the negative obligation of states by stating that the duty to respect has both negative and positive dimensions. In negative terms, it is to take

[410] Ibid. P. 10.

[411] Ibid. P. 17.

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. On the positive side, 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 law enforcement, security, and military forces.[412] 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, which in turn refers to the duty of enforcing security and military forces. Additionally, it establishes that the state must protect people from acts committed by individuals acting in contravention of the law. Regarding the positive obligations, the text stipulates that the duty to respect the right to life applies to 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 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 effectively protect the right to life, continued efforts must be made to strengthen the rule of law universally.[413] The author effectively establishes the necessity of the rule of law as a condition for protecting the right to life. However, it isn't easy to apply this in practice because, even if the human rights courts attempt to establish the necessary standards and hold the responsible states accountable in their judgments, this does not necessarily mean that the state will comply.

Additionally, even if the states comply with it, it is challenging 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

[412] Ibid.

[413] Ibid. P. 27,28.

themselves. Regarding this, the IACtHR has established the abolition of any amnesty law that allows perpetrators to remain unpunished. 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, thereby achieving confidence in the rule of law at both the international and national levels. It is still a work in progress, and these courts are trying to secure adherence to the rule of law.

Ramcharan establishes that every internationally wrongful act of a state entails the state's international responsibility. 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 a state's act is determined by international law. An internationally wrongful act that results from a state's breach of an international obligation so essential for the protection of the fundamental interests of the international community as a whole constitutes an international crime. Accountability is closely related to responsibility, which should also be taken into consideration. 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.[414] Ramcharan determines the state's international obligations, which, in the case of this work, refer to the breach of any 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, as determined by the corresponding international tribunals. In the case of this work, the state is accountable for the acts or omissions of its security forces that violate the right to life.

Another engaging author is Ramona Nicoleta Predescu. Regarding the IACtHR, this author determines that the right to life entails both a negative obligation not to arbitrarily deprive a person of their life and a positive commitment to take all necessary measures to ensure that this fundamental right is not violated. The positive obligation is incumbent upon every state to take the required measures through its relevant bodies

[414] Ibid. P. 28,29.

to ensure that the right to life is respected.[415] 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 from taking such action. The positive obligation encompasses the legal framework that states must adopt to ensure the right to life, and that every organ and agent of the state must execute and comply with.

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 that only bind states that explicitly accept their applicability.[416] The ECHR and the ECtHR have 46 member states; the American Convention and the IACtHR have 20 member states. The author acknowledges that these courts cannot impose demands on states that are not parties to their court or convention and do not comply with the provisions on human rights of the latter. Furthermore, it generates both positive and negative obligations for the states that are part of these treaties and the human rights established therein. However, every state should respect the human rights of the people under its jurisdiction, although several violations in many countries are not adequately addressed. 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 emphasises the importance

[415] 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.

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

of an adequate standard of living and the state's positive obligations, including access to sufficient food, water, housing, and sanitation.[417] Although this work concerns the right to life, all human rights entail both positive and negative obligations towards the state that must be fulfilled. It is worth noting that this work focuses on the arbitrary deprivation of life by security forces. 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 actions and deeds, protect human rights in their laws and policies, and fulfil their treaty obligations. Smith states that human rights are necessary to complement the country's rule of law.[418] This author identifies the positive and negative obligations that states have regarding human rights by establishing that they must respect and protect these rights 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 means at its disposal, including legal, cultural, institutional, and administrative measures (positive obligation), and avoid committing any act that could infringe upon 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 the state's jurisdiction 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 establish certain limits on what a state may do to its nationals. This has always been a controversial issue, with some states being reluctant to endorse what they regard as interference in their internal affairs.[419] The

[417] Ibid. P. 6.

[418] Ibid. P. 10.

[419] Ibid. P. 11.

author's statement 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 cede certain powers to international jurisdiction over their nationals. However, this is necessary to protect the human rights of individuals. If the international law of human rights did not exist, 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 was not functioning yet, so states were not required to respond to this court for human rights violations.

Maurice Cranston, an interesting author, suggests that there may be occasional conflicts between an 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.[420] This author argues that, at times, state security can conflict with individual rights; however, security is a human right that everyone must enjoy. This means the state must provide security and restrain security forces that depend on it from violating human rights.

This author states that 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 state agents, as well as particulars. By this positive obligation, the state must take the necessary measures, legislative or otherwise, 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.[421] 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.

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

[421] Ibid. Par. 15.

An engaging view is that of Candado Trindado. This author determines that an international human rights tribunal must ensure the proper application of the human rights treaty at issue within the framework of each state party's domestic law, thereby securing 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.[422] The human rights courts must ensure compliance with their provisions and that the state fulfils 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 stance in support of the integrity of the protection mechanisms under the two Conventions are provided.[423] Every individual's right to life must be protected. Human rights tribunals have established this through case law, determining that states must protect individuals within their jurisdiction. That is why the state's positive and negative obligations regarding human rights are crucial to fulfilling the inherent entitlements of individual human beings.

Another engaging text is *"The European Union and Human Rights: An International Law Perspective"*[424] by Tawhida Ahmed and Israel de Jesús Butler. These authors establish that, traditionally, although states may not base a failure to observe their

[422] Cançado 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

[423] Ibid. P. 257.

[424] 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 Nº 4 EJIL.* P.P.771-801. 2006.

international obligations on duties under domestic law, each state reserves the right to determine how it implements those obligations. International law does not penetrate national law unless the constitutional tradition of that state provides it.[425] 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. Member states have delegated their responsibilities under human rights law to the UN. States cannot set up an autonomous international actor that can obviate human rights standards that the states are bound by."*[426] According to these authors, states must respect human rights even if a convention does not bind them. They have positive and negative obligations to protect and ensure these rights for everybody under their jurisdiction. States must protect human rights because they are inherent to being human, 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.

Customary international law is the body of international law binding on all states, which derives from states' practice and legal opinion (*opinion juris).*[427] 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.[428] Ahmed and Butler share a similar thought to White's, determining that Customary International Law obliges states to respect fundamental human rights because this is a practical rule that arises without the express consent of every state.

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[425] Ibid. P. 775.

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

[427] 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.

[428] 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 Nº 4 EJIL*. P.P.771-801. 2006. P. 778.

Furthermore, the International Court of Justice has found that the rules of international law 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 the 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.[429] This is another argument presented by the authors, based on the International Court of Justice, that human rights are a concern of all states. They are *erga omnes*, meaning they are rights owed to all, automatically generating both positive and negative state obligations towards human rights. Furthermore, several international instruments have attributed an *Ius cogens* character to the right to life, meaning this is a peremptory norm that cannot be derogated from.

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, states that the ECHR, in Article 2, has established a positive obligation of the state and its representatives; hence, the contracting states are obliged to create a public order that provides adequate protection of the right to life for all persons.[430] 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"*[431] about the positive obligations of the police and protecting against crime as a human right. This is another significant addition to this work. He states that the

[429] Ibid. P. 779, 780.

[430] 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. P.P.43-60. Switzerland, 2018. P. 46.

[431] 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. P.P.181-216. Switzerland, 2018.

primary focus is on the professional duty of the police, which, in human rights law, involves the state's active, positive obligation 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.[432] This author presents an interesting perspective on the positive obligations imposed on state police forces. He states that the primary purpose of the police is a positive obligation to protect and guarantee human rights when these are at risk. 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 a last resort. Furthermore, this is the typical situation that usually occurs. 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.[433] Due to the intersection of the ECtHR system with other regional human rights systems and the UN, there is a considerable degree of harmonisation of review principles and standards at national and European/international levels.[434] 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 have been 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, as tackling crime is a common form of protection against human rights violations. Since the early years of the ECtHR's constitutional review, victims of crime have asserted their protection of

[432] Ibid. P. 183.

[433] Ibid.

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

human rights against the state.[435] Xenos determines that positive obligations emerged for the police when facing crime. For the author, this is a common form of human rights protection, establishing that the victims of crime have both positive and negative human rights obligations protected by the state since the establishment of the ECtHR. The police must uphold both the positive and negative obligations regarding human rights. However, as will be shown in Chapter III, they often abuse the use of force or treat persons in custody without respecting 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, depending on 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.[436] This has been explained before, regarding the right to life and how the 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 human rights violations, as Medina Quiroga mentioned. If this is not the case, and the crime occurs, the state must punish the perpetrator. If this did not happen, these crimes would occur more frequently. Crimes arise, and there is punishment for the perpetrators; this example helps prevent the crime from spreading further. The security forces are not exempt from being judged if they abuse lethal force, which must be applied in conformance with the circumstances and in accordance with the principles of proportionality and absolute necessity.

[435] 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. P.P.181-216. Switzerland, 2018. P. 208.

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

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.[437] The author discusses the *"supreme value in the hierarchy of human rights"*.[438] 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 whether 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.[439] 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 on the part of states. This occurs mainly in Article 2 (according to which death cannot be inflicted intentionally), Article 3 (prohibition of torture), and Article 4 (prohibition of slavery and forced work).[440] The author describes articles that protect human rights and outline the state's positive and negative obligations in this regard. Abstention is a negative obligation, and respect is a positive one. 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 primary 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

[437] 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. P.P.181-216. Switzerland, 2018. P. 209.

[438] Ibid. P. 210.

[439] 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.

[440] Ibid. P. 247.

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 fortunately persisted in the new, which holds that the assumptions it applies make human rights prevail over the sovereignty of states.[441] In the case mentioned above, McCann and Others, the defendant's state's condemnation was based fundamentally on a violation of its positive obligation.[442] Here, it also highlights that the right to life is the most fundamental of all human rights. The state understands that protecting human rights is more important than its sovereignty. The regional human rights courts establish judgments that hold the state accountable for violating human rights when they are found to have done so. Furthermore, human rights generate positive and negative obligations that states 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 summary 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.[443] The situation of extrajudicial executions, forced disappearances, and torture is widespread in the case law of the ECtHR and the IACtHR, mainly in the latter. The state must comply with its positive obligation to investigate the events that led to these crimes and hold those responsible accountable.

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.[444] As the police are also subject to negative obligations, they cannot interfere with human rights without proper justification. A

[441] Ibid. P. 251.

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

[443] 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.

[444] 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".*

preliminary condition for a lawful exercise of police powers regards the prior regulation of the offence in criminal law.[445] 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. Police forces must be aware of the situation and know how to handle it effectively. 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 equipped with knowledge of human rights law to develop their duties and protect these rights effectively. If this does not occur, it is likely a situation that falls within one of the five categories of violation of the right to life, which will be outlined below.

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

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

The text of Tawhida and Butler outlines essential concepts regarding the positive and negative obligations of 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 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.[446] 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

[445] 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.

[446] 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 Nº 4 EJIL*. P.P.771-801. 2006. P. 782.

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.[447] The authors identify specific characteristics of the clash of rights between IGOs and 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 the IGO, but must never leave a legal vacuum regarding the protection of human rights.

The obligations flowing from the UN Charter include the duty to guarantee human rights.[448] 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 Council of Europe must respect the UN Charter over other treaties that have come later, this Charter does not contradict the respect and protection of human rights as established by the ECHR. Furthermore, the authors highlight the importance of EU members respecting Customary International law 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 the necessary measures at the national level to secure and ensure the rights protected by the relevant treaty.[449] Similarly, the Inter-American Court has affirmed that state parties are under a general

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

[448] 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 Nº 4 EJIL*. P.P.771-801. 2006. P. 792.

[449] Ibid. P. 798, 799.

obligation to adjust their domestic legislation to the provisions of the Convention itself, thereby guaranteeing 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 to ensure actual compliance with the provisions outlined in the Convention.[450] In this spirit, the Inter-American Court has held that the fundamental right to life encompasses not only the right of every human being not to be arbitrarily deprived of their life, but also the right to access conditions that guarantee a dignified existence. States must ensure the creation of conditions that prevent violations of fundamental rights from occurring.[451]

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 in their actions or policies.[452] The authors believe that EU law imposes no positive obligations on member states arising from human rights. It is different if they consider the ECHR and the case law of the ECtHR. The provisions of the ECHR outline positive obligations, as seen in Article 2, to protect the right to life through law. Furthermore, other provisions establish positive commitments for the state, such as Article 6 (Right to a Fair Trial)[453], which determines a series of rights that the state

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

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

[452] 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 Nº 4 EJIL*. P.P.771-801. 2006. P. 798, 800.

[453] 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 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)

must comply with in the case of someone charged with a criminal offence or Article 1,[454] that establishes that the contracting parties must secure for everyone in its jurisdiction the rights and freedoms of the Convention. However, the ECHR also includes negative obligations. 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 the IACtHR has defined the state's positive obligations, referring to Article 2 of the American Convention on Human Rights, which establishes the responsibility of states to adopt the provisions of the Convention and adapt them to their domestic legislation.[455] Furthermore, another positive obligation of the state for the IACtHR is outlined in Article 4, which establishes the right to life. In interpreting this provision, the tribunal obliges the state to adopt provisions necessary to guarantee a dignified existence for the human being. These are only a few 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.[456]

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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.

[454] Ibid. Article 1.

[455] 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.

[456] 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*

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, another positive procedural obligation is to respond to allegations of human rights breaches. The negative procedural commitments refer to the absence of investigation and the court's failure to assess when there is an alleged violation of human rights. The lack of inquiry is evident in many cases of this work.

The importance of the International Responsibility of the States

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.[457] These authors establish that international human rights treaties recognise 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 without an international responsibility system.[458] 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, comprising both positive and negative

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.

[457] 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. Vol. 6, No. 1.* P.P.3-17. Washington, United States. 2015.

[458] Ibid. P. 3.

obligations, serves as the basis for the emergence of state responsibility.[459] Wrongful actions regarding human rights refer to the state's positive obligations and its failure to fulfil negative duties. The authors establish that the state's responsibility stems from its non-compliance with both its negative and positive obligations concerning fundamental rights and freedoms.

Barón Soto and Gómez Velásquez conclude that the analysis of the state's international responsibility has become more critical with the advancement of 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 a consequence of the existence of international obligations that states must comply with, as a result of a right whose holder expects and can demand that it be met.[460] The evolution of human rights law, together with the regional courts, has led to the critical examination of both the negative and positive obligations of the state, holding these accountable for any violations. The authors establish the state's responsibility for actions or omissions that violate human rights, and that this responsibility has become more genuine due to 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.

Accordingly, in international human rights law, we are faced with a triadic relationship where individuals are the active subjects and states are the passive ones. Consequently, the active subject can demand a specific behaviour from the state. If the state does not respond, 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.[461] 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

[459] Ibid.

[460] Ibid. P. 4.

[461] Ibid.

determine that the state's international commitments include all the state's organs. In this work, it is the state's responsibility when security forces, which are organs of the state, violate the right to life.

In addition, the state may sometimes be responsible for the actions of private individuals who lack government authority but are involved in, for example, human rights violations. According to international jurisprudence, this can occur when the state tolerates, controls, directs, or allows such acts, which constitutes a global responsibility of the state for its omission. The existence of an internationally wrongful act by a state occurs if the conduct attributable to the state constitutes a breach of an international obligation of the state.[462] The violation of a state's positive obligation to respect human rights occurs when it has perpetrated breaches of these rights or has acquiesced in actions that lead to such 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. An internationally wrongful act occurs when a 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.

Accordingly, one of the principal duties of the state is to protect its citizens and all people under its jurisdiction, a duty that requires positive measures against the actions of non-state actors. 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.[463] The state's positive obligation includes establishing a legal framework that ensures the enjoyment of human rights and fundamental freedoms by everyone within its jurisdiction. The international obligation arises when the state fails to apply these laws in response to a human rights violation perpetrated by one of its organs or a non-state actor. The state has not effectively implemented these rights to protect individuals, resulting in an omission and a violation of the positive obligation. Furthermore, the state fails to fulfil 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.

[462] Ibid. P. 7.

[463] Ibid. P. 8.

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.[464] 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 state's disposal. 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 fulfil is the adoption and adaptation of the Convention's provisions in their domestic courts. This is an essential obligation for state parties to the human rights conventions to guarantee the protection of human rights.

The authors note that there are cases before the IACtHR where the state has violated its international obligations through actions committed by third parties in which the state´s agents were involved or tolerated their occurrence. This wrong behaviour of state representatives must be proven and represents a significant omission in preventing and protecting people under the state's jurisdiction.[465] There are examples in Chapter III of these cases where security forces were in agreement and acted with groups which perpetrated massacres, extrajudicial executions or forced disappearances. This constitutes an infringement of the state's positive obligation to protect human rights and its negative obligation to refrain from any action that could violate these rights. Even if the state did not have present acquiescence in the crime, it can still violate its positive obligation to investigate and punish the responsible parties with due diligence.

The state can be responsible for violating human rights by a private actor. This scenario is based on the state's failure to act with due diligence in preventing the actions of private individuals that constitute a violation of the rights recognised by the American Convention. Therefore, the state's responsibility is an evident consequence of failing

[464] Ibid. P. 10.

[465] Ibid. P. 12.

to fulfil a positive obligation: protecting all people under its jurisdiction. The IACtHR has stated in various decisions that states must prevent all actions that could interfere with the full and effective enjoyment of rights under the American Convention. The absence of due diligence has been recognised by the Court mostly when the state fails to act diligently, even though it is aware of the existence of a specific, immediate, and determined risk.[466] To hold the state accountable for the actions of private or non-state actors, it is necessary to identify these actors and ensure the state is aware of the risks to which individuals under its jurisdiction are exposed. The ECtHR establishes this situation in its case law by stating that the state should know which identified individual is in danger concerning another identified third party. The states cannot be responsible for all violations of human rights. They must be aware of the imminent and tangible threats 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, there were cases where the IACtHR established that the identified individuals were at risk, and the domestic court failed in its positive obligation to protect the Convention's human rights and fundamental freedoms for everyone within its jurisdiction.

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 an effective protection system, populations will become more vulnerable to the risks they face in society.[467] The negative and positive obligations of the state parties stem from the human rights enshrined in 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 result in everyone under its jurisdiction lacking 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.

[466] Ibid. P. 12,13.

[467] Ibid. P. 15.

In summary, the positive obligations guarantee and protect the right to life through a legal framework that establishes this. Furthermore, the positive obligation generates a duty on the state and its entire 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 deaths. The negative obligation also includes the state refraining from establishing provisions that are 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 was able to define five categories for classifying the judgments.

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 state's right to use force and its implications concerning the deprivation of life in the exercise of maintaining order. The state's security forces must consider the proportionality of the situation they face.

(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,[468] the Convention against Torture,[469] the CEDAW,[470] and the Convention of Belem do Pará[471] have been violated.

It is essential to establish that some of these categories may overlap. While this research is being conducted, it may be possible to add more categories or discard others.

In the following, I will examine the key cases of the two tribunals regarding these categories to establish the standards for each as determined by the regional human rights courts. This will allow me to find similarities and differences between these standards. Furthermore, analysing 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 on diverse topics, it was possible to establish why the right to life, as examined by the IACtHR and the ECtHR, is so complex and fascinating. In this work, I aim to investigate how the articles on the right to life in the Conventions can be interpreted differently by human rights tribunals, how they rule on judgments, and the standards they apply in cases of right to life violations. It is challenging to comprehend and interpret the right to life, making the decisions of the IACtHR and the ECtHR concerning violations of this right particularly significant. Although this work focuses on the breach of the right to life resulting from the actions or omissions of security forces, it aims to provide an expanded overview of the

[468] 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.

[469] 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.

[470] 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.

[471] 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.

theoretical aspects. Furthermore, it is essential to examine how case law and the court's decisions have evolved.

The chapter illustrates how various conventions converge to determine the future of a judgment and the importance of the investigation.

Although some sub-chapters have not maintained a balance in the quantity of information about the ECtHR compared to the IACtHR, or vice versa, it is essential to remember what Anikó Raisz established regarding 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 in the literature and jurisprudence concerning several theoretical aspects. I examined the substantive and procedural aspects of the right to life, as well as the positive and negative obligations of states, in both domestic and international 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. A key difference between Article 2 of the ECHR and Article 4 of the American Convention is that it establishes exceptions to the right to life, provided that strict requirements are met. I believe that it is essential to develop these exceptions in this Convention to understand why a person who kills another is justified in some instances. Since the IACtHR does not have these exceptions in its Convention, it must apply the Code of Conduct for the Use of Force by Law Enforcement Officials of the OHCHR, which establishes similar exceptions to those in Article 2.2 of the ECHR. Nevertheless, the instrument of the OHCHR presents a *"pro homine"* aspect (in favour of the person) because the use of lethal force is only allowed to protect the life of a human being.

Furthermore, it is possible to determine that the ECtHR's procedural aspect is more developed, as its case law has extensively discussed this aspect.

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 began examining the cases related to the question of state security forces violating the right to life, I realised that including all of the cases in the thesis analysis would shift the balance of my work towards a descriptive approach. The number of cases that fall under the categories is too high to outline in this work, and several of them share the same essential standards. I decided to make a selection from the analysed cases and, in that way, create a more coherent and organised thesis that could centre on its object of study, which is the standards and the comparison between them. The cases selected are those that are more representative of each Court. This means that those judgments have been paradigmatic and have established essential notions and standards regarding the violation of the right to life, as well as 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 key cases for each court, and several of them have been cited in later judgments in both courts.

It is relevant to note that I included the key cases with their facts and standards, as it was essential to determine how these standards are applied. Every case will have a summary of the specific situation (facts) and the standards established by the courts when they make their decision. In this way, it is possible to understand how each court operates, resolves, and interprets the Convention's articles, as well as applies 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.

In Appendix II, additional cases of each category are presented to further complete the analysis.

Moreover, the chosen cases are those where the defendant state has several instances of this category against it, as well as key cases that were famous and frequently 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 state security forces or with their acquiescence.
4. Homicides committed with police brutality.
5. Forced disappearances.

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, including the judgments of Appendix II. Regarding the IACtHR, there are cases with 13 defendant states. Venezuela, Guatemala, Honduras, and Peru 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. 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 its alleged violation of 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, accounting for 4.34%.[472]

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. These instruments are 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 regarding the use of force by security agents, it relies on these instruments 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 been a member of the Council of Europe since 1996, a period spanning 25 years until 2021. Despite this country's condemnations before the ECtHR, it has maintained its place in the Council. Nevertheless, in 2022, 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 expel Russia from the Court and the Council because it had violated the ECHR.

It is necessary to establish some notions about expulsion in the ECtHR through the text of Frederick Cowell regarding this matter.[473] The author notes that, unlike several international human rights treaties, the ECHR includes a withdrawal clause in Article 58.[474] Historically, Article 58 has been somewhat underdiscussed in comparison with

[472] The statistics were developed based on the cases examined in this work.

[473] Cowell, Frederick. "Council of Europe Expulsion and the European Convention on Human Rights: The Foundations of Involuntary Treaty Withdrawal.". In: *International and Comparative Law Quarterly, Vol. 74.* P.P.147-177. Cambridge University Press. Great Britain, 2025.

[474] 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 58: Denunciation. 1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties. 2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its

other procedural and jurisdictional provisions of the ECHR. It has only been interpreted and applied twice, in the cases of Greece in 1969 and Russia in 2022.[475]

Following the Russian invasion of Ukraine, the Council of Europe took the unprecedented step of deciding to expel Russia. The only precedent was Greece, which was denounced following a finding of the European Commission that crimes of torture and indefinite detention were being committed by the military government in charge at the time. On 15 March 2022, hours before the Council of Europe formalised Russia's expulsion, this country gave notice of its intention to withdraw from the Council of Europe and the ECtHR. Expulsion does not describe a voluntary act as withdrawal does. Expulsion from the ECHR has occurred when a state has engaged in widespread and systematic human rights violations, suggesting that the state is not fulfilling its commitments under the Convention. There is a broader need to remove it to promote human rights.[476]

Although the rules of expulsion are unclear, and in both the Russian and Greek cases, withdrawal occurred before expulsion could take place, the motivation to utilise and develop the powers of expulsion was understandable. The Council of Europe was founded explicitly to respond to the expanding threat of totalitarianism and to create a collective political identity for European states that would differentiate them from Nazism and Communism.[477]

Cowell determines that it is necessary to make clear that obligations under the ECHR in respect of violations do not expire at the point at which withdrawal becomes effective. The scope of the original act of *pacta sunt servanda* would need to be clarified to state that, in the case of Article 58, paragraph 2, it applies in all

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obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective. 3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions. 4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

[475] Cowell, Frederick. "Council of Europe Expulsion and the European Convention on Human Rights: The Foundations of Involuntary Treaty Withdrawal.". In: *International and Comparative Law Quarterly, Vol. 74.* P.P.147-177. Cambridge University Press. Great Britain, 2025. P. 148.

[476] Ibid. P. 149.

[477] Ibid. P. 165.

circumstances: denunciation of the ECHR, voluntary withdrawal, and expulsion from the Council of Europe (involuntary withdrawal). The issue is to ensure that there is maximum clarity on the continuing obligations of a state after its obligations under the ECHR terminate —a situation in which the incentive for a state party to break those continuing obligations is likely to be at its highest.[478]

It is necessary to clarify that voluntary withdrawal from the ECHR would most likely be incompatible with the Council of Europe membership, given that the statute requires all Council members to accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms and may potentially lead to expulsion.[479] Due to the compulsory nature of the ECtHR, the proclamation and activation of Article 58 would ultimately lead to the expulsion of the state parties from the Council of Europe.

On 16 March 2022, the Committee of Ministers of the Council of Europe issued a resolution, establishing that the Russian Federation ceased to be a member of the Council of Europe, effective immediately. Finally, on 16 September 2022, Russia ceased to be a member of the European Convention on Human Rights. This means that the role of a magistrate or a Russian judge also ceased to exist. There are 17,450 petitions against the Russian Federation pending to date, and it will be seen how the ECtHR will process these claims because the expulsion does not eliminate the pending petitions. Moreover, some of these are related to the invasion of Ukraine.

3. A. 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 January 1995:

Facts: This case involves a riot in a prison in Peru that was suppressed by the security forces through the demolition of a pavilion within that facility.[480] In the present case, Perú had the right and the duty to execute the suppression of the riot in the Prison San

[478] Ibid. P. 175, 176, 177.

[479] Ibid. P. 154.

[480] IACtHR. Case Neira Alegría and others v. Perú. Merits, Reparations and Costs. Judgment 19 January 1995. Series C No. 20. Par. 3.

Juan Bautista.[481] 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.[482]
- Disproportionate use of force by agents of state security, considering the situation.[483]
- 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.[484]
- Insufficient elements to justify the volume of force used by the security forces.[485]
- 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"*.[486] However,

[481] Ibid. Par. 60, 61.

[482] Ibid. Par. 69.

[483] Ibid.

[484] Ibid.

[485] Ibid. Par. 73.

[486] 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 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.

in the present case, the analysis that must be conducted concerns the state's right to use force, which may involve the deprivation of life to maintain order.[487]

- 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.[488]
- The right to life plays a fundamental part in the American Convention as it is the essential principle for realising other rights.[489]
- 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.[490]
- Direction towards a political party to kill the people who belong to it.[491]

Procedural Aspects:

- Negligence in the removal and identification of the bodies.[492]

2. Case of Penal Miguel Castro v. Perú. Judgment 25 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.[493] In the context of this disposition, *"Moving Operation 1"* was planned and executed (Operativo Mudanza 1).[494] 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.[495] These inmates were

[487] IACtHR. Case Neira Alegría and others v. Perú. Merits, Reparations and Costs. Judgment 19 January 1995. Series C No. 20. Par. 74.

[488] Ibid.

[489] Ibid. Par. 74.

[490] Ibid. Par. 76.

[491] Ibid.

[492] Ibid. Par. 72.

[493] IACtHR. Case of Penal Miguel Castro v. Perú. Merits, Reparations and Costs. Judgment 25 November 2006. Series C No. 160. P. 197.2

[494] Ibid. Par. 197.15.

[495] Ibid. Par. 197.16.

suspected of belonging to the Communist Party *"Sendero Luminoso"*.[496] The external wall of Pavilion 1A was demolished.[497] There were several deaths caused by security force attacks, including extrajudicial executions of inmates who surrendered. There were at least 111 deaths.[498] 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.[499]
- The observance of Article 4 related to Article 1.1. it not only presupposes that no person is deprived of their life arbitrarily (negative obligation) but also requires that 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 rights of all people under their jurisdiction.[500]
- 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.[501]
- 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.[502]

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[496] 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.

[497] Case of Penal Miguel Castro v. Perú. Merits, Reparations and Costs. Judgment 25 November 2006. Series C No. 160. Par. 197.22.

[498] Ibid. Par. 197.34, 197.37.

[499] Ibid. Par. 236.

[500] Ibid.

[501] Ibid. Par. 240.

[502] 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

- 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.[503]
- In situations of massive violation of human rights, the systematic use of torture generally has the purpose of intimidating the population.[504]
- The State's protection of the right to life involves legislators, every state institution, and the security forces, who must ensure security.[505]

Procedural Aspects:

- 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.[506]
- The State must investigate the violation of the right to life.[507]
- The duty to investigate is an obligation of means, not results.[508]
- 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 the rights of victims or their relatives to be heard during the investigation and judicial procedures.[509]
- When authorities know a criminal fact, they must immediately start a serious, impartial, and effective investigation *ex officio*.[510]

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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.

[503] Case of Penal Miguel Castro v. Perú. Merits, Reparations and Costs. Judgment 25 November 2006. Series C No. 160. Par. 268.

[504] Ibid. Par. 317.

[505] Ibid. Par. 236.

[506] Ibid. Par. 270.

[507] Ibid. Par. 242.

[508] Ibid. Par. 255.

[509] Ibid.

[510] Ibid. Par. 256.

- This investigation must be carried out by all the available legal means and oriented to the determination of the truth and the prosecution, capture, trial and punishment of those responsible for the facts, especially when state agents are involved.[511]
- The obligation to provide a satisfactory explanation falls on the State and refutes the allegations regarding its responsibility using appropriate evidentiary elements.[512]

European Court of Human Rights

1. 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.[513] 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).[514] 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 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.[515]
- 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.[516]
- 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).[517]

[511] Ibid.

[512] Ibid. Par. 273.

[513] ECtHR. Case of Ogur v. Turkey. (Application no. 21594/93). Strasbourg. 20 May 1999. Par. 8

[514] Ibid. Par. 10.

[515] Ibid. Par. 78.

[516] Ibid.

[517] Ibid.

- 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"*.[518]
- 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.[519]
- The use of force must be absolutely necessary and strictly proportionate to achieve one of the aims in paragraph 2 of Article 2.[520]
- 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"*.[521],[522]
- 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.[523]

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.[524]

[518] Ibid.

[519] Ibid.

[520] Ibid. Par. 79.

[521] Ibid. Par. 88.

[522] 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.

[523] Ibid.

[524] ECtHR. Case of Ogur v. Turkey. (Application no. 21594/93). Strasbourg. 20 May 1999. Par. 88.

- This investigation should be capable of leading to the identification and punishment of those responsible.[525]
- Any deficiency in the investigation which undermines its ability to identify the perpetrator or perpetrators will risk falling foul of this standard.[526]

2. 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.[527] Fifty-six people, including the four suicide bombers, were killed in the attack, and many more were injured.[528] The Metropolitan Police Service ("the MPS") initiated a significant police investigation to establish the identities of the persons involved in, or otherwise connected to, 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.[529] The SFOs (Specialist Firearms Officers) were informed that they were going to Code Red, which meant 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.[530]

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

[525] Ibid.

[526] Ibid.

[527] ECtHR. Case of Armani da Silva v. United Kingdom. (Application no. 5878/08). Strasbourg. Judgment 30 March 2016. Par. 13.

[528] Ibid.

[529] Ibid. Par. 29.

[530] Ibid. Par. 38.

behalf of the police. An *ex-gratia* payment was agreed upon to meet the family's financial needs.[531]

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:

Substantive Aspects:

- 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 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.[532]
- 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 that comprise the Council of Europe.[533]
- 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.[534]
- 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.[535]
- 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.[536]

[531] Ibid.

[532] Ibid.

[533] Ibid. Par. 261.

[534] Ibid.

[535] Ibid. Par. 230.

[536] Ibid.

- 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 duties, perhaps to the detriment of their lives and those of others.[537]

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*".[538]
- 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.[539]
- 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.[540]
- 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.[541]
- 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.[542]

[537] Ibid. Par. 244.

[538] Ibid. Par. 231.

[539] Ibid.

[540] Ibid.

[541] Ibid. Par. 234.

[542] Ibid.

- 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.[543]
- 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.[544]
- 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.[545]
- 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.[546]
- 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.[547]
- 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.[548]

[543] Ibid. Par. 237.

[544] Ibid.

[545] Ibid. Par. 239.

[546] Ibid.

[547] Ibid. Par. 245.

[548] Ibid.

- 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.[549]
- The principal question to be addressed is whether the person had an honest and genuine belief that using force was necessary.[550]
- There should be some form of adequate and effective official investigation when individuals have been killed as a result of the use of force.[551]

Summary

It is essential to determine that some of the notions stated below about the cases of this category include standards of the judgments established in Appendix II, which is at the end of this research, and they are:

IACtHR: Case del Caracazo v. Venezuela. Judgment 11 November 1999 and Case Casierra Quiñonez and others v. Ecuador. Judgment 11 May 2022.

ECtHR: Case of Andronicou and Constantinou v. Cyprus. Judgment 9 October 1997 and Case of Ramsahai and others v. The Netherlands. Judgment 15 May 2007.

In this category, important notions are established that will be repeated by the courts in subsequent cases. In the case of the IACtHR, there are notions of the importance of the right to life and the necessity for this right to be fulfilled to protect 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). Additionally, it is noted that the situation in Latin America during the 1960s, 1970s, and 1980s was marked by many countries under dictatorships. The target was the *"enemies of the state"* and guerrilla groups, 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.

[549] Ibid. Par. 247.

[550] Ibid.

[551] Ibid.

Regarding the ECtHR, the term *"absolute necessity"* is used to justify the use of force in accordance with Article 2.2 of the European Convention on Human Rights. This allows the use of force that can result in the death of one or more persons. 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. The ECtHR also highlights that the tribunal's vision is detached from the subjective perspective of a security force agent facing a threat to their life. It is relevant to note that the security forces are committing homicides, but the responsibility lies with the state to which these forces belong. Additionally, the court outlines the essential requirements for an effective investigation in this category. When the security forces commit a homicide, the state must ensure a satisfactory response by all means at its disposal. A crucial concept in this category is that the court has consistently examined the question of procedural obligations separately from the question of compliance with substantive commitments. 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 determines whether the use of force was justified under the circumstances.

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 demonstrates that the use of force by state agents, as outlined in Article 2.2. must be examined regarding an honest belief of the agent who perpetrated the killing, because otherwise, it would impose an impossible burden on the authorities and security forces agents. The court recalls that Articles 2 and 3 are among the most fundamental provisions, enshrining the basic values of the Council of Europe's 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 ECtHR. In the latter, 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.[552] 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.[553] In these 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 Myrna Mack Chang v. Guatemala. Judgment 25 November 2003:

Facts: Myna Mack Chang was a woman who criticised the politics of the Army regarding the displacements and was against the dictatorship in Guatemala.[554] 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.[555] One of the material perpetrators of the homicide was Noel de Jesús Beteta Álvarez.[556] These arbitrary executions, in general, were performed by the State's intelligence organs and had common characteristics and patterns. The decision to execute certain persons was accompanied by acts and manoeuvres that tended to hinder the judicial process aimed at clarifying the facts and sanctioning the responsible parties.[557] 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.

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[552] ECtHR. Case of Finogenov and others v. Russia. (Applications nos. 18299/03 and 27311/03.). Strasbourg. 4 June 2012. Par. 1.

[553] Ibid. Par. 22.

[554] IACtHR. Case Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment 25 November 2003. Series C No. 101. Par. 134.1.

[555] Ibid. Par. 134.4.

[556] Ibid. Par. 134.5

[557] Ibid. Par. 134.12.

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 at individuals considered *"internal enemies"*.[558]
- 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.[559]
- 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.[560]
- 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.[561]
- When the right to life is not respected, all rights are meaningless. The States must guarantee the creation of the required conditions so that violations of this inalienable right do not occur, and the duty to prevent their agents' attempts against it.[562]

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 party.[563]
- 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.[564]
- 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

[558] Ibid. Par. 139, 142.

[559] Ibid. Par. 152.

[560] Ibid. Par. 154.

[561] Ibid. Par. 149.

[562] Ibid. Par. 152.

[563] Ibid.

[564] Ibid.

events repeats itself, which is contrary to the duty to respect and guarantee the right to life and its positive obligation.[565]

- 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.[566]

2. Case Brothers Landaeta Mejías and others v. Venezuela. Judgment 27 August 2014:

Facts: This is 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.[567] According to the evidence offered by the parties, the Court confirmed that on 17 November 1996, Igmar Landaeta died due to two gunshot wounds received from police agents.[568]

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.[569]

On 31 December 1996, Eduardo Landaeta was transferred to the Sectional Mariño; he was handcuffed in the back seat of a red Fiat car.[570] According to the version given during the investigation, at approximately 8:30 hours, the police unit was collided from behind 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 of their regulatory weapons and started shooting at the red car, causing the death of Eduardo Landaeta.[571] The Court found the state responsible for violating the right to life in both its procedural and substantive

[565] Ibid. Par. 156.

[566] Ibid. Par. 157.

[567] IACtHR. Case Brothers Landaeta Mejías and others v. Venezuela. Merits, Reparations and Costs. Judgment 27 August 2014. Series C No. 281. Par. 47.

[568] Ibid. Par. 59.

[569] Ibid. Par. 69.

[570] Ibid. Par. 72.

[571] Ibid. Par. 73.

aspects through this homicide committed by the 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.[572],[573]
- The Court analyses 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.[574]
- The Court acknowledges 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.[575]
- About the duty of guaranteeing, the IACtHR establishes that the State must have national legislation adequate to the Convention and watch its security bodies to whom the use of legitimate force is attributed, respecting the right to life of those under its jurisdiction.[576]
- 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.[577]

[572] Ibid. Par. 124.

[573] 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.

[574] IACtHR. Case Brothers Landaeta Mejías and others v. Venezuela. Merits, Reparations and Costs. Judgment 27 August 2014. Series C No. 281. Par. 124.

[575] Ibid. Par. 126.

[576] Ibid.

[577] Ibid.

- 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. Additionally, they must equip their agents with knowledge of the relevant legal dispositions and provide them with proper training, so that when they must decide on the use of force, they have the necessary elements of judgment to make informed decisions.[578]
- 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 entail 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.[579]
- 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. Consequently, police operatives must be directed to arrest, rather than take the life of the offender.[580]
- 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 is possible only when it is inevitable to protect a life.[581]
- The Court reiterates the Code of Conduct 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.[582]

[578] Ibid.

[579] Ibid. Par. 127.

[580] Ibid. Par. 131.

[581] Ibid.

[582] Ibid. Par. 131.

- Basic Principles and Code of Conduct on the Use of Force establishes that in every case, only intentional use of lethal weapons may be made when unavoidable to protect life. Generally, the use of firearms is considered a measure of last resort, in accordance with national and international law.[583]
- If the use of force is imperative, this must be done in harmony with the principles of legitimate finality, absolute necessity and proportionality.[584]
- Proportionality: The agents must apply criteria for a differentiated use of force, determining the degree of cooperation, resistance, and aggression by the subject they intend to intervene in, and employ tactics of negotiation, control, or force, as appropriate.[585]
- The IACtHR establishes that when state agents employ illegitimate, excessive and disproportionate measures causing the loss of life, it is considered an arbitrary deprivation.[586]
- 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.[587]
- 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.[588]

Procedural Aspects:

- The Court establishes that in every case that includes the deployment of force in which state agents have caused the death or injuries to a person, there is a need to analyse the use of force.[589]
- In every case of use of force by state agents that has caused deaths or injuries to one or more people, corresponding to the State, the obligation is to provide a satisfactory

[583] Ibid. Par. 133.

[584] Ibid. Par. 134.

[585] Ibid.

[586] Ibid. Par. 142.

[587] Ibid. Par. 146.

[588] Ibid. Par. 176.

[589] Ibid. Par. 123.

and convincing explanation of what happened and to rebut the allegations about its responsibility through adequate evidentiary elements.[590]

- 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.[591]

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.[592] The facts in this case are disputed.[593] The security forces opened fire. It led to the death of the applicant's sister, Havva. She was hit in the head by a bullet when she was on the threshold and died immediately. No members of the PKK were killed or captured. 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.[594] The Court established that the State was responsible for the substantive aspect of the right to life, having failed to plan and control an adequate operation, and was guilty of violating the procedural aspect of this right in this homicide through its actions.

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.[595]
- 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.[596]

[590] Ibid.

[591] Ibid. Par. 143.

[592] ECtHR. Case of Ergi v. Turkey. (Application no. 66/1997/850/1057). Strasbourg. Judgment 28 July 1998. Par. 10.

[593] Ibid. Par. 8.

[594] Ibid.

[595] Ibid. Par. 68.

[596] Ibid. Par. 79.

- 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.[597]
- In 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.[598]

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.[599]
- 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.[600]

2. Case of Jaloud v. The Netherlands. Judgment 20 November 2014:

Facts: This case could also be classified as an instance of police brutality.

Mr. Azhar Sabah Jaloud passed away on April 21, 2004.[601] 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 Defence 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,[602] a patrol of six Dutch soldiers, led by Lieutenant A., arrived around 2:30 a.m.[603]

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

[597] Ibid. Par. 79.

[598] Ibid. Par. 81.

[599] Ibid. Par. 81.

[600] Ibid.

[601] ECtHR. Case of Jaloud v. Netherlands. (Application no. 47708/08). Strasbourg. Judgment 20 November 2014. Par. 9.

[602] Ibid. Par. 11

[603] Ibid.

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.[604] He had been hit in 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.[605] The Court decided that the substantive aspect of the right to life was not violated; however, this homicide by action infringed upon the procedural aspect 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.[606]
- 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.[607]
- 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.[608]
- 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.[609]

Summary

[604] Ibid. Par. 13.

[605] Ibid.

[606] Ibid. Par. 149.

[607] Ibid. Par. 152.

[608] Ibid. Par. 200.

[609] Ibid. Par. 226.

It is essential to determine that some of the notions stated below about the cases of this category include standards of the judgments established in Appendix II, which is at the end of this research, and they are:

IACtHR: Case Barrios Altos v. Perú. Judgment 14 March 2001.

ECtHR: Case of Tanrikulu v. Turkey. Judgment 8 July 1999.

The IACtHR establishes its position against impunity and amnesty laws, arguing that these protect the perpetrators of crimes and obstruct state justice. They also signify the possibility that these crimes can be repeated. The use of lethal force 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 the protection of 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 party, which violates the state's positive obligation. The IACtHR emphasises the importance of the Basic Principles and the Code of Conduct on the Use of Force and Firearms by Law Enforcement Officials of the OHCHR in this category. This instrument determines the use of lethal force as a last resort and the circumstances under which it is allowed to use this force, only when a life is in danger, for example, in self-defence. Furthermore, these instruments acknowledge the importance of supplying security forces with suitable equipment, capable personnel, and a well-defined plan of action during operations involving force deployment. Moreover, this court determines that every time security agents use force, it must be done in harmony with the principles of proportionality, legitimate finality, and absolute necessity. Additionally, state agents must adhere to the principles of humanity and exercise due diligence when deploying force. This court also identifies an arbitrary deprivation of life when security force agents fail to follow these rules.

The ECtHR establishes that a 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, which can lead to insufficient precautions being taken 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. 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 whether deadly force was used in accordance with the circumstances is necessary.

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.[610]

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.[611] The Court found the State guilty of both the substantive and procedural aspects of these homicides due to the actions of the security forces.

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

[610] IACtHR. Case Massacre of Santo Domingo v. Colombia. Merits, Reparation and Costs. Judgment 30 November 2012. Series C No. 259. Par. 60, 61.

[611] Par. 61, 62,70.

guarantee them in complying with its general duty established in Article 1.1 of the American Convention (positive obligation).[612]

- 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 of the American Convention on Human Rights.[613]
- 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.[614]
- 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's power. This obligation implies the duty of 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 unimpeded exercise of human rights.[615]
- 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 all times between civilian persons and combatants, so that attacks can only be directed against combatants and civilians cannot be attacked.[616]
- The principle of proportionality in International Humanitarian Law. This principle established a limit to the finality of the war, stipulating that the use of force must not be disproportionate, limiting it to what is indispensable to achieve the desired military advantage.[617]

Procedural Aspects:

- The State is under a legal duty to "prevent *reasonably the violations of human rights, of seriously investigating the violation that was committed within the context of the*

[612] Ibid. Par. 188.

[613] Ibid.

[614] Ibid.

[615] Ibid. Par. 189.

[616] Ibid. Par. 212.

[617] Ibid. Par. 214.

jurisdiction to the end of identifying the responsible, of imposing the relevant sanctions and ensuring adequate reparation to the victims."[618]

2. Case Coc Max and others (Massacre of Xamán) v. Guatemala. Judgment 22 August 2018:

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.[619] This Court has found that following the Commission for Historical Clearance of Guatemala, 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.[620]

On 5 October, in the morning, some community residents of Mayan origin warned about military personnel coming through the farm Xamán.[621] The military entered the Community.[622] 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.[623] Eight adults and three children of the Community were executed during this event, and 29 were injured.[624] The Court considered that the State violated the right to life in its substantive and procedural aspects in these homicides by action.

Standards:

Substantive Aspects:

• The active protection of the right to life involves all state institutions, including those that must ensure security, whether police or armed forces. It is contrary to the

[618] Ibid.

[619] IACtHR. Case Coc Max and others (Massacre of Xamán) v. Guatemala. Merits, Reparations and Costs. Judgment 22 August 2018. Series C No. 356. Par. 28.

[620] Ibid. Par. 29.

[621] Ibid. Par. 37.b.

[622] Ibid. Par. 37. c.

[623] Ibid. Par. 37. d.

[624] Ibid. Par. 37. e.

Convention if there is a deprivation of life which is a product of the use of force in an illegitimate, excessive or disproportionate manner.[625]

- 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 directed against this group was manifested in different kinds of acts, including massacres.[626]
- 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.[627]

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 May 1, 2003, to June 2004, the Coalition Forces consisted of six divisions under the overall command of U.S. generals.[628] 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 Iranian citizens who were 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 due to the homicides committed by 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 investigative measures or cause an investigation to be delayed.[629]

[625] Ibid. Par. 109.

[626] Ibid. Par. 119.

[627] Ibid. Par. 181.

[628] ECtHR. Case of Al-Skeini and others v. The United Kingdom. (Application no. 55721/07). Strasbourg. Judgment 7 July 2011. Par. 20.

[629] Ibid. Par. 164.

- The form of investigation that will achieve the purposes of Article 2 may vary depending on the circumstances. However, regardless of the mode employed, 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 to lodge a formal complaint or to take responsibility for conducting any investigative procedures.[630]

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.[631] 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,[632] 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.[633] The Court decided that, despite the violation of the right to life, it could not rule on this case because the events occurred before the European Convention on Human Rights came 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.[634]
- 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

[630] Ibid. Par. 165.

[631] ECtHR. Case of Janowiec and others v. Russia. (Applications nos. 55508/07 and 29520/09). Strasbourg. Judgment 21 October 2003. Par. 16.

[632] Ibid. Par. 17.

[633] Ibid. Par. 19.

[634] Ibid. Par. 142.

adequate 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 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.[635]

- 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.[636]
- The ECtHR 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.[637]
- 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.[638]
- 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.[639]
- 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.[640]

Summary

Regarding Article 1.1, which establishes that all the rights in the American Convention must be respected, the IACtHR determines that the state must adopt all necessary measures to ensure compliance with Articles 4 and 5. The Article 1.1. restrict the exercise of the state's power that it was given in accepting membership in the court

[635] Ibid. Par. 144.

[636] Ibid. Par. 148.

[637] Ibid. Par. 151.

[638] Ibid.

[639] Ibid.

[640] Ibid. Par. 142.

and incorporating the Convention. The court notes that the state must organise its apparatus to protect human rights. The IACtHR demonstrates in this category that the state's international responsibility includes all state organs and their actions or omissions. This consists of the security forces. The state must prevent human rights violations, investigate those responsible for such crimes, and sanction them accordingly. 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 differs from the one mentioned earlier 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 infringing human rights related to discriminatory conceptions.

The IACtHR states in its case law that a case (Massacre of Santo Domingo v. Colombia) was considered to have violated 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 can judge this kind of 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. The court considers that the procedural obligation under Article 2 remains applicable in challenging security conditions, including in the context of armed conflict. The investigation may encounter difficulties, but it must still be carried out, even in the presence of violence, armed conflict, or insurgency. Furthermore, the state's motion must initiate the investigation, which cannot leave the task 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 challenging conditions under which the military and investigators had to work. 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 conducted 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 rock music recital had taken place. Among the detainees was Walter David Bulacio, a 17-year-old, who was transferred to Police Station N°35 after his detention, specifically 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.[641]

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 injuries and a diagnosis of head trauma. Walter David Bulacio manifested that the police had beaten him.[642] On April 21, 1991, Walter David Bulacio passed away.[643] A friendly agreement between the State, the parties and the

[641] IACtHR. Case Bulacio v. Argentina. Merits, Reparations and Costs. Judgment 18 September 2003. Series C No. 100. Par. 3.1)

[642] Ibid. Par. 3.2)

[643] 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.[644]
- 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.[645]
- 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.[646]
- In the 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.[647]
- 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).[648]

[644] Ibid. Par. 137.

[645] Ibid.

[646] Ibid. Par. 138.

[647] Ibid.

[648] 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 the rights of others.[649]
- The condition of the State as guarantor concerning the right to life obliges it to prevent situations that could arise, by action or omission, to the detriment of that right.[650]

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 satisfying this obligation. Additionally, the State must assume it as its juridical duty, not merely as a matter of managing particular interests.[651]
- 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 this were not the case, the rights established in the Convention would lack adequate protection. This understanding of the Court is based on the letter and spirit of the Convention, as well as the general principles of law, one of which is *pacta sunt servanda*, which requires that the valuable effect of a treaty is assured in the domestic law of the parties to the treaty.[652]
- The Court understands impunity as the lack of overall investigation, prosecution, capture, trial and condemnation of those 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.[653]
- 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 sanction those responsible for these. The victim's relatives should have plain

[649] Ibid. Par. 128.

[650] Ibid.

[651] Ibid. Par. 112.

[652] Ibid. Par. 117.

[653] Ibid. Par. 200.

access and the capacity to act in every instance of such investigations. The results of these investigations must be publicly disclosed so that society knows the truth about the facts.[654]

2. Case Nadege Dorzema and others v. Dominican Republic. 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 may also be included in another. This case could be a part of the category of extrajudicial executions.

On June 17, 2000, a group of Haitian nationals arrived in the Santa María region. In the early morning of June 18, 2000, a truck driven by Mr. Félix Antonio Núñez Peña, accompanied by Mr. Máximo Rubén de Jesús Espinal, both of Dominican nationality, began 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.[655] 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.[656] Four military personnel from the Destacamento Operativo de Fuerza Fronteriza (Border Force Operational Detachment) started pursuing the yellow truck. After a few kilometres, the patrol reached the car, changed the lights and horn noises to stop the truck; however, the driver kept going.[657] The military fired numerous shots with their automatic 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.[658]

Kilometres ahead, in the section of Copey, the truck overturned on the side of the road, trapping some people under it. When the military vehicle crossed a curve, the driver

[654] Ibid. Par. 201.

[655] IACtHR. Case Nadege Dorzema and others v. Dominican Republic. Merits, Reparations and Costs. Judgment 24 October 2012. Series C No. 251. Par. 41.

[656] Ibid. Par. 42.

[657] Ibid. Par. 43.

[658] Ibid. Par. 44.

lost control and collided with the car, which had previously overturned.[659] The driver 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.[660]

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.[661] The Court established that the State violated the procedural and substantive aspects of the right to life in these homicides by action.

Standards:

Substantive Aspects:

- The Court established that the State must ensure that its national legislation is adequate and guarantee that its security bodies, to whom it attributes the use of force, must respect the right to life of those under its jurisdiction[662].
- The State must be clear when demarcating domestic policies about using force and search for strategies to implement the principles about the use of force.[663]
- 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.[664]
- 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.[665]
- 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. ii. Absolute necessity: it is necessary to verify if other means exist to protect the life and personal integrity of the situation intended to protect, in conformity with the circumstances of the case. iii.

[659] Ibid. Par. 46.

[660] Ibid. Par. 47.

[661] Ibid. Par. 52.

[662] Ibid. Par. 80.

[663] Ibid.

[664] Ibid. Par. 81.

[665] Ibid. Par. 84.

Proportionality: the level of force used must be consistent with the level of resistance offered.[666]

- The IACtHR considered that, even when abstaining from using force would have allowed the escape of the people subject to the state action, agents should not have employed lethal force against persons who did not pose any threat or real or imminent danger to agents or third parties.[667]
- 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.[668]
- 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 policy regarding the prevention of the use of force.[669]
- The Court established that there was no credit for the legality or 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 a lack of implementation of reasonable and adequate measures to address this situation.[670]

Procedural Aspects:

- The IACtHR has considered that in every case of use of force by state agents that has 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 rebut the allegations about its responsibility through adequate evidentiary elements, which has not been proven in the present case.[671]
- 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

[666] Ibid. Par. 89.

[667] Ibid.

[668] Ibid. Par. 90.

[669] Ibid. Par. 89.

[670] Ibid. Par. 91.

[671] Ibid. Par. 89.

guarantee human rights established in the Convention, as provided in Article 1.1 of this instrument, entails the responsibility of investigating cases of violations of substantive rights that must be protected and guaranteed. Once the State knows that its 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 conditional element for protecting the right to life, which appears to be cancelled in these situations.[672]

- If human rights violations are not investigated seriously, it would result in a way favoured by public power, compromising the state's international responsibility.[673]

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[674] (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 could be 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 were away from her body. He fired a total of seven shots. Soldier D believed that Savage was attempting to retrieve 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.[675] The Court found that the State was responsible for the violation of the procedural and substantive aspects of the right to life for these homicides by the action of the security forces,

[672] Ibid. Par. 101.

[673] Ibid. Par. 117.

[674] ECtHR. Case of McCann and others v. United Kingdom. (Application no. 18984/91). Strasbourg. Judgment 27 September 1995. Par. 13.

[675] Ibid.

considering that they could have detained the suspects before their entrance to Gibraltar.

Standards:

Substantive Aspects:

- 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.[676]
- 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.[677]
- 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 duties, perhaps to the detriment of their lives and those of others. It follows that, in the circumstances of the case, the soldiers' actions do not give rise to a violation of this provision.[678]
- 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.[679]
- 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

[676] Ibid. Par. 146.

[677] Ibid. Par. 194.

[678] Ibid. Par. 200.

[679] Ibid. Par. 211.

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 the authorities also suggests a lack of appropriate care in controlling and organising the arrest operation.[680]

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.[681] In 1996, Mr. Angelov and Mr. Petkov, who were both 21 years old, were conscripts in the Construction Force.[682] Early in 1996, Mr. Angelov and Mr. Petkov were arrested for repeatedly being absent without leave.[683] Both had previous theft convictions. On 15 July 1996, they fled from a construction site outside the prison.[684] Both men were armed when they arrived at 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 July 19, 1996, the officer on duty at the Vratsa Military Police Unit received an anonymous telephone message stating that Mr. Angelov and Mr. Petkov were hiding in the village of Lesura.[685]

At around 1 p.m., the officers arrived in Lesura.[686] As soon as the jeep drew up in front of the house, between 1 and 1.30 p.m., Sergeant K. recognised Mr. Angelov,[687] 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,[688] Mr. Angelov and Mr. Petkov

[680] Ibid. Par. 212.

[681] ECtHR. Case of Nachova and others v. Bulgaria. (Applications nos. 43577/98 and 43579/98). Strasbourg. Judgment 6 July 2005. Par. 10.

[682] Ibid. Par. 13.

[683] Ibid. Par. 14.

[684] Ibid. Par. 15

[685] Ibid. Par. 17.

[686] Ibid. Par. 22.

[687] Ibid. Par. 24.

[688] Ibid. Par. 27.

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.[689] Mr. Angelov and Mr. Petkov died on the way to Vratsa. They were pronounced dead on arrival at the hospital.[690] 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 in these homicides 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.[691]
- As the text of Article 2.2. it shows that the use of lethal force by police officers may be justified in certain circumstances.[692] 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.[693]
- 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.[694]
- According to the principle of strict proportionality inherent in Article 2, the national legal framework regulating arrest operations must make recourse to firearms

[689] Ibid. Par. 32.

[690] Ibid. Par. 33.

[691] Ibid. Par. 93.

[692] Ibid. Par. 94.

[693] Ibid. Par. 95.

[694] Ibid. Par. 96.

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.[695]

- 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.[696]
- 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.[697]
- 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.[698]
- **Procedural Aspects:**
- The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. It was established in previous examination cases that these are the characteristics of an investigation into such a delicate matter. They must apply a standard comparable to the *"no more than essential" requirement outlined in* 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.[699]

Summary

It is essential to determine that some of the notions stated below about the cases of this category include standards of the judgments established in Appendix II, which is at the end of this research, and they are:

IACtHR: Case Rodríguez Vera and others (Desaparecidos del Palacio de Justicia) v. Colombia. Judgment 14 November 2014; Case García Ibarra and others v. Ecuador.

[695] Ibid.

[696] Ibid. Par. 99.

[697] Ibid.

[698] Ibid.

[699] Ibid. Par. 113.

Judgment 17 November 2015 and Case Díaz Loreto and others v. Venezuela. Judgment 19 November 2019.

ECtHR: Case of Wasilewska and Kalucka v. Poland. Judgment 23 February 2010; Case of Giuliani and Gaggio v. Italy. Judgment 24 March 2011 and Case of Mocanu and others v. Romania. Judgment 17 September 2014.

When analysing this category, the IACtHR emphasises the importance it attaches to the investigation, stating that it is an obligation that the state must fulfil, not a mere formality that is condemned beforehand. The court determines the importance of the investigation, as it has in other categories, establishing the concept of *pacta sunt servanda*, which means that contracts must be fulfilled and complied with, referencing the compromises the states have made with the Convention. Although the state recognises its responsibility, if the investigation has not found the responsible and sanctioned them, the state should continue the investigation. Furthermore, although the next of kin is not obliged to initiate the procedure, the state must take the lead, and the victim's relatives have the right to participate in the process. 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, particularly those in vulnerable positions, as outlined in Article 4. 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 highlights the importance of Article 7, which pertains to the right to personal liberty. 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 strict procedures must be followed to do so. 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 adjudicate the infringements of the Convention articles and human rights. It is vital for this court that the population is aware of the truth about human rights violations.

The court establishes that there are vulnerable groups that require protection, including migrants. That is why the IACtHR states that security forces must have adequate training to deal with vulnerable groups and administrative infractions, such as those

related to migration. Moreover, the IACtHR emphasises the necessity of the rights that the security forces are protecting, particularly regarding the life of the offenders. The most important thing is to preserve life, although this may mean the offender's escape if they are not a danger to others and no other life is at risk. This signifies 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 uphold the Convention, preventing impunity and ensuring this action is not 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, as these are always unique. It is necessary to determine 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 subsidiary. They must decide whether the state is responsible under the Convention; however, the case must first exhaust all domestic instances, and the national courts must determine 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, he should escape rather than be 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 conducted by 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 has demonstrated that the investigation must be efficient in determining the action in the circumstances, as failure to do so would violate the standard of effectiveness. Additionally, the states parties of the ECtHR must adopt and adapt the Convention to their legal framework to adjudicate cases related to the provisions in this instrument, as determined by the IACtHR. The ECtHR highlights essential aspects of the security forces' operations and their actions. 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 resort in 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, as stated in Article 2, and it is also essential that the national framework can assess 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 determining the guilt or innocence of an individual, but rather with establishing whether 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 it is within the sphere determined in Article 2.2. of the 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 in which the use of force is justified are strictly defined. The operations of force deployment 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 determines that the primary objective is to ensure that the Convention's provisions are interpreted in a manner that makes their 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 emphasises the significant value of the planned and controlled operation, as the security forces in the field could have used lethal force, believing it 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 the rights and freedoms of everyone within its jurisdiction. The court must be subject to the careful scrutiny of the Convention's provisions and the decisions of national courts. 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, as well as Mocanu (all listed in Appendix II). 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 being will react to a particular situation. According to the law, the state is only permitted to prepare and equip 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, and the IACtHR, in Article 3 of the Code of Conduct of the OHCHR, allow the use of lethal force in certain circumstances. However, in its case law, both courts have shown that the offender's life should not be compromised, even if this means evading the authorities. I believe the standards of the courts, particularly the ECtHR, contradict the literal interpretation of the instruments. 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 September 12, 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.[700] 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.[701] The Court established that the State was responsible for violating the substantive and procedural aspects of the right to life by the 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.[702]
- 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.[703]
- 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.[704]
- 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 infringement of its juridical system. However, no matter how severe specific actions

[700] IACtHR. Case Velásquez Rodríguez v. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4. Par. 146.

[701] Ibid. Par. 147.

[702] Ibid. Par. 148.

[703] Ibid. Par. 175.

[704] Ibid.

and the guilt of prisoners convicted of determined crimes may be, it is not possible to admit that power can be exercised without limit or that the State can take advantage of any procedure to reach its objectives without being subject to the law or morality. No activity of the State can be founded in the despair of human dignity.[705]

- 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.[706]
- It 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 supposes an infraction of Article 7 of the American Convention on Human Rights, which recognises the right to personal liberty.[707]
- 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.[708]
- 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.[709]

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[705] Ibid. Par. 154.

[706] Ibid. Par. 155.

[707] Ibid.

[708] Ibid.

[709] 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

- 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).[710]
- 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.[711]
- 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).[712]
- 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 regarding 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.[713]
- This article is fundamental to determining 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 of any public authority constitutes an

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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.

[710] IACtHR. Case Velásquez Rodríguez v. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4. Par. 156.

[711] Ibid.

[712] Ibid. Par. 157.

[713] Ibid. Par. 164.

imputable fact to the state that compromises its responsibility in the terms foreseen in the Convention.[714]

- 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.[715],[716]
- 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.[717]
- 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.[718]
- 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.[719]

Procedural Aspects:

[714] Ibid.

[715] Ibid. Par. 172.

[716] 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

[717] IACtHR. Case Velásquez Rodríguez v. Honduras. Merits, Reparations and Costs. Judgment 29 de July 1988. Series C No. 4. Par. 172.

[718] Ibid. Par. 181.

[719] Ibid. Par. 187, 188.

- 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 is an obligation of means or behaviour.[720]
- The lack of investigation by the State is an infraction of the juridical duty of this.[721]
- 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.[722]
- 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 person 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 to 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.[723]
- 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 permit the application of corresponding sanctions to those individually responsible for such crimes.[724]

2. Case "Panel Blanca" (Paniagua Morales and others) 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.[725] The agents

[720] Ibid. Par. 180.

[721] Ibid. Par. 187, 188.

[722] Ibid. Par. 181.

[723] Ibid. Par. 176.

[724] Ibid. Par. 181.

[725] 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.

of the Guardia of the Hacienda had committed a series of crimes using the vehicle, known as a "*panel"* (a large white car).[726]

The Court established that the State was responsible for violating both procedural and substantive aspects of these homicides, resulting from the actions of the 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.[727]
- 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.[728]

European Court of Human Rights

1. Case Timurtas v. Turkey. Judgment of 13 June 2000:

Facts: The facts surrounding the disappearance of Abdulvahap Timurtaş are disputed.[729]

On August 14, 1993, the applicant (Timurtas's father) received a telephone call from someone who did not identify himself. The caller stated that the applicant's son, Abdulvahap, had been apprehended that day near the village of Yeniköy, in the Silopi district of Şırnak province, by soldiers attached to the Silopi central gendarmerie headquarters.[730] The Court determined that the State was responsible for violating the

[726] Ibid.

[727] Ibid. Par. 120.

[728] Ibid. Par. 156.

[729] ECtHR. Case of Timurtas v. Turkey. (Application no. 23531/94). Strasbourg.13 June 2000. Par. 1, 9.

[730] Ibid.

substantive and procedural aspects of the right to life through this homicide committed by the security forces.

Standards:

Substantive Aspects:

- The Court held 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, raising an issue that arises under Article 3 of the Convention (Prohibition of Torture).[731],[732]

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.[733]
- 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 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.[734]
- 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

[731] Ibid. Par. 82.

[732] 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.

[733] ECtHR. Case of Timurtas v. Turkey. (Application no. 23531/94). Strasbourg.13 June 2000. Par. 82.

[734] Ibid. Par. 84.

effective official investigation when individuals have been killed as a result of the use of force.[735]

2. Case of Imakayeva v. Russia. Judgment 9 February 2007:

Facts: The facts surrounding the disappearance of Said-Magomed Imakayev are disputed.[736] According to the applicant (the wife of Imakayev), on June 2, 2002, she and her husband were at their house in Novye Atagi.[737] At 6.20 a.m., they were awakened by a loud noise in their courtyard. They saw several APCs and a UAZ car. Approximately 20 servicemen, dressed in military camouflage uniforms and 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.[738] 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.[739]
- 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 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.[740]

Summary

[735] Ibid. Par. 88.

[736] ECtHR. Case of Imakayeva v. Russia. (Application no. 7615/02). Strasbourg. 9 February 2007. Par. 8, 10, 11.

[737] Ibid Par 47, 48.

[738] Ibid.

[739] Ibid. Par. 141.

[740] Ibid. Par. 161, 164.

It is vital to determine that some of the notions stated below about the cases of this category include standards of the judgments established in Appendix II, which is at the end of this research, and they are:

IACtHR: Case Godínez Cruz v. Honduras. Judgment 20 January 1989; Case Fairén Garbi and Solís Corrales v. Honduras. Judgment 15 March 1989; Case Goiburú and others v. Paraguay. Judgment 22 September 2006; Case Ibsen Cárdenas and Ibsen Peña v. Bolivia. Judgment 1 September 2010; Case Gomes Lund and others ("GUERRILHA DO ARAGUAIA") v. Brazil. Judgment 24 November 2010; Case Gelman v. Uruguay. Judgment 24 February 2011 and Case Contreras and others v. El Salvador. Judgment 31 August 2011.

ECtHR: Case Kurt v. Turkey. Judgment 25 May 1998; Case of Ertak v. Turkey. Judgment 9 May 2000; Case of Salman v. Turkey. Judgment 27 June 2000; Case of Avsar v. Turkey. Judgment 27 March 2002; Case of Gongadze v. Ukraine. Judgment 8 February 2006; Case of Medova v. Russia. Judgment 5 June 2009 and Case of Varnava and others v. Turkey. Judgment 18 September 2009.

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 most frequently committed crimes. In the IACtHR, there are more than eighty cases; in the ECtHR, there are twenty-seven, the most of any category in my examination. Analysing some of the literature about this crime is relevant to clarifying its characteristics and providing further insight into it. There is little literature available on the other categories, except for analysing specific cases for each category.[741]

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*

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

Ayala Corao, Carlos M. "La Ejecución de Sentencias en la Corte Interamericana de Derechos Humanos". In*: Estudios Constitucionales, Year 5 N° 1.* P.P.127-201. University of Talca, Chile, 2007.

recourse to the applicable legal remedies and procedural guarantees."[742] This is the definition of the Inter-American Convention on the Forced Disappearance of Persons, providing 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.[743] 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.[744]

In this category, the IACtHR demonstrates that the state must determine the reparation of the victims' rights. The reparations are the next step after addressing the substantive and procedural aspects, and they are part of the legal consequences, along with the punishment of the responsible party. 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 achieved through compensation or other means, and the judgment itself constitutes a form of reparation. The aim is always to establish the situation as it was before the crime; however, in the case of murders, this 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 their alterations, of a non-pecuniary nature, in the conditions of the existence of the victims or their families. The court acknowledges 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-

[742] General Assembly Organisation 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 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.

[743] Kyriakou, Nikolas. *"Enforced disappearance in international human rights law."* PhD Thesis. European University Institute. Department of Law. 2012. P. 50.

[744] 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.

pecuniary in nature. In this category, the IACtHR identifies the characteristics of forced disappearances. The court determines that every state has the right and the duty to guarantee its security, but it cannot commit crimes against its people. Regardless of the crimes committed by its citizens, it cannot take actions that violate the dignity of the people under its jurisdiction. 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 it involves concealing the body to procure impunity for the perpetrators. Still, the obligation to investigate persists until the person's destiny and whereabouts are defined. The relatives have the right to know what happened to their loved ones. Additionally, the court emphasises the right of individuals deprived of their liberty to be treated with dignity. People in the state's custody must be treated with respect and dignity, which is inherent to the human condition. The IACtHR highlights the state's responsibility for acts of particular individuals if there was acquiescence to these acts and/or if it did not act with the due diligence required to investigate the crimes. The first case concerning the forced disappearance before the IACtHR is Velásquez Rodríguez v. Honduras, a judgment rendered on July 29, 1988. The IACtHR has determined that this crime constitutes a breach of the state's obligation to guarantee the right to life in a preventive and effective manner. 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.[745] 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 precautions to protect and preserve the right to life".*[746] In this category, it is established that if the state cannot restore the situation to its pre-crime state, it must impose legal consequences in the form of

[745] General Assembly Organisation of American States. *Inter-American Convention on Forced Disappearances of Persons*. 9 June 1994. Belem do Para, Brazil.

[746] 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.

reparations, as mentioned above. The court highlights that the duty of prevention encompasses all juridical, political, administrative, and cultural measures that promote the safeguarding of human rights. The violation of human rights is an illicit act that is punishable by sanctions against those who commit these violations, as well as the obligation to compensate the victims for the prejudicial consequences. These are the legal consequences of breaching the procedural and substantive aspects of the right to life, the prohibition of torture, and the right to liberty, among other rights infringed. It is relevant to note that, in this category, as the body was concealed and there was no evidence of the crime due to the involvement of the entire state's apparatus, including the judicial power, the declarations of witnesses became sufficient proof to establish 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 were against the dictatorial governments. The military and police authorities, like the government or the judicial power, were either unable or refused to 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 state's argument 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 a forced 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 enforced disappearance of people and the correlative duty of investigating and sanctioning those responsible have 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 country 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.[747] The crimes of a dictatorship do not cease to be investigated simply because the government changes. These crimes must continue to be investigated by the subsequent government. The IACtHR 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. The state agents acted in violation of the judicial 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 1990s, with the adoption of the Inter-American Convention on Forced Disappearance, significant changes were observed 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, thereby removing all possibility of special jurisdictions, such as the military, and eliminating the immunities for these charges.[748]

Concerning the ECtHR, Amnesty International, which was part of the case Kurt v. Turkey, establishes another excellent definition of forced disappearances: (a)

[747] 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.

[748] Medina Quiroga, Cecilia. "La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P.59-136. Chile, 2005. P. 75.

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. The ECtHR considers that forced disappearances violate Articles 2, 3, 5, 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 the presence of 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 has been established that if the corpse is not found, it is difficult to prove that a crime occurred. Meanwhile, the ECtHR demonstrates that if a person disappears in the custody of security forces, a period passes, 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. 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 did not have the responsibility for the death of the person. The court recalls that the state acknowledges that 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 demonstrates 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 providing the most substantial safeguards for an effective method of finding facts and attributing criminal responsibility. This is the task of national courts, while the ECtHR must determine if the provisions of the Convention apply to 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 human rights violations and, if they have 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 for 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 a systematic pattern of forced disappearances in southeastern Turkey. However, the ECtHR decided that there is insufficient proof 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 emphasises the importance of the investigation and the necessity for investigators to 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, as the events in question may lie wholly or mainly within the exclusive knowledge of the authorities. It is also suspicious to the court that the respondent's state refuses to disclose essential documents about the case.

The ECtHR has ruled since 1998, years after the first judgment of the IACtHR, on several cases of forced disappearances, mainly in Turkey and Russia.

Ophelia Claude determines that the ECtHR defines three different state obligations.[749]

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.[750]

The first two obligations relate to the substantive aspect of the right to life, while the last concerns the procedural aspect of this right.

López Guerra[751] 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.[752] Encarnación Fernández[753] 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, and 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.[754] 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

[749] 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.

[750] Ibid. P. 420.

[751] 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.

[752] Ibid. P. 436.

[753] 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.

[754] Ibid. P. 197.

Guerra, have few cases presented before the ECtHR. These can be found in Appendix I, where all instances of forced disappearances are listed.

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).

In my view, it is essential to note that many cases involved security forces violating the right to life in two or more categories, as explained in each case. These judgments could have been categorised differently because several rights were violated. For example, one case in Appendix II, Rodriguez Vera, included four of the five categories. I analysed each case in one category for academic purposes, explaining that it could be categorised differently, but I chose the category that best aligned with the standards.

Impact of these Judgments on Social Media and Pop Culture

The judgments chosen for this research have been widely shared on social media, sparking considerable discussion about these cases. It is worth noting that these cases are among the most famous, widely cited, and well-known to the general public due to their significance at both a legal and human level. Furthermore, the ECtHR has a document on its website detailing key cases of various rights violations, and most of the judgments concerning the right to life in that study are included in this document. This highlights the importance of them. When these judgments were made, social media had not yet developed into its current form or even existed. However, when the world was dominated by social media platforms such as Twitter (now called X), Facebook, Instagram, or TikTok, people worldwide began discussing and citing these cases in relevant contexts, mostly by jurists, NGOs, lawyers, academics, or individuals interested in human rights. Some of the most talked about cases were McCann v. United Kingdom, concerning the rapid use of lethal force and the cases in Turkey about forced disappearances to make visible the situation that was happening in the southeast of this country. Regarding the IACtHR, Velásquez Rodríguez v. Honduras was widely cited many times concerning the importance of this case about forced disappearance and the right to life. Neira Alegría v. Perú and Penal Miguel Castro v. Perú were in the conversation about the treatment of people in prison and the systematic targeted killing.

Furthermore, two cases had an impact on pop culture. The case Bulacio v. Argentina gave rise to a song performed by the same band that Walter Bulacio had attended before he was taken into police custody. This song, titled "Juguetes Perdidos" (Lost Toys), is a reference and homage to Walter Bulacio by the band Patricio Rey y sus Redonditos de Ricota. Furthermore, the case Armani Da Silva v. United Kingdom was adapted in a British production named *"Suspect: the shooting of Jean Charles de Menezes"* and narrates the story of this situation. This show was released in 2025 on Disney+.

Impact of these Judgments on the National Courts of the Countries

In this section, I would like to determine some of the consequences that these judgments had in the domestic courts and laws of the condemned states. However, as this is a subject for a whole other study in itself, I will provide only a few examples, one for exemplary consequences and another without any real consequences, to illustrate the different attitudes of the states.

First, it is relevant to give a general vision of cases of forced disappearances in Latin America. As explained before, many countries have recognised the responsibility for the atrocities committed during the dictatorships, including crimes such as forced disappearances and torture. However, many Latin American countries decided that, to facilitate a possible transition to democracy, given the circumstances in which the state was, the best possible solution was to pardon and grant amnesty to the members of the armed forces who had taken part in these crimes, as these forces had not been held accountable. The only country that conducted a trial of the state's leaders during the dictatorship, which took place between 1976 and 1983, was Argentina, with a monumental trial that condemned the senior leaders of the dictatorship in 1985.[755] Nevertheless, due to military uprisings and the fear of another coup in 1986, the law of Punto Final (Final Point) and in 1987, the law of Obediencia Debida (Due Obedience) established a term for initiating criminal causes and exempted from liability any member of the armed forces under the rank of colonel, respectively. In 1989 and 1990, in front of the menace of another coup, the president at that time, Carlos Menem, gave pardons to the members of the armed forces incarcerated in 1985

[755] Crenzel, Emilio Ariel. "La verdad en debate. La primacía del paradigma jurídico en el examen de las violaciones a los derechos humanos en la Argentina". In: *Polit. Soc. Vol. 54. N.º 1.* P.P.229-248. Madrid, Spain, 2025. P. 234.

to guarantee democracy and avoid another coup d'état.[756] Luckily, many of these persons, responsible for the death of at least 30.000 persons, went back to prison for the theft of babies of women incarcerated during the dictatorship in the 1990s and 2000s.[757]

Regarding the case of Bulacio v. Argentina, the IACtHR condemned the state and imposed the modification of the laws about police powers of detention in every province of the country, especially in the case of minors. For this, it was necessary to establish a federal consultation table that included representatives from civil society. However, this table is still pending to ensure adequate alignment of the legislation with international human rights law. The judgment of the IACtHR established that to have legislation consistent with international law regarding individual liberties, the contraventions and faults granted to the police must be repealed, along with other faculties for detaining persons outside of flagrancy and without a court order. Furthermore, the court considered that every crime committed by the police is a crime of the state and is imprescriptible.[758] It is necessary to determine that the trial and condemnation of the former chief of police, Miguel Ángel Espósito, for this crime occurred in 2013. Espósito was condemned to 3 years in prison, but only for the crime of illegal deprivation of liberty.[759] It is fair to say that the state has not complied with the judgment of the IACtHR yet, and it is necessary to reform the laws that allow situations such as razzias or illegal deprivation of liberty, which can lead, as in this case, to the death of a person and, most worrying, a minor. Additionally, it cannot be said that Walter Bulacio received justice.

Regarding the case Armani Da Silva v. United Kingdom, although the ECtHR decided that there was no violation of the procedural aspect of Article 2 considering that the state had already judge the responsible for this crime in the domestic justice and paid a compensation to the relatives of the victim, there were modifications in the Metropolitan Police Service, the force in charge when Jean Charles de Menezes was killed. However, the Metropolitan Policy Authority was found liable and penalised for failing in the planning and implementation of the operation, meaning that whilst

[756] Ibid. P. 241.

[757] Ibid.

[758] https://www.correpi.org/2021/a-30-anos-de-la-detencion-tortura-y-muerte-de-walter-bulacio-es-urgente-basta-de-detenciones-arbitrarias-cumplan-la-sentencia-del-caso-bulacio-ya/

[759] https://www.cels.org.ar/web/2021/04/bulacio-30-anos-de-arbitrariedad-policial/

personal accountability was avoided, institutional accountability was not.[760] Following the death of Jean Charles de Menezes in 2005, the Metropolitan Police Service (MPS) underwent several significant modifications, particularly in its firearms procedures and accountability mechanisms. These changes were primarily driven by investigations and recommendations from the Independent Police Complaints Commission (IPCC) and subsequent legal rulings by the European Court of Human Rights (ECtHR). The IPCC investigated the handling of the situation and the accountability of the Metropolitan Police, concluding that numerous mistakes occurred in the procedure. It identified several aspects that required changes within the force. Following this case, the Metropolitan Police has revised its planning and control of force deployments, particularly in firearms procedures, following the tragic mistake made with Mr. De Menezes.

This section presents only a few examples of the impact of human rights courts' judgments on the domestic law and tribunals of the states parties. Furthermore, the aim is to acknowledge that not every judgment is complied with by the states. However, the Inter-American Commission and Court on Human Rights, as well as the Committee of Ministers of the ECtHR, are responsible for monitoring and obliging states to comply with and act on the courts' established judgments. This means executing the sentence, and if the state does not act accordingly, these organs will continue to work to ensure compliance with the decisions and justice for the victims. Furthermore, the states must comply with and modify their domestic laws or internal procedures to prevent the situations presented in the judgments from being repeated in the future.

These two examples, the cases Bulacio v. Argentina and Armani Da Silva v. United Kingdom, illustrate the varying responses that states may have to the judgments of human rights courts. In the case of Argentina, the country has not complied with the decision of the IACtHR, and the Commission is awaiting the amendment of laws regarding police powers of detention. The state must comply with this requirement as part of the Convention and has been condemned for the actions of its police forces in violating the right to life. In the case of Armani Da Silva, the United Kingdom received a favourable judgment that determined the state had not violated the right to life in its

[760] https://www.hrlc.org.au/case-summaries/ecthr-finds-investigation-into-innocent-mans-death-was-procedurally-sound/

procedural aspect. Still, there were recommendations regarding the actions of the Metropolitan Police. This organ of the security forces, following the Independent Police Complaints Commission (IPCC) and the decision of the ECtHR, acknowledged its mistakes and revised internal measures and procedures to protect and respect the right to life in the future. It is possible to find a different attitude towards the judgments between the two countries and how they apply the requirements of the sentences.

Chapter IV: Comparison Between Standards and Identification of Similarities and Differences

I chose case study and comparative law methods to compare the standards of both courts regarding their decisions on the right to life when security forces violate it. Case study and comparative law methods are essential for understanding the differences and similarities between standards that may be difficult to establish due to their specificity and complexity. Furthermore, through this comparison, I can demonstrate the most critical standards of both tribunals in similar cases.

It is necessary to determine that the standards of this comparison include those of the cases established in Appendix II of this research. This is for a reason, as it allows for a more complete and thorough comparison by encompassing these standards.

Introduction

This section 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 interpreting 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 the circumstances under which 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 a last resort in 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 is most frequently invoked in cases of violations of the right to life before the ECtHR.

This 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 that make up the Council of Europe.

The obligation imposed in the ECHR 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 states 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 of 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 do not pose a direct danger, even when the failure to use force will result in the loss of the opportunity for capture.

iii. Proportionality: the level of force used must be consistent with the level of resistance offered. This principle is crucial for determining cases of the first category established in this work: *"Disproportionate use of force by Agents of Security Forces"*.

The IACtHR has established in its case law that less harmful methods could be employed and that the state could foresee less extreme means to achieve the same objective, such as negotiation or issuing 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 state apparatuses, and that it is an obligation of the state parties to 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. The IACtHR considered it necessary to verify the actions and omissions attributable to the state. This means that the state has an international obligation. Moreover, the IACtHR highlights the negative obligation of the state by stating that the state's global responsibility is based not only on acts but also on omissions by 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 examines key issues related to 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 explicitly highlight the importance of these Basic Principles and the Code of Conduct, this instrument adheres to 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 that outlines the limited circumstances in which law enforcement officials may use force and firearms, in accordance with relevant international standards. Although not mentioned in the text, the court is likely 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 extensively referenced. 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 the use of firearms is dependent on a careful assessment of 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 essential requirements for deciding when to use firearms in a delicate situation, and they should always be used 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 determine that the intentional use of lethal weapons may only happen when it is unavoidable to protect life. Generally, the use of firearms is considered a measure of last resort, in accordance with 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 outlined some of the requirements for using force, such as in the defence of any person from unlawful violence, to effect 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 that the equipment state agents possess must be materially adequate to their response in a proportional manner to the events in which they are to 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, depriving the offender of their life and 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 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 matters as the planning and control of the actions under examination. Both courts emphasise the importance of having a plan of action, controlling force deployment, and providing training and capacitation. Additionally, the ECtHR determines the significance of the circumstances surrounding the planning and control of the operation, as well as whether it is necessary to deploy state officers. In this respect, it is required to instruct them on the safe use of firearms.

The IACtHR 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 indicates 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 implicitly 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.

The IACtHR is deeply concerned about the impunity surrounding these events. The ECtHR is also concerned that these situations may recur. However, this latter court does not discuss impunity; instead, it establishes that punishment is necessary to deter perpetrators from committing such acts in the future.

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 that defines the limited circumstances in which law enforcement officials may use force and firearms, in accordance with the relevant international standards. Concerning domestic law and lethal force, this court establishes that, in line with the principle of strict proportionality outlined in 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 the ECtHR, as it quotes this judgment and establishes that the court affirmed: *"the phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted integrally."*[761] The gravity of the rights violation attendant upon a disappearance has led the United Nations Human Rights Committee to conclude, under Article 6 of the

[761] ECtHR. Kurt v. Turkey. (Application 15/1997/799/1002). Strasbourg. 25 May 1998. Par. 68, 69.

International Covenant on Civil and Political Rights, that state parties should take specific and compelling measures to prevent the disappearance of individuals. It should establish facilities and procedures to thoroughly investigate 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 to guarantee security and maintain public order within its territory corresponds to the state as a duty and, thus, has the right to use force rightfully for restoration, if necessary. The state's obligation must comply with all the requirements for using force mentioned above. The conventionality of using force must be evaluated in every circumstance and context, considering the principles of legitimacy, absolute necessity, and proportionality. In this way, impunity is avoided, and the recurrence of such events is prevented on a larger scale. This would not happen if there were no consequences for the state agents who use force without considering these criteria.

The ECtHR determines that Article 2, which protects the right to life and establishes the circumstances under which 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, categorising it in the 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 necessitate the interpretation and application of Article 2 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 of an individual in custody is particularly rigorous when that individual dies. This is also a standard of the IACtHR, which mainly demonstrates 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, as well as the right to be detained with due respect for the inherent dignity of the human being.

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 in this work violate these provisions.

Another interesting notion is that, as established in the letter of the ECHR and the Code of Conduct for Law Enforcement of the OHCHR, which the IACtHR applies, lethal force may be used when an offender is attempting to escape. However, as mentioned above, the courts have 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 escaping does not pose a danger to another person's life or limb, it is preferable that there be no capture, but that the suspect's life be 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 that violations of that inalienable right do not occur. Therefore, the state must prevent its agents from attempting 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 occur when the security forces in charge fail to take all feasible precautions in selecting the 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 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 has stated several times that it is detached from the events in issue and cannot

substitute its assessment of the situation, unlike officers who have honestly perceived a danger to their own lives 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 must guarantee the right to life and be transparent in its decisions regarding the use of force, particularly in domestic politics. 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 similar to the standards of the ECtHR, there is a difference in that 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 authority to use lethal force as stipulated in the letter of its Convention, as the ECHR determined in Article 2.2. Moreover, these exceptions are not found in their homologous Article 4 of the American Convention on Human Rights, which highlights the difference in judgment, for example, as seen in the case of Neira Alegría, where a riot occurred in prison and the IACtHR ruled against the state for the disproportionate use of force. The ECHR establishes that it is permissible to use lethal force in cases 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 attempted to put itself in the position of the person who used 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 can determine whether the person possesses the requisite belief and assess the necessity of the degree of force. The court takes a detached view of the facts, as it was not present at the time of the events, but it attempts to reconstruct the facts in a manner that can determine the necessity of using force and whether it was proportionate. The primary question to be addressed is whether the person genuinely believed that using force was necessary.

The IACtHR highlights that Article 4 implies the adoption of measures on two slopes: a) the suppression of norms and practices that violate the provided guarantees in the

Convention, and b) the promotion of norms and development of practices conducive to the practical observance of such guarantees. This is a positive duty of the state, referring to the adoption and incorporation of the Convention into 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 perpetrators. In some countries, immunity for the perpetrators was even established by amnesty laws. The ECtHR expresses concern about the lack of punishment for those responsible for these crimes, but does not elaborate on 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 made by contraventional police edicts. 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 right to 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 capacity as guarantor, the state is responsible for ensuring the individual's rights are protected while 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 recalls that the state must adapt its national legislation to the American Convention and ensure that its security bodies, to whom it attributes the use of force, comply with the duty to respect the right to life of those under its jurisdiction. State agents must be trained, capacitated, and have a comprehensive understanding of the rules governing the use of force, as outlined in the Basic Principles and Code of Conduct of the OHCHR and the norms of the American Convention on Human Rights. This Court has addressed cases of migration in its case law. It was determined that the state must provide appropriate training to address administrative infractions, including 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 recalls the positive obligation of the state to respect the right to life and the right to personal integrity as established, and to adopt all necessary measures to ensure compliance with the general duty outlined in Article 1 of the American Convention on Human Rights. Additionally, as it derives from Article 1, the court highlights that the state has special duties in determining the particular necessities of protecting the subject of the law. The IACtHR demonstrates that states must guarantee the creation of necessary conditions to prevent the violation of the right to life and, therefore, must stop their agents from committing such attacks. 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 arose in the context of an 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 all times between civilian persons and combatants, aiming to ensure that civilians are not targeted. Second, the principle of proportionality differs from that which governs the use of force; however, it establishes

a limit to the finality of war, stipulating that the use of force in armed conflicts must not be disproportionate.

The IACtHR notes that there is no doubt that the state has the right and the duty to guarantee its security, and every society suffers when its juridical system is infringed. 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 morality. 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 a state violates the rights protected by the Convention, it implies a violation of this article. This provision is fundamental in determining whether 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 by people whose acts validate the power they hold under their official character, is imputable to the state. However, the situations in which the state is obliged to prevent, investigate, and punish human rights violations, or the situations 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 occurs due to a lack of due diligence to prevent the violation or to address it in accordance with 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 established by this court regarding forced disappearances, as outlined in its key case, Velázquez Rodríguez.

The IACtHR considers that the duty of prevention encompasses all juridical, political, administrative, institutional, and cultural measures that promote the safeguarding of 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 individuals by the state authorities. The persons kidnapped were bandaged and taken to secret and irregular areas of detention, where they were often tortured and moved from one of these places to another. The people who were kidnapped were interrogated and subjected to humiliation, cruelty and torture. Most 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 defence 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 vested in the state apparatus and did not acknowledge the possibility of disappearance. This attitude was also evident in cases of people who later reappeared in the hands of the same authorities that had 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 its duty to respect the rights acknowledged by the Convention because it carries out actions directed at making involuntary disappearances, tolerates them, fails to investigate them satisfactorily, and does not sanction the responsible parties. 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 indefinitely if the remains are never found, which is often the case.

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*[762] 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 on the enforced disappearance of people, and the duty to investigate and sanction 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. 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."*[763]

The IACtHR, the Inter-American Commission of Human Rights, the organs of the United Nations, and other universal and regional organisations protecting human rights

[762] Presumption of law that orders admission as a proven fact in a trial if there is no proof to the contrary.

[763] 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 recognised by the international community of States as a 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.

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 through a systematic character of repression that was used 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 primary objective is to protect the lives of all human beings. The tribunal returns to paragraph 2 of Article 2, where it is established that the use of lethal force by law enforcement officers 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 in a case, 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 were not published and did not provide clear protection against 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 duties, perhaps to the detriment of their lives and those of others. It is impossible to expect law enforcement officers always to be certain of their actions when facing challenging and potentially 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 a clear and consistent approach. 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, in accordance with 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 equipped to evaluate whether firearms are necessary, based on the letter of the relevant regulations, with due regard for the primacy 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 in a manner that makes its safeguards practical and effective.

The ECtHR considers that when an individual is taken into custody in good health but is found to be injured at the time of their release, 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 give a convincing explanation for a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on the specific 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 individuals who were arrested for a long time and subsequently 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 outlines the circumstances under which the deprivation of life may be justified. It ranks as one of the most fundamental provisions in the Convention, and no derogation is permitted from this provision. 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 recalls the case of 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. In such cases, 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's case law, the first sentence of Article 2.1 requires the state to refrain from intentional and unlawful killing and to 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 establishing adequate criminal-law provisions to deter 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 were to occur, the state would have violated its positive obligation to protect the right to life. A relevant point is that for this positive obligation to arise from the state, it must know which individuals are in danger from the acts of other identified individuals. If these conditions are not met, no positive obligation arises because it would impose 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 conduct this investigation, and the victims and their relatives have the right to participate in the process by providing evidence, testifying, or observing the proceedings.

Furthermore, if the authorities are aware of a crime, they must initiate 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 has caused death or injury 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 causes a death or 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, allowing such events to repeat themselves. 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 that criminal proceedings are conducted fairly 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 regarding the initiation of an investigation *ex officio* (by their account) when the authorities are aware of 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 to lodge a formal complaint or to take responsibility for conducting 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 to reasonably prevent human rights violations, conduct a serious investigation of the offences committed within its jurisdiction to the end of identifying the responsible parties, impose the relevant sanctions, and ensure adequate reparation to the victims. The IACtHR notes that, in addition to the investigation necessary to determine responsibility, it is essential to establish the facts, identify the degree and participation of each intervener, whether material or intellectual, and verify the type of responsibility. The actions of state agents must be adjusted to the principles of due diligence and humanity. This court establishes that the only way in which the actions of third parties can be held responsible by the state is if, in the concrete case, it results from 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 to ensure that the protective effect of the judicial system and the significance of its role in preventing violations of the right to life are not undermined. On several occasions, the IACtHR

has emphasised that states have a juridical duty to avoid human rights violations reasonably. It is relevant for the court to clarify the criminal proceedings in the domestic courts. However, concerning human rights allegations, it is essential to note that criminal law liability differs from the state's responsibility under the Convention. The competence of these courts 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 primary guarantor of human rights; therefore, if these rights are violated, the state must resolve the matter at the domestic level and provide reparation to victims and their relatives. This means that before responding to international instances, such as this court, if they conduct a fair trial and sanction the responsible party, it is optional for the case to be referred to the Inter-American System. This derives from the subsidiary character that encompasses the international process concerning the domestic system of human rights guarantees. The IACtHR and the ECtHR are subsidiary courts that only intervene in cases when domestic courts have not adequately addressed the issues, and the victims or their relatives are dissatisfied with the decision. The victims and their relatives must exhaust all domestic remedies before seeking recourse to the regional human rights courts.

The ECtHR needs to be distant from the criminal proceedings in national courts. The state's responsibility under the Convention should not be confused with domestic legal issues of individual criminal responsibility, which are examined in national criminal courts, even if the responsibility arises from the acts, organs, agents, or servants of the state. For the ECtHR, determining guilt or innocence of the people 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 correctly 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 such situations, the case can be referred to human rights tribunals if domestic courts do not address 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 investigate the facts and punish those responsible for the crime. Moreover, the court determines that relatives must have access and the capacity to act in every instance of such an investigation. The tribunal concluded that the investigation results must be publicly disclosed, so that society can 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 that the state must fulfil with its means of reach.

This 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 commit these infringements, as well as the obligation to compensate the victims for the prejudicial consequences. The state must, if possible, ensure the re-establishment of the right violated, or, in its case, the reparation of the damage caused by the violation.

The IACtHR reiterated several times that the state must investigate every situation in which a violation of human rights safeguarded by the Convention occurred. Nevertheless, the court recognises that it can be challenging to investigate the facts that are harmful to a 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 established above, the

obligation to investigate and prevent is an obligation of means or behaviour that must be fulfilled, even if the investigation does not produce a satisfactory result. The court established the judicial power's inability to address the interposed resources before the various tribunals in cases of forced disappearances. The criminal investigation at the time of the disappearance was not even conducted, and no procedure was in place to handle the case.

The IACtHR finds that the lack of investigation of these facts constituted a determining factor in the systematic practice of human rights violations and facilitated the impunity of those responsible.

This court holds that a judgment, by itself, is 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 fulfil other judicial commitments and processes assigned to the state. As mentioned in the theoretical part, the IACtHR has been very creative in its approach to reparations for victims and their 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, and changes in legislative and judicial measures.

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 statehood, responsibility persists despite changes in government over time. This typically happens in Latin America when a facto government transitions into a democracy, but the crimes committed during a dictatorship must be judged under a democratic government. Primarily, responsibility is generated and declared from the moment the illicit act is executed. 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 state established that the victim's relatives have not attempted to use civil and administrative means, which does not diminish the state's responsibility for failing to address the consequences of these violations. 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.

Regarding the procedural aspect, the ECtHR determines that for an investigation to be effective, the persons responsible for carrying it out 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, as what is at stake is public confidence in the state's monopoly on the 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 is generally 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 all reasonable steps to secure evidence concerning the incident, including eyewitness testimony, forensic evidence, and, where appropriate, an autopsy that provides a complete and accurate record of the 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 more challenging to conduct. Nevertheless, the ECtHR establishes that the procedural obligation remains applicable in difficult security conditions. The court is not oblivious to the fact that obstacles may be placed when the investigation is carried out in circumstances of violence, armed conflict, or insurgency. This context may require the use of less effective investigation measures or result in a delay. Nevertheless, even in challenging security conditions, all reasonable steps must be taken to ensure an effective and independent investigation, as required by 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. The IACtHR does not formally distinguish between these two aspects of the right to life in its judgments. 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 aspect being condemned (normally the procedural) and the other not (usually

the substantive). There have been instances where both have been condemned or absolved, but the two facets are always considered separately.

The ECtHR indicates that this tribunal has generally applied the standards of proof *"beyond a reasonable doubt"* when assessing evidence. 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 that occurred 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, among several, has managed to escape the criminal justice process does not necessarily indicate a failure by the authorities.

This court views the failure to take measures as a breach of the obligation to exercise exemplary diligence and promptness in investigating and addressing 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. Additionally, this handling of the inquiry could only hinder the prospects of identifying the perpetrators and determining the victim's fate.

Chapter V: Conclusion

5.A. Summary of the Differences and Similarities between Standards

As established in the previous chapter, the ECtHR and the IACtHR share the same foundational standards: respect for and protection of the right to life 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 essential considerations when state agents use force, which are crucial for both courts and the public.

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. This court establishes that Articles 2 and 3 (Prohibition of Torture) rank among the most fundamental provisions in the ECHR, enshrining the essential values of the democratic societies that comprise the Council of Europe. This aligns with the IACtHR's acknowledgement of the right to life and its importance, as stated in Articles 4 (Right to Life) and 5 (Human Treatment), which stipulates that all other human rights are violated if the right to life is not fulfilled.

In the procedural aspect, both courts find that the state's positive obligation to investigate violations of the right to life arising from Articles 2 and 4 is an obligation of means, but not of 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 American Convention on Human Rights. I believe both tribunals coordinate on this concept regarding their role as subsidiary courts and explain that there is a common misconception about a higher instance of domestic courts that falls outside 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 reach different decisions in cases involving riots and insurrections. The IACtHR has condemned the state for the disproportionate use of force by security forces in cases of riots. 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 it is justified if they are lawfully detained or causing 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 if 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 offender. Additionally, it is crucial to consider the crime this person has committed. Both courts have established this standard, although it is relevant the person's crime.

The ECtHR acknowledges that investigations may be complex and delayed in circumstances involving violence, armed conflict, or insurgency. 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 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 the custody of the security forces. Meanwhile, the IACtHR has a comprehensive set of standards regarding forced disappearances, considering that this court has more than 80 cases of this crime, whereas the ECtHR has 27. 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 has been 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 highlights the lack of hierarchical or institutional connection and practical independence, as what is at stake is public confidence in the state's monopoly on the use of force. This court determines that, to maintain public confidence in the adherence to the rule of law, a prompt response by the authorities in investigating the use of lethal force is generally regarded as essential. In my view, this demonstrates the tribunal's concern in maintaining citizens' assurance of the rule of law and the public's confidence in the state. The ECtHR finds that for an investigation to be effective, the persons responsible for carrying it out 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 the court repeats this in most cases involving violations of the right to life. This court details every step and characteristic of the investigation that the IACtHR does not establish in its standards.

The IACtHR states that reparation of material and immaterial damage should be considered, with the latter not merely as pecuniary compensation, but as moral damage that encompasses the suffering and distress of the victim, if they are alive, and their relatives or loved ones.

The ECtHR also examines the intention of the state agent when using lethal force, the importance of addressing 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 that using force was necessary. For this, the court established that it should take a subjective approach, as if it 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 further developed this standard.

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. The IACtHR does not formally distinguish between these two aspects of the right to life in its judgments. 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 results in one facet being condemned (typically the procedural) and the other not (usually the substantive). There have been

instances where both have been condemned or absolved, but the two aspects are always considered separately.

5.B. Example Case that includes the five categories and how the IACtHR and the ECtHR would decide.

In this section, I will present the facts of a fictional case that encompasses all categories of violations of 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. Although it may not be entirely accurate due to the missing proofs, it is a typical academic situation.

Facts of the Case

A riot broke out in the Ministry of State after administrative employees discovered substandard working 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 warned 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 were able to pass the barricade and proceed 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 were unaware of his whereabouts. Later, it was discovered that this person had left the building and was taken to a police station. He never appeared, and no investigation was conducted to determine the person's whereabouts. 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 forces had firearms and used lethal force.	According to Article 2.2, subsection C, the court ruled that the security forces are justified in using force in the event of a riot or insurrection.
Extrajudicial Execution	The court decided that the police forces violated Article 4, which protects the right to life. The force used did not comply with the principles of legitimate purpose, 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 people 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 ruled that the state had violated	The state is responsible for the procedural aspect of the

	Articles 4 and 5, which pertain to the right to life and personal integrity, respectively, in the case of the person who never appeared.	right to life for failing to investigate 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 courts' judgments differ in 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 ruled that the security forces acted in accordance with Article 2, paragraph 2, of the ECHR. Therefore, the state has no responsibility. The courts differ in the extent of police brutality in 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 sets forth 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.

5.C. Influence and Relation between the IACtHR and the ECtHR

In this subsection, the influence between the two courts is determined, as well as the relation that they share. This influence has been established in previous chapters regarding citations of these courts' judgments, but it is necessary to determine other aspects of the relationship between these tribunals.

Alfredo Islas Colín examines the influence of the IACtHR and the ECtHR on the right to life. According to this author, the ECtHR's influence on the IACtHR concerning the

positive action includes a) the positive action in a specific manner; b) the action by prevention; c) the procedural action; d) the satisfying and compelling action.[764]

In the case of positive action in a specific manner, the ECtHR determined that the state must take positive action to protect the right to life, which translates to an official, effective investigation when people are deprived of their life due to the use of force by state agents. The IACtHR incorporated the state's obligation to undertake positive actions, including conducting real and practical investigations in similar cases related to the use of force by state security forces.[765]

Regarding the action by prevention, Islas Colín acknowledges that the ECtHR determined the action by prevention to safeguard the right to life that the state must protect in a practical way the human life, which includes the positive actions of the type of preventive actions to discourage the commission of violations of the right to life through the expedition of adequate criminal dispositions and preventive measures to protect the life of people who is at risk. The ECtHR imposes on states the positive obligation to adopt protective measures, which the IACtHR also applies.[766]

Concerning procedural action, the ECtHR emphasises the importance of protecting the right to life when imposing the state's procedural obligation to conduct an effective official investigation, a principle also adopted by the IACtHR in its case law.[767]

In the case of the satisfying and compelling action, the ECtHR influenced the IACtHR by determining that the state must be guarantor of the right to life of every person under its jurisdiction and with specific modalities when it is about the protection of the life of minors, either trough the prevention of situations that could lead by action or omission to the affectation of the life. Furthermore, the state must provide a satisfying and compelling explanation about the occurrence of the death if that is the case.[768]

Islas Colín states the influence of the judgments of the ECtHR in the IACtHR regarding the status of the European Court as the first court of human rights to develop essential standards concerning the right to life. It is necessary to recall that the ECtHR

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[764] Islas Colín, Alfredo. "Influencia de la Corte Europea de Derechos Humanos a la Corte Interamericana de Derechos Humanos". In: *Perfiles de las Ciencias Sociales, Year 2, No. 3, July*. UJAT. P.P.109-128. Mexico, 2014. P. 116.

[765] Ibid. P. 119.

[766] Ibid.

[767] Ibid. P. 121.

[768] Ibid. P. 122.

was the first human rights court and served as a model for the IACtHR. The positive actions that this author states can be understood as the positive obligations that state parties have towards the people under their jurisdiction, which are generated by the right to life and the responsibility to protect it by law. Furthermore, the positive action in a specific manner and the procedural action establish the necessity of an effective and impartial investigation by the state when security forces cause death, and this investigation must be official and start *ex officio*. The IACtHR has adopted this standard and applied it in its judgments, as evident in Chapters III and IV. In the case of preventive action, Medina Quiroga and other authors have established that the state must develop a legal framework to prevent the violation of the right to life from occurring. This is another positive obligation for the states. According to Islas Colín, this was another influence of the ECtHR over the IACtHR. Regarding the satisfying and compelling action, the influence of the European Court can be observed in the American court, which highlights the importance of a state providing a convincing and plausible explanation of the facts when a death has been caused by state security forces, as seen in many instances of its case law. Furthermore, the jurisprudence of the IACtHR reveals the notion that the state is the guarantor of the right to life, along with the specific modalities that this must apply, particularly to vulnerable groups such as minors and migrants, as seen in the cases of Bulacio v. Argentina and Nadege Dorzema and others v. Dominican Republic.

Another thought-provoking text is one by Kai Ambos and María Laura Bohm, which explores these courts and their approach to adjudication, considering whether they are bold or shy tribunals according to the concept established by Von Bogdandy. This concept is based on the extent to which tribunals interfere in the domestic law and politics of countries when making their decisions and imposing the requirements for compliance. These authors determine that the IACtHR would be a bold court because it cancels national laws (for example, amnesty), decides important cases (that are politically delicate) and is a recent institution (unconsolidated).[769]

[769] Ambos, Kai and Bohm, María Laura. "Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos. ¿Tribunal Tímido vs. Tribunal audaz?" In: *Sistema Interamericano de Protección de los Derechos Humanos y Derecho Penal Internacional. Vol. II*. Kas/ University of Gottingen. P.P.43-69. Montevideo, 2011. P. 44.

However, Ambos and Bohm clarify that although the affirmation that the IACtHR is a bold tribunal presupposes that this court has had to go beyond what was expected against the will of the states parties, this has not occurred in the American Court. In 1988, when the court determined the state's duty to investigate and punish those responsible for violating human rights in the judgment Velásquez Rodríguez, the processes of transition from dictatorships to democracies in Latin America had already started. During this period, the movement for human rights was revived and strengthened, and with it, the demand for justice and accountability for those responsible for serious human rights abuses committed during the dictatorships of the previous decades. The IACtHR, with the exceptions of Peru and Venezuela, in which it was precisely about current situations, was considered an ally of the new democratic governments in the face of the trial of past events. On the one hand, the representatives of the states did not argue about the requisites of admissibility. On the other hand, on more than one occasion, the court was asked to make a confident decision in favour of domestic human rights. The court and the new governments pursued the same pro-human rights agenda, which undermines the court's boldness in its activities.[770]

In the case of the ECtHR, it has been established that even in cases of serious human rights violations, the rights of the accused state remain intact. This strict interpretation by the ECtHR has been the subject of several critiques, as some authors see these concessions as a means of impunity. If this were true, it would be considered a shy tribunal. However, Ambos and Bohm establishes that the judgments of this court concerning more severe cases of systematic criminality (those that are concentrated in a few countries which are the ones that face the majority of the cases before the court) the tendency at the moment of interpret fundamental principles of the criminal process and the interference of the tribunal in the criminal politic of the states parties, it does not differ too much of the modality of the Inter-American court. In the field of international law, the mere condemnation of a state is seen as a violation of national sovereignty. From this perspective, the ECtHR would adopt an intermediate stance between the intrusive approach of the IACtHR and the non-intrusive approach of international law.[771]

[770] Ibid. P. 44, 45.

[771] P. 56, 62, 63.

According to the authors, the ECtHR has been more demure regarding the impositions on the parties, in contrast with the IACtHR. An interesting concept of Ambos and Bohm is that in the cases of the ECtHR, the reach of the judgments is directed to a particular case. However, it has a guiding effect on subsequent jurisprudence and national legislation, as well as for *"parallel cases"* (such as pilot judgments). Still, its immediate effect does not transcend the sphere of those individuals directly involved. On the contrary, a significant number of cases before the IACtHR are primarily cases in which not only particular individuals are attached, but the whole society is affected by the systematic violation of human rights. Several judgments of the IACtHR have an immediate effect not only on the parties but also a symbolic force over the collective. The authors conclude that these courts do not present criminal proceedings but rather processes inherent to international law that have precisely the aim of limiting state power in favour of respecting individual rights.[772]

Ambos and Bohm determine whether a tribunal is bold or shy, depending on the reach of its judgments regarding their effects on domestic law. It is necessary to clarify that this is an academic concept developed in this text by these authors. The ideas presented in this text suggest that these tribunals are bold or shy, depending on how much they impose their decisions on state parties. However, this concept largely depends on what individuals claim in court. On several occasions, the ECtHR had to decide on the procedural aspect of the right to life without involving itself in the substantive one. However, both courts decide in favour of the human rights of the individuals, and according to that, they punish or absolve the state. The ECtHR has been more cautious in its decisions regarding the non-involvement in the sovereignty of states parties and has allowed for flexibility in these cases to apply their sentences. It has used the margin of appreciation named above to enable states parties a certain level of freedom in applying the judgments. The margin of appreciation essentially allows member states a degree of discretion when implementing the Convention's provisions, acknowledging that diverse cultural and societal contexts might necessitate different approaches to upholding human rights. However, when cases involving the collective, such as forced disappearances, this tribunal has made more difficult judgments and obliged states to face the consequences of their actions, influenced by the IACtHR. In this line of thought, the IACtHR had to be bolder, as it has had to decide on more than

[772] Ibid. P. 68, 69.

80 cases of forced disappearances to date, and for that, it has been called a court that exhibits judicial activism. Furthermore, I believe this bold or shy character can be observed in the cases of violation of the right to life by the security forces of this research, which determines consequences for the sovereignty of the state parties. As mentioned above, the states renounce some power to participate in the human rights conventions and must deal with the outcomes determined by these courts.

Another interesting text that examines the comparison between the three regional human rights courts is that of Cali, Madsen, and Viljoen. These authors determine that the differences and similarities between regional human rights courts derive from the active exercise of agency by regional courts and commissions in negotiating regional legal human rights cultures, which are responsive to pressures from both national and global levels. Exercising this agency, regional courts and commissions have been able to bring the regional systems both closer and further apart. According to these authors, despite textual convergence, the Inter-American and European Courts of Human Rights have diverged on the question of the extent to which differences should be given to national authorities in the interpretation of qualified rights.[773] This is in line with Ambos and Bohm, who note that these courts have different ways of accepting the compliance of state parties, with varying levels of flexibility on their part. The ECtHR, by applying the margin of appreciation, understand that the different states will comply with the judgment according to their specific society and culture. This tribunal allows a degree of discretion that the IACtHR has not developed. The IACtHR is less flexible in considering how the states must comply with its judgments. This does not mean that there is more compliance with decisions in the IACtHR than in the ECtHR; it only means that there are different approaches to decision-making and enforcement of judgments.

Cali, Madsen, and Viljoen state that the formal, but mostly informal, connections between regional human rights regimes generate patterns of harmonisation of human rights law interpretation and convergence despite differences in historical, textual, and institutional trajectories. Empirically, there are also notable trends of horizontal

[773] Cali, Başak; Madsen Mikael Rask Madsen and Viljoen, Frans. "Comparative regional human rights regimes: Defining a research agenda." In: *I•CON (2018), Vol. 16, No. 1.* P.P.128-135. New York, 2018. P. 134.

citation among regional regimes and a shift towards comparative human rights law as a crucial aid for interpretation.[774]

The authors recognise that regional divergences are best understood in terms of how regional history, legal culture, and past political and legal experiences, including constitutional experiences in the regions, cast significant shadows on regional human rights practices. Regional understandings of the purpose of regional human rights texts, such as resisting authoritarian regimes and promoting democracy, become crucial in this context.[775]

An interesting point is that regional regimes with a more extended history of interpreting human rights in specific ways may be more inclined to maintain their established patterns of interpretation. However, the younger regional regimes also have more options when adopting or shifting interpretive styles.[776]

Cali, Madsen and Viljoen highlight significant notions about the divergences and convergences between the courts. The influence between these courts is related to the judicial history and culture of each of them. The case of McCann was established first in the branch of police brutality, and because of this, it has influenced the decisions on this matter of the IACtHR. Furthermore, the same can be said about cases of forced disappearances ruled upon by the Inter-American Court, which served as a model for the ECtHR when similar situations were presented before it. Furthermore, the authors determine that specific characteristics of each region impact the decisions of each court.

A vital point is how these different tribunals are characterised according to their longevity. The ECtHR is an established court with more experience, which serves as a model for the human rights system of the IACtHR. According to the authors, the first court can be more anchored to its interpretative patterns. Although the IACtHR has developed similarly to the ECtHR, it can be more creative in its standards for decision-making, given its relative youth. All of these situations enrich the horizontal dialogue between these courts, enabling them to influence one another. The notion of these authors is that the formal and informal horizontal connections among these courts are crucial for influencing each other and deciding their cases. I believe that this is true

[774] Ibid.

[775] Ibid.

[776] Ibid. P. 135.

because these courts may engage in official dialogue, but the judgments of one court impact the other, and this affects how they rule.

A thought-provoking text by Oscar Parra Vera examines the characteristics of both courts. This author determines that in Europe, it is not possible to be part of the Council of Europe without accepting the competence of the ECtHR. This allows a compulsory jurisdiction for all states parties. On the contrary, in the IACtHR, it is possible to be a member of the Organisation of American States without having accepted the jurisdiction of the court. This causes an uneven impact on the fixed standards of the IACtHR.[777]

This author determines that the ECtHR has had a policy about this prioritisation since 2009 that is based on the urgency of the petitions in cases of risk to the life or health of the petitioner, situations that could impact on the effectiveness of the Convention and petitions that involve controversies about the principal rights (core rights) established in Articles 2,3,4, or 5.1. Currently, there is a debate about the prioritisation of cases in the IACtHR. According to the author, the ECtHR's use of judgments as reiterations of jurisprudence, the handling of unilateral declarations of acknowledgement of responsibility, and the criteria for sending cases from the sections to the Grand Chamber could be helpful to apply in the IACtHR, given their specific characteristics.[778]

Parra states that the IACtHR have systematically used jurisprudence of the ECtHR in its contentious cases. In the case of the ECtHR, the division of investigations published a document in 2012 that referred to every decision that has cited Inter-American jurisprudence. According to the author, and I agree, these mutual citations are of exceptional value. There are instances where the IACtHR revisits European jurisprudence, such as the broad view of the concept of family life or the evolution regarding prenatal life and the reach of the right to life under the European Convention, among other examples of dialogue between the two systems.[779]

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

[778] Ibid. P. 569, 570.

[779] Ibid. P. 572.

Parra acknowledges that this type of dialogue is inserted into a debate about the methodology of the two systems to establish certain kinds of standards. While the European System has waited for a consensus between states to take specific steps, Inter-American jurisprudence has developed relatively ambitious standards.[780]

This author provides examples of the influence of the IACtHR on the ECtHR. These were in matters such as the broad representation by the NGOs for the victims, amnesties, the waiting of many years to bring before the court cases regarding the violation of the right to life, and not to be subjected to ill-treatment. This allowed a broader interpretation of the European Convention. These dialogues between the courts evidence the relevance and value of the comparative approach and are contextualised to develop better standards for decisions.[781]

The author notes that the system for implementing and supervising judgments differs between the two courts. The IACtHR is responsible for this process, whereas the ECtHR has the Committee of Ministers, which assumes this task. This Committee has a political character and is formed by permanent representatives of each state before the Council of Europe. This procedure for supervising the completion of judgments is known as the *"hybrid model"* because it combines official positions (such as those in foreign affairs Ministers) with judicial positions. This model aims to facilitate the complement of judgments in the most effective way possible, with the participation of relevant stakeholders. The problem with this model is that state representatives may interpret compliance in a way that is politically favourable for their countries. However, the presence of the Secretary of the Tribunal supervises the performance of the diplomatic representatives who act as peers in the Council.[782] This model was not adopted by the IACtHR, which did not apply the reforms of the ECtHR of 1998. The IACtHR is the organ that supervises the implementation of judgments using a juridical approach, in contrast to this hybrid model. At this point, these courts differ in how they oversee the implementation of judgments, applying each process with the belief that it is the most suitable for ensuring compliance with sentences by state parties. As mentioned, these states do not always comply, and these organs must be vigilant in monitoring the actions of these states to ensure conformity with their decisions.

[780] Ibid.

[781] Ibid. P. 573, 574.

[782] Ibid. P. 577.

Parra provides a comprehensive overview of the relationship between the two courts. In the case of prioritisation of judgments that the European system admits, this is well established and a rational criterion. The IACtHR could benefit from this scheme. There is a significant difference between the courts, which is the existence of the Inter-American Commission of Human Rights that serves as a filter for cases that reach the tribunal. For this reason, the number of cases that reach the IACtHR is lower. However, both courts have to deal with the overload of cases. Parra determines that judgments as reiteration of jurisprudence, or, I believe, the pilot judgments procedure, could be helpful to apply in the IACtHR. However, the author mentions the unilateral recognition of responsibility by state parties that has occurred in several cases before the IACtHR, as illustrated in some examples of this research. It is essential to note that when one court seeks to apply a procedure or feature of another court within its own system, it must do so in accordance with the specific characteristics of that tribunal. Although the IACtHR is modelled after the ECtHR, there are many differences already mentioned, as the 1998 reform of the ECtHR altered the previous model that the IACtHR adopted. Furthermore, the IACtHR does not present a system of a Great Chamber like the European one.

The constant citation between the two courts enriches the jurisprudence of each one. In this way, the courts help each other to develop better standards for their decisions. The author notes that this has allowed a broader interpretation of the ECtHR. This dialogue employs a comparative approach that is significant for judicial decisions and the protection of individual human rights. Furthermore, they can apply what has already been established in the other and adjust these standards to their own systems and jurisdictions. This helps in the evolution of human rights.

Ophelia Claude establishes significant notions about these courts and cases of forced disappearances. This author determines that the ECtHR was influenced by the extensive case-law on the matter of the IACtHR. However, she states the characteristics to judge this category in both courts.

Claude determines the rules of evidence admission in both courts. In the IACtHR, she emphasised that the rules are less formal and more flexible, and the court is not bound by the same formalities that govern domestic courts. The court admits a wide range of evidence and exercises fact-finding functions by hearing witnesses, experts, or any other person whose evidence statement or opinion it deems relevant. Regarding the evidence admitted, the court held that circumstantial evidence, indicia and

presumptions may be considered, so long as they lead to a conclusion consistent with the facts. The admission of circumstantial or presumptive evidence has been particularly crucial in cases of disappearances because, as the court underlined, this type of repression is characterised by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.[783]

In the case of the ECtHR, the rules of evidence admission are similar to those of the IACtHR in the sense that they also reflect the concept of free evaluation of evidence. There are no strict rules governing what may be presented to the court. This tribunal may adopt any investigative measure, including requesting documentary evidence and hearing any person as a witness or expert. The ECtHR has frequently utilised fact-finding missions in Turkish disappearances cases. However, no fact-finding investigation has been held in the Chechen disappearance cases. The court noted that it is entitled to rely on evidence of every kind, including, insofar as it deems relevant, documents or statements emanating from governments, whether respondent or applicant, or from their institutions or officials. The ECtHR also frequently relies on reports produced by intergovernmental institutions and human rights NGOs, as seen in the case of Amnesty International in Kurt v. Turkey. In contrast with the Inter-American court, the ECtHR has been less inclined to rely on indirect evidence concerning certain rights. The phenomenon of forced disappearances has acted as a great impulse for both courts to test the limits of their so-called flexible rules of admission of evidence. However, the IACtHR set a pace for progress, while the ECtHR's improvements are still limited. The very nature of the crime of forced disappearances calls for a need to use indirect evidence that the European court still neglects.[784]

Claude establishes that, regarding the burden of proof, the IACtHR adopted a two-step approach for resolving the burden of proof issue. The petitioner must show: 1) there is a governmental practice of disappearances (pattern of disappearances), and 2) the disappearances of the specific individual were linked to that practice (link with the pattern). Once these two requirements are proven, the person is presumed to have

[783] 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. P. 410, 411.

[784] Ibid. P. 412, 413, 414.

disappeared and the burden shifts to the state to prove otherwise. The problem is that the government has either participated in the disappearance or tolerated it, is reluctant to provide documents or other kinds of proof and is unwilling to cooperate when it controls the evidence. In this case, the IACtHR found that when a government controls the means to verify acts occurring on its territory and fails to assist the fact-finding process, it is proper for the court to take this into account when weighing the evidence and determining which party has met its burden of proof. The state's lack of cooperation may affect the burden of proof.[785]

The ECtHR considers that when a person is taken into custody before he disappears, and the state provides no reasonable explanation for his disappearance, he must be presumed dead. Additionally, this court determines that when a person previously in good health is injured while in custody, it is incumbent on the state to explain. Additionally, this court has noted that to shift the burden of proof onto the government in such circumstances requires, by implication, that the applicant has already established a *prima facie* case. Furthermore, the court determines that non-disclosed information might lead to a shift of the burden of proof. The court considers that when a *prima facie* case has been established, and the court is prevented from concluding due to the absence of the requested documents, the burden of proof shifts to the state. The court has evolved to use inferences from a state's lack of cooperation.[786]

The IACtHR influenced the ECtHR to note a pattern of disappearance. However, the European court only notes this pattern, while the IACtHR has highlighted this crime and determined the existence of a systematic practice of forced disappearances.[787]

Claude observes that the IACtHR presents a flexible standard of proof that is weaker than the standard of proof beyond a reasonable doubt of the ECtHR. It was established in Chapters III and IV that the European Court applies this standard in all cases, including those involving forced disappearances. The IACtHR adopted a standard based on reasoned judgment, and this flexible standard recognised the court's power to weigh the evidence freely. This standard allows the IACtHR to make presumptions. Although the ECtHR has a standard beyond a reasonable doubt that is rigid, it has found violations of the procedural aspect of the right to life. As this standard

[785] Ibid.

[786] Ibid. P. 417, 418, 419,420.

[787] Ibid. P. 421.

disallowed the court from finding an infringement of the substantive element of the right to life, the court did find a violation of the procedural element. However, this court developed another method to overcome the drawback of the formula of proof beyond a reasonable doubt and has increased the admission of inferences. In Timurtas v. Turkey, the court permitted the use of circumstantial evidence to establish a violation of the right to life. However, the admission of inferences is only allowed in cases of alleged breach of the right to life. Moreover, where it uses inferences and presumptions, the court constantly reiterates that the presumed death of the disappeared is established *"beyond a reasonable doubt"*. On the one hand, the court is not willing to depart from the beyond a reasonable doubt formula. Still, on the other hand, it is increasingly adapting its substance to reduce its rigidity and make it more suitable to the specific circumstances of particular cases.[788]

Despite the ECtHR's efforts to modify its initial standard, it still falls short of being adequate in cases of disappearances. Unlike in cases of violation of the right to life, the court systematically rejects the applicant's allegation of a breach of Article 3 (torture and ill-treatment) against the victim. The reasoning of the court disregards the material impossibility of the parties to provide evidence of torture because the body disappeared, and further dismisses the allegation on the grounds of lack of evidence.[789] In contrast, the IACtHR admits the existence of torture and ill-treatment despite the concealment of the body based on its flexible approach to the standard of proof.

Claude notes that the ECtHR did not endorse the IACtHR's approach of numerous rights being violated. While in the Inter-American court system, every case constitutes a multiple violation of rights, the European Court adopts a more conservative approach: a case of enforced disappearances may constitute a violation of several provisions, but that is not strictly necessary. Therefore, it considers the alleged violations of each right separately as if they resulted from different situations. The IACtHR has a holistic approach that understands forced disappearance as a violation of multiple rights.[790]

The phenomenon of forced disappearances presents challenges for both courts and law enforcement. The evidence in these cases has been concealed, and it is difficult to

[788] Ibid. P. 423-427.

[789] Ibid. P. 427.

[790] Ibid. P. 432, 433.

prove the death or torture of a person without a body. Although both courts have recognised the seriousness of this crime, they have differing approaches regarding the standard of proof, among other factors. The IACtHR considers this crime as a phenomenon with multiple violations of human rights (to life, to humane treatment, to liberty and security and an effective remedy). This court has developed an adequate method to examine the type of violations that occur in disappearance cases. On the contrary, the ECtHR is reluctant to adopt any specific method to face the complexity of forced disappearances, and this can mean that this court does not find the violations of certain rights in its decisions, such as the prohibition of torture and ill-treatment. However, this court has been exhaustive in condemning the procedural aspect of the right to life in these cases.

The ECtHR fails to acknowledge the gravity of the phenomenon. Additionally, it impedes determining the multiple crimes that were violated. It could be beneficial for the ECtHR to adopt a variety of features and a flexible approach to the standard of proof, as seen in the IACtHR, to ensure justice for victims and the protection of human rights.

To conclude this analysis of the influence and relationship between these two courts, I would like to establish some key notions about the interference and impact between the IACtHR and the ECtHR. The IACtHR established in its first Advisory Opinion that: *"it would be inappropriate to make distinctions based on the regional or non-regional nature of the international obligations assumed by the states and deny the existence of the common core of the basic standards of human rights."*[791] This quote encapsulates the fundamental nature of the dialogue between the human rights courts. The essential objective of these is to protect and defend the common core of human rights; this guides both courts in the decisions they make and the standards they apply in their judgments.

Furthermore, it is essential to note that although the judgments of the other court can influence one of the tribunals, they don't need to apply the same standards, as can be seen in the case of forced disappearances. The courts may adopt a different approach if they are convinced that they have better reasons to reach their conclusions. However,

[791] IACtHR. "Otros Tratados Sujetos a la Jurisdicción Consultiva de la Corte" (Article 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, 24 September 1982. Series A No. 1, par. 40.

it is essential to note that the dialogue and citation of decisions enhance the comparative approach and the evolution of human rights.

It is undeniable that the ECtHR has influenced the IACtHR and vice versa. This has strengthened the development of human rights standards and facilitated better decision-making. At the beginning of the IACtHR, it was modelled after the ECtHR and made extensive references to it in its jurisprudence. Nowadays, the citations go both ways, with the ECtHR being attentive to the judgments of the Inter-American Court and applying its standards in its decisions. This is possible due to the horizontality between the courts and the constant dialogue. These courts acknowledge each other and respect the work of the other. There is consensus between these regional human rights courts. The objective would be that each court applies what it is working for the other court, although there are no guarantees that this approach will work in a different context. I believe that the dialogue and influence between these courts is a trial-and-error mechanism. It is essential to remember that each court decides and applies standards according to the specific characteristics of the continent where it has jurisdiction.

Furthermore, the horizontality of the international system enables the recognition of courts and facilitates dialogue and influence among them. In the regional human rights courts, no tribunal is superior to another, which allows for interference. The possibility of these courts does not rely solely on the precedents of their jurisprudence, but also on the case law of other human rights courts. There is a globalisation of human rights that allows for the evolution of these. The universality of human rights, as established in this research by Costa Rodríguez, is reflected in the influence of these courts.

Ultimately, these courts offer cross-references and legal translations that have proven effective in facilitating more informed decision-making. However, there are differences between these courts that are characteristic of each one. Some examples include the margin of appreciation and the pilot judgments of the ECtHR, as well as the flexibility of the burden of proof and the acknowledgement of the phenomenon of forced disappearances by the IACtHR. Each court has a different jurisdiction, history, and culture that is specific to it. I believe that it is not necessary for these courts to be the same and to render equal judgments. It is essential to acknowledge the differences and enrich the academic study and jurisprudential analysis to explore these variations. The aim would be for each court to incorporate the best aspects of the other to achieve

the best and most comprehensive protection of individual human rights and to develop optimal standards.

5.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."[792]

— Hannah Arendt, The Human Condition

As Hannah Arendt states, society is how we may realise and protect 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 increasingly apparent to me that the courts share a similar focus on protecting the right to life in a democratic society. Furthermore, despite their differences, they apply humanitarian standards to protect the lives of persons.

Before proceeding with the conclusions about this research, it is essential to assess the scientific novelty of this work. As it was highlighted in the summary of differences and similarities of the standards and the influence between the two courts, this work provides a new vision of the cases of death by state security forces. This thesis aims to provide a thorough analysis of the specific standards of the ECtHR and the IACtHR regarding the right to life. I believe this study presents a novelty in its findings because previous studies have compared these courts on other matters, or only one category has been examined in other works (for example, the text by Ophelia Claude on forced disappearances). However, these texts does not determine the specific standards on the violation of the right to life by state security forces, analise the articles of the regional convention on human rights about the protection of the right to life or the prohibition of torture or other ill-treatment, develop the particular categories of this kind of perpetration, or have a thorough analysis of the differences and similarities of the standards applied by the two courts in this precise violation of the right to life and

[792] Arendt, Hannah. *"The Human Condition".* 2nd Edition. The University of Chicago Press. Chicago; London. 1998.

determines how the ECtHR and the IACtHR influence each other, examining these notions all together as this thesis does.

I believe that the research on this form of perpetration of violation of the right to life is significant to study. As mentioned earlier, these situations have been ongoing for a long time. However, this was not determined in the jurisprudence of these courts until the 1990s. Through the cases of these tribunals regarding this form of perpetration, it is possible to understand and trace the evolution of this type of crime in international law. In this way, it is possible to determine the gravity of this crime. I believe that this gravity is the result of the death caused by the security forces of the state that must protect the individuals under its jurisdiction. However, sometimes these forces go beyond their duties and perpetrate homicides. It is essential to understand in which situations these can occur to enrich the framework and legislation of the states to avoid these types of events and urge the security forces to change their actions when facing events that could lead to the death of a person. For example, it can be understood why it is so vital for the two courts to establish their jurisprudence concerning the escape of offenders. The right to life is the most fundamental human right, and it must be protected and respected at all times. As the courts say in their case-law, it is better to let an offender who does not commit a serious crime escape than to kill this person. This is an example of the courts' acknowledgement of the right to life as an essential right of the human being and their dignity in their jurisprudence. Moreover, the death of a person can be avoided if it does not entail a threat to the life or limb of another person, as the case-law of the ECtHR and the IACtHR determines. The core of the case law of the ECtHR and the IACtHR is to protect the right to life in general and prevent the abuse and violation of this right in every possible way. However, this must be done in concordance with the state's capabilities and not be an impossible burden. The state cannot prevent every violation of the right to life except when it is possible to identify the perpetrator and the victim.

In my view, this work does not have the aim to criticise the actions of the security forces. When these forces act following the legislative, judicial, and administrative framework, in concordance with human rights Conventions, they can be excellent forces that protect individuals. However, since the sixties, with the dictatorships in Latin America, the Kurdish-Turkey conflict and Chechen conflict with Russia, together with the terrorist attacks of the IRA and of 11 September 2001 in the United States and later the United Kingdom and Spain, the security forces showed an

excessive and arbitrary use of force in certain situations. For this reason, I believe it is essential to examine this type of perpetration.

Furthermore, it is necessary to explain how I determine the five categories of violation of the right to life by state security forces. After reading the judgments regarding the breach of the right to life by security forces in both tribunals, I realised that these were always about a particular crime. In this way, I was able to state these five categories because they include every case concerning the violation of the right to life by these forces. This is acknowledged in Appendix I, which presents all the cases and the analysis of judgments in Chapter III, as well as in Appendix II. Furthermore, the cases I chose to include in this research are key instances for these courts in these categories because they present the fundamental standards applied by the IACtHR and the ECtHR in this form of perpetration of a violation of the right to life. I think that because of the standards explained in these cases, I could determine the differences and similarities that show how these courts have acknowledged this type of homicide and have decided to condemn or not the accused states.

In my view, to achieve the objectives of this study, it was necessary to analyse all the judgments concerning the violation of the right to life by state security forces. I believe that the cases I chose to present in this research were necessary to determine the recurrence of crimes in the five categories of this type of perpetration. I could not examine all cases due to the large number, but I selected a subset of those that were more emblematic and presented the key standards of the two courts. For me, it was essential to present these cases in this work so that the reader could understand, through examples, the analysis I was conducting on these categories of crime. I believe it is a more dynamic and didactic way to present the standards that were examined later in the research. Moreover, the facts of these cases can help the reader better understand the situations in which these events occur and gain insight into the reality of the judgments, without remaining solely in the academic perspective of the subject in question.

I believe that this work is essential for jurists who must decide on the violation of the right to life by security forces, as well as academics studying the application of the European and American Conventions on Human Rights, or the right to life or human rights in general, or those analysing the ECtHR and the IACtHR. Additionally, it is helpful for those people interested in human rights in general. This research presents a comprehensive examination of the right to life and the standards used to protect it.

Furthermore, this study examines how human rights courts have addressed these violations, condemning and punishing the culpable state and, if applicable, finding the state not guilty, specifying the arguments that justify their decisions in this manner.

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 quote each other and are attentive and concerned about what the other tribunal establishes to apply in their decisions, or decide to take a different approach. 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 own terms. These can be seen in the standards applied and the comparison between them. The only predominant document is the United Nations Charter.

In my view, international law allows for a horizontal relationship between courts and organisations, except for the United Nations. This organisation has been the first global institution and the model for the development of other international courts and organs. The purpose of this international organisation is to achieve peace and security, and that includes protecting human rights. The Charter of the United Nations is a comprehensive document that encompasses several essential principles of international law, including the protection of human rights. The European and American Conventions expand these rights more fully and thoroughly.

Moreover, in my view, the theoretical part suggests that the ECHR and the American Convention on Human Rights share several similarities, considering that the latter was modelled after the former, which was adopted sixteen years earlier. However, each court applies and interprets the provisions of its conventions in accordance with the characteristics and specific situations of the continent where it has jurisdiction. There are also some differences, such as those shown by the articles that protect the right to life.

In the theoretical part, 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. 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 have highlighted the exceptional work of the latter, emphasising the reparations for victims and their relatives. Still, these do not contradict the practical part because these courts effectively decide, as the authors' views establish, by the specific characteristics of their respective continents.

For this work, I believe it is necessary to address the notion that there are differences between these human rights tribunals regarding the scope of the state's responsibility for the actions of its agents that violate the right to life. Additionally, it can demonstrate how this aspect is 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 summary of similarities and differences 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 context 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 person 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 comprehensive than Article 4 of the American Convention on Human Rights because the IACtHR must resort to the instruments of the OHCHR on law enforcement to establish a judgment on whether it is necessary to use lethal force. Furthermore, both courts establish the predominance of the right to life in their standards when offenders escape. They determined 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 related to the right to life, but not the substantive element of the right itself. In contrast, the IACtHR

primarily condemns both aspects together. Moreover, the ECtHR presents the separation of consideration for these two aspects as one of its standards when deciding whether to condemn one or the other (principally the procedural facet), or both. At the same time, 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, primarily focusing on the differences between Article 2 and Article 4, as well as the procedural and substantive aspects of the decision-making process. However, they have the respect and protection of the right to life as a basis in a democratic society. Furthermore, they share many similarities, such as the subsidiary character with domestic courts, the use of lethal force as a last resort, the state's role in investigating, trying, and punishing perpetrators of right-to-life violations by security forces, and the necessity of efficient, impartial, and thorough investigations into these crimes. Additionally, in my view, both courts consider an essential standard to define the existence of both positive and negative obligations of the state. Moreover, even the ECtHR has quoted the IACtHR in cases of forced disappearances, considering that the latter court was the first to adjudicate this crime and had extensive experience, as seen in Velásquez Rodríguez v. Honduras—judgment of 29 July 1988. Additionally, the IACtHR cited the ECtHR in cases where the European tribunal was an expert in the use of force, such as the Case of McCann and others v. the United Kingdom, judgment of 27 September 1995. These courts can learn a great deal from each other and, fortunately, are in constant dialogue about their decisions in case-law, which can also support the development of their jurisprudence and standards.

Moreover, in my view, it is necessary to determine whether one of these courts has a more effective method of handling these cases or a more efficient decision-making process. 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 failed to condemn this crime, despite the evidence available, and a pattern should have been considered. Additionally, the IACtHR has extensive case law regarding forced disappearances and has developed

essential standards that have become paradigmatic and are used as background in other international courts. Nevertheless, the ECtHR has consistently condemned the procedural duty in these crimes, considering that the state failed to investigate these violations. Furthermore, I believe the ECtHR is very detailed in its case law regarding the investigation steps and characteristics. Additionally, this court consistently emphasises the necessity of an effective and impartial inquiry. This tribunal has also established unique standards for planning and controlling operations related to the force deployment of the security organs.

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 more comprehensive and 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 would be beneficial to revise Article 4 of the American Convention on Human Rights by removing the five paragraphs that explain the death penalty (which has been abolished by Protocol of San Salvador, A-53 of the American Convention) and incorporating some key characteristics of these international instruments. In this way, Article 4 will be more complete concerning the use of lethal force. Furthermore, the ECtHR could benefit from incorporating these instruments into its judgments, as they establish 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. Additionally, the IACtHR could draw on the vast experience of the ECtHR in dealing with the use of force and police actions in its judgments. The ECtHR examines the actions of security forces in relation to human rights in contemporary times, as well as the unpredictability of human behaviour.

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 a different light, being less strict with the permission to use force in an action lawfully taken to quell a riot or insurrection, because, as shown in the cases of the IACtHR, there are sometimes attacks on inmates that demand some defence.
5- Moreover, it would be beneficial for the ECtHR to draw on examples from the IACtHR regarding the regulations of amnesty or indulgence that undermine justice, as they are unable 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 IACtHR, as the latter court has been exhaustive in this area.
7- The IACtHR should adopt compulsory jurisdiction to ensure compliance with its provisions in all American states and promote the advancement of human rights in the Americas.

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 these courts receive every year is substantial, making it challenging for one court to rule over all these cases. Under these conditions, they thoroughly and carefully examine each case to ensure a fair judgment. Each decision takes considerable time due to the overwhelming number of cases. The IACtHR and the ECtHR have reasonable and humanitarian standards for their decisions. They could borrow more characteristics from one to another to make better judgments. Although they can make mistakes, they are excellent courts that decide over the 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.

Bibliography:

Papers and Books:

- 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. Nº 4.* EJIL. P.P. 771-801. 2006.

- Alleweldt, Ralf; Fickensher, Guido and others. *"The Police and International Human Rights."* Ed: Alleweldt, Ralf; Fickensher, Guido. Springer. DSF: German Foundation for Peace and Research. Switzerland, 2018.

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

- Ambos, Kai and Bohm, María Laura. "Tribunal Europeo de Derechos Humanos y Corte Interamericana de Derechos Humanos. ¿"Tribunal tímido vs. Tribunal audaz?" In: *Sistema Interamericano de Protección de los Derechos Humanos y Derecho Penal Internacional. Vol. II.* Kas/ University of Gottingen. P.P. 43-69. Montevideo, 2011.

- Arendt, Hannah. *"The Human Condition."* 2nd Edition. The University of Chicago Press. Chicago; London. 1998.

- 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. Volume 6. No. 1.* P.P. 3-17. Washington, United States, 2015.

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

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

- 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.

- 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.

- Cali, Başak; Madsen Mikael Rask Madsen and Viljoen, Frans. "Comparative regional human rights regimes: Defining a research agenda." In: *I•CON (2018), Vol. 16. No. 1.* P.P. 128-135. New York, 2018.

- Cançado Trindade, Antonio. *"A Proteção Internacional dos direitos humanos – Fundamentos Jurídicos e Instrumentos Básicos."* Ed. Saraiva. 1996.

- Cançado 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.

- Cançado 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.

- 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.

- 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.

- 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.

- 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.

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

- Council of Europe. European Court of Human Rights. *"The ECHR in 50 questions."* Strasbourg, France, 2021.
- Cowell, Frederick. "Council of Europe Expulsion and the European Convention on Human Rights: The Foundations of Involuntary Treaty Withdrawal." In: *International and Comparative Law Quarterly, Vol. 74.* P.P. 147-177. Cambridge University Press. Great Britain, 2025.
- Cranston, Maurice. "Are there any Human Rights?" In*: Daedalus. Vol. 112. No. 4. Human Rights* (Fall, 1983). P.P. 1-17. 1983.
- Crenzel, Emilio Ariel. "La verdad en debate. La primacía del paradigma jurídico en el examen de las violaciones a los derechos humanos en la Argentina." In: *Polit. Soc. Vol. 54. Nº 1.* P.P. 229-248. Madrid, Spain, 2025.
- Drzemczewski, Andrew. "The European Human Rights Convention: Protocol No. 11 entry into force and first year of application." In: *El Sistema Interamericano de Protección de los Derechos Humanos en el umbral del siglo XXI.* P.P. 357-379. 2003.
- Fajardo, Ana María. "Paralelo entre el Tribunal Europeo de Derechos Humanos y la 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
- 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.
- 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.
- García-Huidoboro, Rodolfo Figueroa. "Concepto de Derecho a la Vida." In: *Magazine Ius et Praxis. Nº 1*. 2014. The University of Talca. P.P. 261-300. Talca, Chile, 2014.
- 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.

- 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: *El futuro del sistema interamericano de protección de los derechos humanos, IIDH*. Ed. J. E. Méndez and F. Cox. P.P. 155-166. Costa Rica, 1988.
- Gutiérrez, Martha. "Inter-American Human Rights System and Social Change in Latin America." In: *Laws Vol. 14. No. 14.* P.P. 1-16. Switzerland, 2025.
- Haglund, Jullienne and Parente, Francesca. "Balancing justice: Damages awarded by the Inter-American Court of Human Rights." In: *The Review of International Organisations.* Ed. Springer. P.P. 1-30. March 2025. United States, 2025.
- 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.
- Inter-American Court of Human Rights. *"ABC de la Corte Interamericana de Derechos Humanos. El qué, cómo, cuándo, dónde y por qué de la Corte Interamericana."* 2013.
- 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*. Ed. Bloomington. P.P. 61-73. March, 1996.
- Islas Colín, Alfredo. "Influencia de la Corte Europea de Derechos Humanos a la Corte Interamericana de Derechos Humanos." In: *Perfiles de las Ciencias Sociales, Year 2, No. 3.* UJAT. P.P. 109-128. Mexico, 2014.
- Janczarek, Szymon and Kolomiets, Nikita. "Execution of Judgments of the European Court of Human Rights: Actors, Substance and Procedure." In: *ICL Journal 2025, Vol. 19, No. 2.* Ed. De Gruyter. P.P. 181-211. 2025.
- 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.
- Koskenniemi, Martti and Leino, Paivi. "Fragmentation of International Law? Postmodern Anxiety." In*: Leiden Journal of International Law. Vol. 15*. P.P. 553-579. 2002.
- Kyriakou, Nikolas. *"Enforced disappearance in international human rights law."* PhD Thesis. European University Institute. Department of Law. 2012.

- Lambert Abdelgawad, Elisabeth. “El Tribunal Europeo de Derechos Humanos y la Técnica de las Sentencias Piloto: Una Pequeña Revolución en Marcha en Estrasburgo...” In: *UNED. Revista de Derecho Político. No. 69*. P.P. 355-383. 2007
- Lamm, Vanda. “Some Thoughts on the Proliferation of International Courts and Tribunals.” In: *Társadalomtudományi Kutatóközpont Jogtudományi Intézet*. P.P. 414-424. Hungary, 2019.
- 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.
- 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.
- Medina Quiroga, Cecilia. “La Convención Americana: Vida, Integridad Personal, Libertad Personal, Debido Proceso y Recurso Judicial.” In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Universidad de Chile, Facultad de Derecho, Centro de Derechos. P.P. 59-136. Chile, 2005.
- 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. Portland, Oregon. 2004.
- Nalbandian, Elise G. “The Challenges facing African Court of Human and Peoples´ Rights.” In: *Mizan Law Review. Vol. I. No. 1. June 2007*. P.P. 75-89. 2007.
- Ouguergouz, Fatsah. “The African Charter on Human and Peoples’ Rights: A Comprehensive Agenda for Human Dignity in Africa.” The Hague/London/New York: Ed. *Martinus Nijhoff Publishers*. P.P. 47- 1016. 2003. ISBN 9041120610.
- Paine, Thomas. *“Rights of Man: Being an Answer to Mr. Burke's Attack on the French Revolution.”* 2nd Edition. London, 1791.
- Paraskeva, Costas. “Human Rights Protection Begins and Ends at Home: The Pilot Judgment Procedure developed by European Court of Human Rights.” In: *Human Rights Law Commentary*. 2003.
- Parra Vera, Óscar. “Algunos aspectos procesales y sustantivos de los diálogos recientes entre la Corte Interamericana de Derechos Humanos y el Tribunal Europeo de Derechos Humanos.” In: *La América de los Derechos*. Centre of Political and

Constitutional Studies. Santolaya. Pablo and Wences, Isabel (Coord.) P.P. 565- 606. Madrid, Spain.

- 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.

- 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.

- 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.

- 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.

- 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.

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

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

- 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.

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

- 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.

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

- Steine, Henry and Alston, Philip. *"International Human Rights in Context: Law, Politics, Morals."* 2d ed. Oxford University Press, 2000.
- Van Hoecke, Mark. "Methodology of Comparative Research." In: *Law and Method. European Academy of Legal Theory Series*. P.P. 1-35. Great Britain, 2011.
- Vasilachis de Gialdino, Irene (Coord.) *"Estrategias de Investigación Cualitativa."* Editorial Gedisa. Barcelona, Spain. 2006.
- Watalany Silva dos Santos, Sara and Moraes de Outeiro, Gabriel. "Conventionality Control in the Inter-American Court of Human Rights." In: *Revista de Direitos Humanos, Vol.1. No. 1.* P.P. 34-50. Marabá, 2025.
- White, Nigel D. "Towards a Strategy for Human Rights Protection in Post-Conflict Situations." In: *The UN, Human Rights and Post-Conflict Situations*. Ed. N. White and D. Klaasen. 2005.
- 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.
- Wildhaber, Luzius. "The European Court of Human Rights in action." In: *Ritsumeikan Law Review. Nº1*, 2004. P.P. 83-92. 2004.
- Yuni, José Alberto and Urbano, Claudio Ariel. *"Técnicas para investigar: Recursos metodológicos para la preparación de proyectos de investigación."* Ed. Brujas, First Edition. Córdoba, Argentina. 2014.

International Instruments and Conventions:

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

- *Declaration of Independence of the United States*. Proclaimed by the thirteen states in 1776 and redacted by Thomas Jefferson.
- General Assembly of the Organisation of American States. *A-53 Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted on 6 August 1990, in* Asunción, Paraguay. https://www.oas.org/juridico/english/treaties/a-53.html
- General Assembly Organization of American States. *Inter-American Convention on Forced Disappearances of Persons*. 9 June 1994. Belem do Para, Brazil.
- Judgments of the European Tribunal of Human Rights from 1988 to 2025.
- Judgments of the Interamerican Court of Human Rights from 1988 to 2025.
- Organisation of African Unity. *African Charter on People and Human Rights*. Adoption on 1 June 1981. Entered into force on 21 October 1986.
- Organisation 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.
- Organisation of American States. *American Declaration on the Rights and Duties of Man*. Resolution XXX, adopted May 2, 1948, reprinted in Basic Documents on Human Rights in the Inter-American System, OAS Doc. OEA/Ser.L. V/II.82, doc. 6, rev. 1, at 17. 1992.
- States General Constituent Assembly. *The Declaration of the Rights of Man and of the Citizen*. August 1789, France.
- 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.
- United Nations General Assembly. *International Covenant on Civil and Political Rights*. Adopted 16 November 1966. Entry into force 23 March 1976.
- United Nations General Assembly. *Response to Resolution 833*. GAOR, Tenth Session Annexes (10), 28-1.
- United Nations General Assembly. *Universal Declaration of Human Rights on 10 December 1948* (General Assembly resolution 217 A). Paris, France.
- 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).

- United Nations. *Statute of the International Court of Justice*. Adopted in 1948 in Paris, France.
- United Nations. *The United Nations Charter*. Signed on 26 June 1945 in San Francisco, United States. It entered into force on 24 October 1945.
- United Nations. *Vienna Convention on the Law of Treaties*. Done at Vienna on 23 May 1969. It entered into force on 27 January 1980.
- *United States Bill of Rights*. Ratified on 15 December 1791.

Internet Sources:

- https://www.african-court.org/wpafc/
- https://apnews.com/article/death-of-george-floyd-minneapolis-police-reformd109eb0d3094119ddbcb560676467f19
- https://www.correpi.org/2021/a-30-anos-de-la-detencion-tortura-y-muerte-de-walter-bulacio-es-urgente-basta-de-detenciones-arbitrarias-cumplan-la-sentencia-del-caso-bulacio-ya/
- 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
- https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen
- https://idehpucp.pucp.edu.pe/boletin-eventos/violencias-urbanas-en-francia-represion-policial-e-insurreccion-de-jovenes-marginales-28384/
- https://ijrcenter.org/european-court-of-human-rights/#Structure
- https://www.cels.org.ar/web/2021/04/bulacio-30-anos-de-arbitrariedad-policial/
- https://www.hrlc.org.au/case-summaries/ecthr-finds-investigation-into-innocent-mans-death-was-procedurally-sound/
- https://www.telesurtv.net/news/colombia-indepaz-documenta-cifras-violencia-policial-20210616-0002.html
- Merriam-Webster Dictionary online: www.merriam-webster.com

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 January 1995.
2. Case del Caracazo v. Venezuela. Judgment 11 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 Andronicou and Constantinou v. Cyprus. Judgment 9 October 1997.
2. Case of Gülec v. Turkey. Judgment 27 July 1998.
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 April 2009.

18. Case Garibaldi v. Brazil. Judgment 23 September 2009.

19. Case Cepeda Vargas v. Colombia. Judgment 26 May 2010.

20. Case Familia Barrios v. Venezuela. Judgment 24 November 2011.

21. Case Uzcátegui and others v. Venezuela. Judgment 3 September 2012.

22. Case Brothers Landaeta Mejías and others v. Venezuela. Judgment 27 August 2014.

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 November 2018.

27. Case Omeara Carrascal and others v. Colombia. Judgment 21 November 2018.

28. Case Vicky Hernández and others v. Honduras. Judgment 26 March 2021.

29. Case Guerrero, Molina and others 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 Massacre the Dos Erres v. Guatemala. 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 2016.

11. Case Favela Nova Brasília v. Brazil. 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 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 others v. Ecuador. Judgment 19 May 2011.

6. Case Nadege Dorzema and others v. Dominican Republic. 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

Inter-American Court of Human Rights

1. Case Velásquez Rodríguez v. Honduras. Judgment 29 July 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 others) 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 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 2006.
29. Case Servellón García and others v. Honduras. Judgment 21 September 2006.
30. Case Goiburú and others 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 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. Dominican Republic. Judgment 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 Bárbara 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 others 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.

European Convention on Human Rights

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 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 others 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 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.

Appendix II

Judgments examined by the IACtHR and the ECtHR

I. Disproportionate Use of Force by Agents of the Security of the State: Inter-American Court of Human Rights

1. Case del Caracazo v. Venezuela. Judgment 11 November 1999:

Facts: This case involves a large group of protesters who initiated a series of disturbances in the city of Garenas due to the increase in urban transportation prices.[793] 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.[794] 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:

- 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.[795]

2. Case Casierra Quiñonez and others v. Ecuador. Judgment 11 May 2022:

Facts: The brothers Casierra Quiñonez were engaged in fishing activities.[796] On 7 December 1999, the Captain of the Puerto de Esmeraldas (Emerald Port), corresponding to the Third Naval Zone of the Ecuadorian Navy, ordered an anti-crime operation following information received about a boat carrying nine pirates who had committed robberies.[797] 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,

[793] IACtHR. Case of Caracazo v. Venezuela. Merits, Reparations and Costs. Judgment 11 November 1999. Series C No. 58. Par. 2.

[794] Ibid.

[795] Ibid. Par. 42, 43.

[796] IACtHR. Case Casierra Quiñonez and others v. Ecuador. Merits, Reparation and Costs. Judgment 11 May 2022. Series C No. 450. Par. 48.

[797] Ibid. Par. 49.

while his brothers Andrés Alejandro and Sebastián Darlin were injured.[798] That night, while the brothers were fishing, they stopped with their lights on, and another boat approached without identifying itself because it did not have signs, lights, or loudspeakers. The brothers Casierra Quiñonez thought they were pirates.[799] 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.[800] The Court determined that the State was responsible for violating the right to life in both its procedural and substantive aspects through this homicide committed by the 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.[801]
- 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.[802]
- Regarding proportionality, it was established that there was disproportionate use of force because of the number of holes in the victims' boats.[803]

Procedural Aspects:

- The State did not provide a satisfactory and convincing explanation for the deaths and injuries that the state agents caused. There was no independent, impartial investigation performed with due diligence.[804]

European Court of Human Rights

1. Case of Andronicou and Constantinou v. Cyprus. Judgment 9 October 1997:

[798] Ibid. Par. 52.

[799] Ibid. Par. 54.

[800] Ibid. Par. 56.

[801] Ibid. Par. 96.

[802] Ibid.

[803] Ibid.

[804] Ibid. Par. 95.

Facts: This case is about the death of Lefteris Andronicou and Elsie Constantinou, caused by police agents who intervened because of a domestic argument.[805] 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.[806] 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 in this case must be evaluating whether, in the circumstances, the planning and control of the rescue operation included the decision to deploy state officers.[807]
- It is not unreasonable to alert the officers to the dangers which awaited them and to direct them carefully to use firearms.[808]
- 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.[809]
- 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.[810]
- 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.[811]

Procedural Aspects:

[805] ECtHR. Case of Andronicou and Constantinou v. Cyprus. (Application no. 86/1996/705/897). Strasbourg. 9 October 1997. Par. 6, 10.

[806] Ibid. Par. 76, 86.

[807] Ibid. Par. 181.

[808] Ibid. Par. 186.

[809] Ibid. Par. 192.

[810] Ibid.

[811] Ibid. Par. 193.

- 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.[812]

2. Case of Ramsahai and others v. The Netherlands. Judgment 15 May 2007:

Facts: Moravia Ramsahai forced a scooter owner at gunpoint to give up his vehicle.[813] 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 they had been given, stopping near a high-rise building.[814] 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.[815] 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.[816]
- This means a lack of hierarchical or institutional connection and practical independence. What is at stake here is the public's confidence in the state's monopoly on the use of force.[817]
- The investigation is not an obligation of result but one of means.[818]

[812] Ibid.

[813] ECtHR. Case of Ramsahai and others v. The Netherlands. (Application no. 21594/93). Strasbourg. 20 May 2007. Par. 14.

[814] Ibid. Par. 17.

[815] Ibid. Par. 18.

[816] Ibid. Par. 325.

[817] Ibid.

[818] Ibid. Par. 154.

II. Extrajudicial Executions by State Security Forces

Inter-American Court of Human Rights

1. Case Barrios Altos v. Perú. Judgment 14 March 2001:

Facts: At approximately 22:30 hours on November 3, 1991, six heavily armed individuals broke into the building located on Jirón Huanta Nº 840 in the neighbourhood known as Barrios Altos of Lima. When the irruption occurred, a party was held to raise money to repair the building. [819] The individuals, whose ages ranged between 25 and 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 people 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.[820] The State recognised its international responsibility in the present case for violating the substantive and procedural aspects of the right to life. It was homicides 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.[821]
- The IACtHR considers inadmissible the dispositions of amnesty, prescription and the establishment of liability exclusions that pretend to prevent the investigation and sanction of those 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

[819] IACtHR. Case Barrios Altos v. Perú. Merits, Reparations and Costs. Judgment 14 March 2001. Series C No. 75. Par. 1,2.

[820] Ibid.

[821] Ibid. Par. 40.

for the human rights that had 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.[822]

European Court of Human Rights

1. Case of Tanrikulu v. Turkey. Judgment 8 July 1999:

Facts: The facts surrounding the killing of the applicant's husband are disputed.[823] 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.[824] 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.[825]
- The ECtHR establishes the necessity of exhausting domestic remedies before presenting cases before this tribunal.

III. Homicides committed with Police Brutality

Inter-American Court of Human Rights

1. 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*

[822] Ibid. Par. 50.

[823] ECtHR. Case of Tanrikulu v. Turkey. (Application no. 23763/94). Strasbourg. Judgment 8 July 1999. Par. 8.

[824] Ibid. Par. 13.

[825] Ibid. Par. 110.

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 deemed disproportionate and excessive by the internal tribunals and the Commission of the Truth regarding the facts of the Palace of Justice of Colombia (hereinafter referred to as the Commission of the Truth), established by the Supreme Court of Justice.[826]

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 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.[827] 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 both substantive and procedural aspects of the right to life by the security forces' actions.

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 the 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 taking and release of the hostages, such as negotiation.

2. Case García Ibarra and others v. Ecuador. Judgment 17 November 2015:

[826] 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.

[827] Ibid. Par. 80.

Facts: José García Ibarra was a 16-year-old adolescent at the time of his death.[828] 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, hitting José Luis García Ibarra and causing his death.[829] 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 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 establish that the actions and omissions have been verified, attributable to the State, and that the State's international obligation is unfulfilled by this.[830]
- 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.[831]
- As a general rule, the use of firearms is planned as a measure of last resort in the light of national and international law.[832]

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

[828] IACtHR. Case García Ibarra and others v. Ecuador. Merits, Reparations and Costs. Judgment 17 November 2015. Series C No. 306. Par. 50.

[829] Ibid. Par. 51.

[830] Ibid. Par. 98.

[831] Ibid. Par. 109.

[832] Ibid. Par. 112.

jurisdiction with the end of identifying the responsible, imposing the pertinent sanctions on them and ensuring to the victim the adequate reparation.[833]

- 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.[834]
- 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.[835]
- 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 control of conventionality, could the case get to the Inter-American System.[836]

3. Case Díaz Loreto and others v. Venezuela. Judgment 19 November 2019:

Facts: On January 6, 2003, in the afternoon, agents of the Aragua State Security Forces and Public Order arrived in the La Segundera sector. Subsequently, it was the product of a series of circumstances that led these officers to shoot Robert Ignacio Díaz Loreto.[837] He was later transferred to the city hospital. In a moment, after they had the circumstances that also led to disagreement between the parties, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez were shot by police officers.[838] The protocol of the autopsy of the three men indicated that the cause of death was a cardiac wound from a projectile from a firearm.[839] The Court established that the State was guilty of

[833] Ibid.

[834] Ibid.

[835] Ibid. Par. 103.

[836] Ibid.

[837] IACtHR. Case Díaz Loreto and others v. Venezuela. Merits, Reparations and Costs. Judgment 19 November 2019. Series C No. 392. Par. 35.

[838] Ibid. Par. 36.

[839] Ibid. Par. 37.

violating the procedural and substantive aspects of the right to life in 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.[840]
- State agents can appeal to the use of force and, in some circumstances, even lethal force. The state's power is not limited to achieving its independent purposes, regardless of the gravity of specific actions or the guilt of the authors.[841]
- 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.[842]

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.[843]

European Court of Human Rights

1. 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.[844] A column of four vehicles arrived at the Spała Sports Centre, accompanied by two persons, G.B. and T.N. Suddenly,[845] several armed men jumped out of the cars. It later

[840] Ibid. Par. 63.

[841] Ibid.

[842] Ibid. Par. 70.

[843] Ibid. Par. 88.

[844] ECtHR. Case of Wasilewska and Kalucka v. Poland. (Applications nos. 28975/04 and 33406/04). Strasbourg. Judgment 23 February 2010. Par. 6.

[845] Ibid. Par. 7.

turned out that they were police officers from the Łódź and Tomaszów Mazowiecki police forces, as well as a special anti-terrorist group. There were no visible signs indicating they were from the police.[846]

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.[847] 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.[848] 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.[849] The Court decided that the State was responsible for violating the substantive and procedural aspects of the right to life by the 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.[850]
- 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.[851]

[846] Ibid. Par. 8.

[847] Ibid. Par. 9

[848] Ibid. Par. 10.

[849] Ibid. Par. 13.

[850] Ibid. Par. 35.

[851] 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.[852]
- The Court has held that the opening of fire should, whenever possible, be preceded by warning shots.[853]
- **Procedural Aspects:**
- The deliberate or intended use of lethal force is only one factor to consider in assessing its necessity.[854]
- 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.[855]
- The investigation must afford a sufficient element of public scrutiny of the investigation or its results.[856]

2. 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.[857] On July 19, 20, and 21, 2001, the G8 summit was held in Genoa. Numerous *"anti-globalisation"* demonstrations[858] were staged in the city, and the Italian authorities implemented substantial security measures. 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.[859] 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—

[852] Ibid. Par. 42.

[853] Ibid. Par. 43.

[854] Ibid.

[855] Ibid. Par. 60.

[856] Ibid.

[857] ECtHR. Case of Giuliani and Gaggio v. Italy. (Application no. 23458/02). Strasbourg. Judgment 24 March 2011. Par. 11.

[858] Ibid. Par. 12.

[859] Ibid. Par. 22.

one of them, M.P.,[860] 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.[861]

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 either the procedural or substantive aspects 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.[862]
- 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.[863]
- The Court cannot help 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.[864]
- The Court concludes that lethal force was absolutely necessary in the instant case *"in defence of any person from unlawful violence"* within the meaning of Article 2.2. (a) of the Convention.[865]
- 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.[866]
- 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 establish

[860] Ibid. Par. 23.

[861] Ibid. Par. 24.

[862] Ibid. Par. 187.

[863] Ibid.

[864] Ibid. Par. 183.

[865] Ibid. Par. 194.

[866] Ibid. Par. 208.

a system of adequate and effective safeguards against arbitrariness, abuse of force, and even avoidable accidents.[867]

- 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.[868]
- 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.[869]
- 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.[870]
- 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.[871]
- 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.[872]
- 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 preeminence of respect for human life as a fundamental value.[873]

[867] Ibid.

[868] Ibid. Par. 244.

[869] Ibid. Par. 245.

[870] Ibid. Par. 249.

[871] Ibid.

[872] Ibid.

[873] 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.[874]

Procedural Aspects:

- When there have been criminal proceedings in the domestic courts, 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.[875]
- 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.[876]
- The responsibility of a State under the Convention, arising from 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.[877]

3. 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.[878] 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 and June 1990[879] and the relatives of persons who died during those events. Three people were killed by the shots fired in the Ministry of the Interior.[880] It was in those circumstances that, at about 6 p.m. on 13 June 1990, when he was a few meters away from one of the doors of the

[874] Ibid. Par. 251.

[875] Ibid. Par. 182.

[876] Ibid. Par. 179.

[877] Ibid.

[878] ECtHR. Case of Mocanu and others v. Romania. (Applications nos. 10865/09, 45886/07 and 32431/08). Strasbourg. Judgment 17 September 2014. Par. 11.

[879] Ibid. Par. 13.

[880] Ibid. Par. 43.

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 the presence of the police officers and service members, 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.[881] Mr. Stoica woke up at around 4.30 a.m. in the Floreasca Hospital in Bucharest.[882] The Court declared that there was a procedural breach of the right to life regarding the lawsuit interposed, which 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."*[883]

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.[884]
- 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.[885]

[881] Ibid. Par. 51.

[882] Ibid. Par. 52.

[883] Ibid. Par. 137.

[884] Ibid.

[885] Ibid. Par. 135.

• 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 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.[886]

IV. Forced disappearances

Inter-American Court of Human Rights

1. 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 this country. These disappearances had a similar pattern that was initiated through the following: surveillance of the victim. Then, there was a violent kidnapping by armed men dressed as civilians with vehicles without official identification and polarised windows.[887]

Saúl Godínez Cruz disappeared on the 22nd of July 1982 after leaving his house on a motorbike to work as a professor.[888] The Court determined that the State was guilty of violating both the procedural and substantive aspects of the right to life in this homicide through the actions of the 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.[889]

• States must be capable of assuring the plain and free exercise of human rights. Due to this obligation, States must prevent violations of human rights.[890]

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[886] Ibid. Par. 136.

[887] IACtHR. Case Godínez Cruz v. Honduras. Merits, Reparations and Costs. Judgment 20 January 1989. Series C No. 5. Par. 3.

[888] Par. 3,4,5.

[889] Ibid. Par. 171.

[890] Ibid. Par. 175.

- 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.[891]
- 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.[892]
- 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.[893]

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 must impose pertinent sanctions and ensure that the victim, or their relatives in their case, receive adequate reparation.[894]
- 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.[895]
- The state must compensate the victims for the prejudicial consequences.[896]
- 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. In

[891] Ibid. Par. 186.

[892] Ibid. Par. 175.

[893] Ibid.

[894] Ibid. Par. 184.

[895] Ibid. Par. 175.

[896] Ibid. Par. 185.

these cases, the requested criminal investigation was not even conducted, and no procedure was followed.[897]

- 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 regarding the continuity of the State, responsibility persists despite changes in government over time. Primarily, between the moment the illicit act is committed and when it is declared, responsibility is generated.[898]

2. 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 Customs office *"Las Manos"*, Department of El Paraíso, on December 11, 1981, which means they were last seen in this country. Despite what has been established previously, the Court determined that in the present case, it has not been proven that Francisco Fairén Garbi and Yolanda Solís Corrales disappeared due to a cause imputable to Honduras, whose responsibility has not been determined.[899]

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 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.[900]
- The population considered this a public and notorious fact. The kidnappings were perpetrated by military agents, police agents, or staff under their direction. [901]
- The victims were generally considered dangerous persons by the authorities of the State.[902]

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[897] Ibid. Par. 188.

[898] Ibid. Par. 192, 194.

[899] IACtHR. Case Fairén Garbi and Solís Corrales v. Honduras. Merits, Reparations and Costs. Judgment 15 March 1989. Series C No. 6. Par. 139-145.

[900] Ibid. Par. 146-152.

[901] Ibid.

[902] Ibid.

- The persons kidnapped were bandaged, taken to secret and irregular places of detention and moved from one of these places to another.[903]
- 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. [904]
- 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 defence of human rights, such as the executive judges in recourse of personal exhibition. This attitude was also evident in cases of individuals who later reappeared in the hands of the same authorities that had systematically denied having them in their power or knowing their fate. [905]

Procedural Aspects:

- The attempted legal cases were processed slowly and disinterestedly, and some were finally dismissed.[906],[907]
- 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.[908]
- 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.[909]

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[903] Ibid.

[904] Ibid.

[905] Ibid.

[906] Ibid.

[907] 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.

[908] IACtHR. Case Fairén Garbi and Solís Corrales v. Honduras. Merits, Reparations and Costs. Judgment 15 March 1989. Series C No. 6. Par. 139-145.

[909] Ibid. Par. 158.

3. Case Goiburú and others v. Paraguay. Judgment 22 September 2006:

Facts: General Alfredo Stroessner's military dictatorship in Paraguay began with a coup d'état in 1954 and lasted for 35 years, until it was overthrown by a coup d'état led by his father-in-law, General Andrés Rodríguez.[910]

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.[911]

The doctor Agustín Goiburú was kidnapped on 9 February 1977 when he was leaving the Hospital San Martín. Doctor Goiburú's disappearance reveals a coordinated action between the Paraguayan and Argentine security forces within the Condor operation. 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 in the region of the *"Cono Sur"* (southern cone) assumed power or were in control during the 1970s, which allowed for repression against people labelled as *"subversive elements"* to escalate 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.[912]

The operation known as *"Operation Cóndor"* took place, a key name given to the alliance that united the security forces and intelligence services of the dictatorships in the southern cone in their fight against and repression of persons identified as subversive elements. The activities deployed as part of this Operation were coordinated by the military of the countries involved. Such an operation systematised

[910] IACtHR. Case Goiburú and others v. Paraguay. Merits, Reparations and Costs. Judgment 22 September 2006. Series C No. 153. Par. 56.

[911] Ibid Par. 61.

[912] Ibid. Par. 61.5.

the covert coordination between the *"security, military forces and services of intelligence"* of the region more effectively, which the CIA, the agency of intelligence, among other US agencies, 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.[913] 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 sufficient to consider the context in which the facts permeate and condition the State's international responsibility concerning the obligation to respect and guarantee the rights established in the Convention.[914]

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*.[915]
- 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.[916]
- A judgment constitutes a form of reparation *per se*. The Court determines that the State must comply with its obligation to investigate the denounced facts, identify, judge, and sanction the responsible parties, and fulfil other judicial commitments and processes entrusted to the State.[917]

[913] Ibid. Par. 61.6.

[914] Ibid. Par. 62, 63.

[915] Ibid. Par. 84.

[916] Ibid. Par. 122.

[917] Ibid. Section XIII.

4. 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 information about the repair of the damage caused and uncertainty about the whereabouts of the victims.[918]

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.[919] The Court determined that the State was 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.[920]
- The IACtHR determines that the State must compensate for material and immaterial damage.

5. 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,[921] in the context of Brazil's military dictatorship

[918] IACtHR. Case Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment 1 September 2010. Series C No. 217. Par. 49-75.

[919] Ibid.

[920] Ibid. Par. 166, 174.

[921] A guerrilla group originated in the Communist Party of Brazil established as an internal enemy.

between 1964 and 1985.[922] 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.[923] 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 *iuris tantum*[924] concerning mothers and fathers, daughters, sons, husbands, wives, and permanent partners who always correspond to the particular circumstances of the case.[925]
- 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.[926]

6. 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. [927]

Furthermore, the Commission alleged the suppression of the identity and nationality of María Macarena Gelman García Iruretagoyena, daughter of María Claudia García

[922] 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.

[923] Ibid. Par. 81-93.

[924] 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.

[925] 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.

[926] Ibid. Section XII, II. Par. 9.

[927] IACtHR. Case Gelman v. Uruguay. Merits, Reparations and Costs. Judgment 24 February 2011. Series C No. 221. Par. 44-52.

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, the Court accepted the partial acknowledgement of international responsibility made by the State.[928] 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, as well as the organs of the United Nations and other universal and regional organisations dedicated to the protection of human rights, have consistently expressed their views on the incompatibility of amnesty laws concerning serious violations of human rights and international law, as well as states' international obligations.[929]

7. 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.[930] The Court verified the facts and decided that it accepted the acknowledgement of the international responsibility effected by the State.

Standards:

[928] Ibid. Par. 2.

[929] Ibid. Par. 195.

[930] IACtHR. Case Contreras and others v. El Salvador. Merits, Reparations and Costs. Judgment 31 August 2011. Series C No. 232. Par. 2, 41-55.

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"*. The protection of the civilian population in the armed conflict corresponds to the State, especially children who are in a situation of grave vulnerability and risk.[931]
- 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.[932]

European Court of Human Rights

1. Case Kurt v. Turkey. Judgment 25 May 1998:

Facts: The facts surrounding the disappearance are disputed.[933] From November 23 to 25, 1993, security forces, comprising 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.[934]

When the soldiers gathered the villagers in the schoolyard on November 24, 1993, they were looking for Üzeyir Kurt, who was not present at the time. He was hiding in his aunt's house. The soldiers went to that house and took Üzeyir from there. The morning of November 25, 1993, was the last time the applicant (mother of the alleged victim) saw Üzeyir. The applicant maintains no evidence that he was seen elsewhere after this time.[935]

On 30 November 1993, the applicant received a response from Captain Izzet Cural at the provincial gendarmerie headquarters,[936] stating that it was supposed that Üzeyir had been kidnapped by the PKK (the Kurdish Workers' Party). The Government submitted that there were substantial grounds for believing that Üzeyir Kurt had joined

[931] Ibid. Par. 100, 108.

[932] Ibid. Par. 108.

[933] ECtHR. Case of Kurt v. Turkey. (Application no. 15/1997/799/1002). Strasbourg. 25 May 1998. Par. 8, 9.

[934] Ibid. Par. 14.

[935] Ibid. Par. 15.

[936] Ibid. Par. 16.

or been abducted by the PKK.[937] 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.[938]
- A *"disappearance"* is seen as constituting a violation of the individual's liberty, security, and other fundamental rights.[939]
- The gravity of the violations of the rights attendant on a disappearance has led the United Nations Human Rights Committee to conclude, under 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.[940],[941]

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[937] Ibid. Par. 28.

[938] Ibid. Par. 68.

[939] Ibid. Par. 69.

[940] Ibid.

[941] United Nations General Assembly. *International Covenant on Civil and Political Rights*. Adopted 16 November 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 their 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 authorise 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 a pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may

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.[942]
- 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.[943]

2. Case of Ertak v. Turkey. Judgment 9 May 2000:

Facts: The facts surrounding the disappearance of Mehmet Ertak are disputed.[944] Between 18 and 20 August 1992, several people were taken into police custody at the Şırnak gendarmerie command and security police headquarters. 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 identification papers, and one of them asked which one belonged to 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,[945] 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.[946] 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

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.

[942] ECtHR. Case of Kurt v. Turkey. (Application no. 15/1997/799/1002). Strasbourg. 25 May 1998. Ibid. Par. 108.

[943] Ibid. Par. 69.

[944] Ibid. Par. 8.

[945] Ibid. Par. 17.

[946] Ibid.

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 of his subsequent fate.[947]

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).[948],[949]
- 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

[947] Ibid. Par. 18.

[948] Ibid. Par. 18.

[949] 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 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.

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.[950]

Procedural Aspects:

- 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.[951]

3. 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.[952] 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 and later released. 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.[953] The Court decided that the State was responsible for the

[950] ECtHR. Case of Ertak v. Turkey. (Application no. 20764/92). Strasbourg. 9 May 2000. Par. 134.

[951] Ibid. Par. 134.

[952] ECtHR. Case of Salman v. Turkey. (Application no. 21986/93). Strasbourg. 27 June 2000. Par. 1, 6, 8, 9, 10, 11.

[953] Ibid. Par. 32.

violation of the substantive and procedural aspects of the right to life and the prohibition of torture by this homicide committed by the action of security forces.

Standards:

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.[954]

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.[955]
- 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.[956]

4. 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 armed men taken away, was found killed outside Diyarbakır.[957] 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 spoke with Mehmet Şerif Avşar and stated that they would take him into custody. The seven men took Mehmet Şerif Avşar from the shop, placing him in a white Toros

[954] Ibid. Par. 99.

[955] Ibid. Par. 100.

[956] Ibid.

[957] ECtHR. Case of Avsar v. Turkey. (Application no. 25657/94). Strasbourg. 10 July 2001. Par. 8

car.[958] The Court established that the State was guilty of violating both the substantive and procedural aspects of the right to life through this homicide committed by 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.[959]
- 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.[960]
- 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.[961]

Procedural Aspects:

- The Court considers that taking a person unlawfully, without a judicial warrant and not giving this person the right to a fair trial violates Article 6 of the European Convention on Human Rights.[962],[963]

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[958] Ibid. Par. 10.

[959] Ibid. Par. 390.

[960] Ibid.

[961] Ibid. Par. 387, 388, 389.

[962] Ibid.

[963] 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 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;

- 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.[964]
- 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. The form of investigation that will achieve those purposes may vary in different circumstances. However, regardless of the mode employed, the authorities must act on their own 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.[965]
- 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.[966]
- The fact that one suspect, amongst several, has succeeded in escaping the criminal justice process is not conclusive of a failure by the authorities.[967]

5. 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.[968] He was a political journalist and the editor-in-chief of Ukrayinska Pravda, an online newspaper. He was known for

(c) to defend himself in person or through legal assistance of his 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.

[964] ECtHR. Case of Avsar v. Turkey. (Application no. 25657/94). Strasbourg. 10 July 2001. Par. 396, 397, 398.

[965] Ibid. Par. 391.

[966] Ibid. Par. 403.

[967] Ibid. Par. 404.

[968] ECtHR. Case of Gongadze v. Ukraine. (Application no. 34056/02). Strasbourg. 8 February 2006. Par. 9, 10.

criticising those in power and actively participating in awareness-raising in Ukraine 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.[969] 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, to the date of the judgment.[970] The Court determined that the State was responsible for the substantive and procedural violation of the right to life by the 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.[971]
- 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.[972]
- 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

[969] Ibid. Par. 18, 20.

[970] Ibid.

[971] Ibid. Par. 164.

[972] Ibid. Par. 164.

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 which, judged reasonably, might have been expected to avoid that risk.[973]

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.[974]

6. Case of Medova v. Russia. Judgment 5 June 2009:

Facts: The applicant (Mrs. Medov's wife) submitted that on June 15, 2004, at approximately 8 p.m., her husband left his temporary home in Nazran in his car.[975] He did not come back home that night. On 16-17 June 2004, the applicant's husband called his brother and reported 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 June 17, 2004, the Medovs were informed that their son, Mr. Adam Medov, had been 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 June 15, 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, whose name he did not know. The police officer stated that Mr. Medov had been apprehended by eight men, four of whom were of Russian origin and four of whom were 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.[976] The Court determined that the State was responsible for the procedural aspect of the right to life in this homicide, as a result of the actions 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

[973] Ibid. Par. 165.

[974] Ibid. Par. 165.

[975] ECtHR. Case of Medova v. Russia. (Application no. 25385/04). Strasbourg. 5 May 2009. Par. 7, 8, 9, 10, 11.

[976] Ibid.

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.[977]

7. Case of Varnava and others v. Turkey. Judgment 18 September 2009:

Facts: The complaints raised in this application stem from the Turkish military operations in Northern Cyprus in July and August 1974, as well as the ongoing division of the territory of Cyprus.[978] These events gave rise to four applications by the Government of Cyprus against the respondent State, leading to various findings of Convention violations. For example, the following 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 8-9 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.[979] 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.[980] 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.[981]

The respondent Government disputed that the applicants had been taken into captivity by the Turkish army during the military action in Cyprus in 1974.[982] The Court

[977] Ibid. Par. 110.

[978] 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.

[979] Ibid. Par. 24, 25

[980] Ibid.

[981] Ibid.

[982] Ibid. Par. 85.

determined that the State was responsible for violating the procedural aspect of the right to life by the 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 State and there is *prima facie* evidence that the State 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. 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.[983]
- 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.[984]

[983] Ibid. Par. 184.

[984] Ibid. Par. 192.