| Chapter 10 |

Significance of the Regional Human Rights Mechanisms: Interactions Between the Inter-American and European System of Human Rights

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ABSTRACT

Over the years, the American and European system of human rights protection have developed their legal ecosystems, which address human rights violations. However, both systems differ based on numerous factors, including legal traditions, legal systems, culture, human rights challenges, resources and other particularities of the region. Nonetheless, both systems share certain similarities as well. They are both based on fundamental values enshrined in the Universal Declaration of Human Rights (UDHR) and initially shared the same institutional blueprint, which was procedurally visible before the adoption of Additional Protocol No. 11 to the European Convention of Human Rights (ECHR). Even though the approach to certain rights and their interpretation by both European and Inter-American Courts may differ, both systems interact and influence each other. This relation is visible in the jurisprudence of both Courts. Both approach certain rights or freedoms similarly and refer to each other's case laws. This chapter compares both systems and examines their mutual influences.

KEYWORDS

Inter-American Court of Human rights, European Court of Human Rights, ECHR, ACHR, case-law, regional human rights systems, Inter-American human rights protection system

1. Introduction

Comparing two regional human rights systems is not easy. The concept of the coexistence of universal human rights protection system and regional systems are based on the assumption that the regional human rights systems will differ based on numerous factors, such as legal traditions, legal systems, culture, religion, human rights challenges, resources and other particularities of the region. Adopting different

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approaches is necessary to address the human rights challenges in the regions more effectively. Regional human rights systems should provide legal and procedural mechanisms tailored for the needs of the region and acceptable to the states parties to proceed with ratifications. Furthermore, they must remain mindful of the cultural and traditional context of human rights. The African system sets the perfect example for this necessity. It focuses on individuals and refers to the 'peoples'.[1] This is a clear reference to the African culture, in which a person is perceived as an individual and as a member of a group, such as tribal, national, etc.

In regional human rights systems, it is crucial to adopt solutions tailored to address certain issues of a particular region. The differences will evolve over time and will result in establishing legal ecosystems that gradually vary. To some extent this may mean the existence of substantial differences between particular regional human rights protection systems. Despite such differences, regional human rights systems do not operate in vacuum and influence each other. Such mutual influences are noticeable between regional systems and between universal and regional systems.

Regional legal systems may implement human rights more effectively by giving states levers to influence the conduct of a state found to be in violation. Regional institutions possess local expertise and are better equipped to assess the significance of historical and legal facts in human rights claims.[2] In comparison to the universal human rights system, regional systems will not perceive human rights protection identically. Their insight into regional contexts will enable greater cultural and ideological homogeneity in a region. It may permit agreement on a fuller list of human rights or their detailed definition than the 'universal' processes have achieved.[3]

Even though both the European Convention on Human Rights (ECHR)[4] and American Convention on Human Rights (ACHR)[5] were inspired by the Universal Declaration of Human Rights (UDHR),[6] their differences are clearly visible. The ACHR was adopted after the ECHR and the two Covenants (International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)). This enabled wider insight in other human rights protection systems. Despite similar backgrounds, some of their provisions went in different directions.[7]

Nevertheless, there are several similarities. Despite being created in different decades, in the late 1950s and 1970s, both the European Court of Human Rights (ECtHR) and Inter-American Court of Human Rights (IACtHR) were based on the same institutional blueprint. They had the power to interpret the respective Conventions.

1 See: African Charter on Human and Peoples' Rights, 27 June 1981, entered into force 21 October 1986.

2 Neuman, 2008, p. 106.

3 Ibid.

4 European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms), 4 November 1950.

5 American Convention on Human Rights (Pact of San José), San José, 22 November 1969.

6 Universal Declaration of Human Rights, UN General Assembly Resolution 217A, 10 December 1948.

7 E.g. Arts. 14 and 18 of the ACHR.

Furthermore, both Courts would work with a regional human rights commission that would function as a quasi-judicial filter. Additionally, they would serve as supranational bodies and would be open to applicants who had exhausted all available domestic remedies.[8]

The initial legal and socio-political of the IACtHR and ECtHR were significantly different. The ECtHR was established as a 'product of a Cold War political compromise'[9] or to 'fine-tune established democracies and prevent them from backsliding into authoritarianism'.[10] However, the IACtHR was operating in a region 'characterised largely by authoritarian regimes, mass atrocities, and violent human rights violations, such as massacres in indigenous communities and prisons, as well as widespread forced disappearances of political dissidents'.[11] Although a lot has changed since then, it remains clear that the socio-political context significantly impacted the way both Courts operated, their approach to human rights protection and their evolution.

Before focusing on the interactions between the Inter-American and European systems of human rights regarding their jurisprudence, it is crucial to examine the similarities and differences between both systems concerning their institutional structure and organisation. Moreover, it is essential to analyse the differences and similarities between the two Conventions.

2. American and European Regional Human Rights Protection Systems: Institutional Framework

As mentioned, both the ECHR and the ACHR were conceptually based on the UDHR. Since the ACHR was established later, it was partly influenced by the ECHR system and both Covenants as well. Hence, the ECHR and ACHR, to some extent and despite visible differences, were similar in the scope of the rights protected and in their institutional sphere.

The ECtHR was established in 1959; however, it became active in the 1990s. This change was introduced by Protocol No. 11 to the ECHR.[12] The Protocol was adopted in 1994 and entered into force in 1998. It completely remodelled the ECHR institutional system. The European Commission on Human Rights (ECmHR) was decommissioned and individual applications could be brought directly to the ECtHR. This resulted in the Court opening up for individual applications, with an unprecedented increase in applications and its scale. Before the Protocol, in the 39 years since it was established (1959-1998), the Court gave 837 judgments. Three years later, in 2001, it gave 888

8 Yildiz, 2020, pp. 312–313.
9 Madsen, 2016, p. 141.
10 Yildiz, 2020, p. 313.
11 Cavallaro and Brewer, 2008, p. 774.
12 Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, 11 May 1994, ETS No 155.

judgements.[13] Hence, it gave more judgments in a single judicial year than nearly 40 years of its existence.

The ECtHR went through different stages in its functioning and number of applications. The initial 20 years were relatively calm.[14] At the time, the Court gave one judgment per year, on average. It was the time of establishing the ECtHR's jurisprudence regarding basic terminologies and interpretations of the Convention.[15] In 1970s, the Court gave several of its classical judgments, which changed the way the human rights obligations was perceived.[16] The ECtHR introduced the evolutive interpretation of the Convention, the 'living instrument' concept, which states that the 'Convention is a living instrument, which must be interpreted in the light of present-day conditions'.[17] It stressed that the Convention guarantees 'not rights that are theoretical or illusory but rights that are practical and effective'.[18] The establishment of both doctrines was crucial for ensuring the effectiveness of the rights enshrined in the Convention and guaranteeing their actualisation 'in the light of present-day conditions'. Both remain important landmarks in the ECtHR's jurisprudence. Their significantly impacted the effectiveness of the Convention system and influenced other systems of human rights protection. All the Council of Europe (CoE) Member States have signed and ratified the Convention. The only example of leaving the ECHR was Russia, which was excluded from the CoE on 16 March 2022, following the aggression on Ukraine. Russia ceased to be a party to the ECHR on 16 September 2022. However, the applications against the Russian Federation filed in the Court before this date will be examined.

The IACtHR was established in 1979, which makes it 20 years younger than the ECtHR. Nevertheless, the history of human rights protection in the Americas dates back to the American Declaration of the Rights and Duties of Man (ADRDM),[19] which was adopted in 1948, before the UDHR. Institutionally, the Inter-American Commission on Human Rights (IACmHR) was established before the IACtHR.[20] However, it is not a body of the ACHR but an organ of the Organization of American States (OAS).[21] The IACtHR started its mission in completely different circumstances than its European counterpart. It had to deal with other realities, including authoritarian regimes, mass atrocities, violence and violations of human rights.[22] Moreover, unlike the

13 ECHR, Overview 1959-2020, p. 4.
14 See: Hunneus and Madsen, 2018, pp. 140–141.
15 Dąbrowska, 2021, p. 241.
16 Ibid., p. 243.
17 ECtHR Judgment *Tyrer v. United Kingdom*, 25 April 1978, Application no. 5856/72, § 31.
18 ECtHR Judgment *Airey v. Ireland*, 9 October 1979, Application no. 6289/73, § 24; ECtHR Judgment *Tysiąc v. Poland*, 20 March 2007, Application no. 5410/03, § 113.
19 American Declaration of the Rights and Duties of Man, 2 May 1948, Ninth International Conference of American States, Art. 19.
20 More: Hunneus and Madsen, 2018, pp.139–141.
21 See: Protocol of Amendment to the Charter of the Organisation of American States („Protocol of Buenos Aires"), 27 February 1967, Art. XII, Art. XV; Dąbrowska, 2021, p. 39. See more: Chapter Institutional framework for human rights protection in Americas: The Inter-American Commission on Human Rights.
22 More: Goldman, 2009, pp. 856–887.

ECtHR, it did not have very strong support from the regional authorities, namely the OAS.[23] In the first decade of its existence, the IACtHR issued only advisory opinions, because the IACmHR did not provide any case for the Court's examination. However, later, it started to play an effective role in human rights protection in the region.[24]

Several periods of evolution can be distinguished in the Court's history. Until the 1980s, the IACtHR had to deal with brutal political regimes, which caused mass human rights violations. At that point, the states unwillingly accepted its jurisdiction. When the Court issued its first report in 1980, only Costa Rica was under its jurisdiction.[25] It was the only state that formally deposited the instrument accepting the Court's competence in general and all cases.[26] In 1986, the Commission submitted the first cases to the IACtHR. This led to the Court's first landmark judgment in *Velásquez Rodríguez v. Honduras*,[27] which concerned enforced disappearances. With this case, the Court established international human rights standards concerning enforced disappearances.[28] Subsequently, it examined several cases per year.[29]

The wider democratisation of the region was noticeable. The IACmHR and IACtHR handled cases concerning impunity, freedom of expression and due process and focused on states obligations under Article 1 para 1 and Article 2 of the ACHR, such as duties to investigate and punish those allegedly responsible for human rights violations. Subsequently, the Court was examined numerous cases concerning second generation rights, such as inequality, exclusion and poverty. These issues are particularly pressing, since the Western Hemisphere has the most inequitable distribution of wealth in the world. The IACtHR focused on particularly vulnerable groups, such as indigenous peoples, women, minorities and children, who do not fully enjoy human rights.[30]

Currently 25 (out of 35) OAS Member States have ratified the ACHR. Only 20 of those states have accepted the Court's jurisdiction. However, there is a wide discrepancy between states parties to the Convention regarding formal compliance. This is visible in the unequal acceptance of regional human rights instruments by states. One of the issues concerns ratifications. While most states in the region are engaged in human rights protection within the OAS system, certain countries, such as the US, Canada and English-speaking Caribbean states, have not ratified the ACHR and have not accepted the IACtHR jurisdiction. Moreover, two states have denounced the Convention: Trinidad and Tobago (in 1998) and Venezuela (in 2012).[31]

23 Dąbrowska, 2021, p. 245.
24 Ibid.
25 Ibid. pp. 245–246.
26 OAS, IACtHR, Annual Report of the Inter-American Court of Human Rights to the General Assembly, 1980, OEA/Ser.LIV/III.3, 15 April 1981, p. 6.
27 IACtHR Judgment *Velásquez Rodríguez v. Honduras*, 29 July 1988, Series C No. 4.
28 See: IACtHR Judgment *Fairén-Garbi and Solís-Corrales v. Honduras*, 15 March 1989, Series C No. 6; IACtHR Judgment *Godínez-Cruz v. Honduras*, 20 January 1989, Series C No. 5.
29 Dąbrowska, 2021, p. 246.
30 Grossman, 2008, p. 1268.
31 Dąbrowska, 2021, p. 247.

Despite numerous issues in the region, the IACtHR and the whole human rights protection system emphasise on the state's obligation to guarantee human rights protection. Since its establishment, this independent organ regularly verifies whether states are complying with their international obligations concerning human rights protection. Currently, the IACtHR case law is evolving and focuses on new issues.[32]

Notably, the Court does not grant only financial compensation for the violations. In the past, it resorted to other measures of reparation. The IACtHR judgements ordered states to establish a scholarship in the name of the violation victim,[33] name a well-known street or square after the deceased applicant and place a prominent plaque,[34] express public apology and recognise the international responsibility for the violation[35] or build a monument.[36] It may order guarantees of non-repetition as well. According to S.G. Puente, this is one of the most important developments in the Court's jurisprudence. These guarantees stem from the state's obligation to respect, protect and fulfil human rights under Article 1(1) of the ACHR, with the purpose of eliminating similar violations.[37] However, the ECtHR does not resort to such measures. It focuses mostly on remuneration, which may not be granted if the Court decides that the establishment of a violation constitutes sufficient satisfaction.[38] Moreover, it may focus on the state's obligation to remedy systemic or structural disfunctions within the domestic legal system.[39]

A specific aspect of the Inter-American system is the possibility of conventionality control (*control de convencionalidad*). According to this doctrine, state courts must review the compatibility of national legislation with national Constitutions and its interpretation by the IACtHR.[40] The IACtHR stated that the judiciary must exercise a sort of 'conventionality control' between the domestic legal provisions, which are applied to specific cases and the ACHR. To perform this task, the judiciary has to take into account the treaty and the IACtHR's interpretation.[41] Such interpretations oblige domestic judges to examine whether domestic regulations are in accordance with the ACHR itself and the IACtHR's jurisprudence.[42] Moreover, the IACtHR issues advisory opinions. This competence is wider and more effective than the advisory opinions issued by the ECtHR. It may focus on the ACHR's interpretation and other Conventions

32 Ibid.
33 IACtHR Judgment *Myrna Mack Chang v. Guatemala*, 25 November 2003, Series C No. 101, § 285.
34 Ibid., § 286.
35 IACtHR Judgment Moiwana Community v. Suriname, 15 June 2005, Series C No. 124, § 216.
36 Ibid., § 218.
37 Puente, 2009, p. 79 et seq.; Antkowiak, 2008, pp. 382–384.
38 ECtHR Judgment *McHugh and Others v. United Kingdom*, 10 May 2015, Application no. 51987/08 and 1,014 others.
39 See e.g.: ECtHR Judgment *Broniowski and Others v. Poland*, 22 June 2004, Application no 31443/96; more: Czepek, 2018, pp. 347–373.
40 Deftou, 2020, p. 80; More on the doctrine of conventionality control and the discussion concerning it: Contesse, 2017, p. 422 et seq.; Villagran Sandoval and Carvalho Veçoso, 2017, pp. 1608–1609.
41 IACtHR Judgment *Almonacid Arellano et al. v. Chile*, 26 September 2006, Series C No. 154, § 124.
42 Dąbrowska, 2021, p. 249.

concerning human rights protection in American states. All OAS Member States, and its organs listed in the Charter, may request such 'consultation'. States parties use the Courts' competence to issue advisory opinions extensively, which greatly contributes to the development of international human rights law.[43]

As already mentioned, institutionally, the European and Inter-American systems were similar in the first phases of their existence. The drafters of the ACHR were, to some extent, inspired by the ECHR. The IACtHR and its relationship with the IACmHR was modelled on the European human rights system of the1960s. However, several significant differences remain. First, the IACtHR possesses broader advisory jurisdiction than the ECtHR. Second, its contentious jurisdiction relates mainly to the application of the ACHR and has been extended to a few other regional human rights treaties.[44] Third, the IACmHR partly resembles the former ECmHR. The Commission predates the adoption of the ACHR and serves a broader range of promotional, monitoring and quasi-judicial functions than the ECmHR. Moreover, it is an organ of the OAS. Hence, the IACmHR retains its pre-ACHR quasi-judicial responsibilities concerning OAS Member States that have not ratified the ACHR. It may examine their compliance with human rights on the basis of the ADRDM.[45]

The only possibility to bring a case before the IACtHR leads through the IACmHR. The IACmHR may effectively withhold cases from the IACtHR, as it did in the initial years of the Court's existence. It is not possible to bypass the Commission and have the case examined only by the IACtHR.[46] The Court stressed that Article 61(2) of the ACHR clearly indicates that the Court may not deal with any matter unless the procedures before the Commission have been exhausted.[47] It stated that the IACtHR and the IACmHR have an obligation to preserve all of the remedies of the Convention for victims of human rights violations, so that they are accorded the protection to which they are entitled.[48] In recent years, the Commission has adopted a practice of presumptively referring cases in which it has found at least one violation of the ACHR to the Court; however, it retains the option of refusing.[49]

The main difference in the structures of the European and Inter-American human rights legal systems was introduced by Protocol No. 11 to the ECHR, which greatly improved individuals' access to the Court. The Protocol abolished the two-tier structure and the ECmHR, opening the possibility of bringing individual applications before the ECtHR. The original structure of the Inter-American system was similar to the European system before the Protocol. Within that framework, victims and their families could not initiate cases before the Court and had to bring their cases before

43 Balcerzak, 2008, p. 241.
44 Neuman, 2008, p. 102.
45 Ibid., p. 103.
46 See: IACtHR judgement, *Gallardo v. Costa Rica*, 13.11.1981, No. G 101/81.
47 Ibid., § 14.
48 Ibid., § 15. See more: Chapter Institutional framework for human rights protection in Americas: The Inter-American Commission on Human Rights.
49 Neuman, 2008, p. 103.

the IACmHR and request a referral to the IACtHR.[50] Individuals began to play a larger role in the court proceedings with the introduction of the new Rules of Procedure of the Court in 1997. These rules granted victims the right to participate in the court proceedings.[51] In 2001, the Court modified its Rules of Procedure to grant direct participation to the victims, their next of kin or their representatives. According to C.M. Cerna, the petitioner does not have 'direct access'; however, once the case is presented, the petitioner has *locus standi* to present their positions at all stages of the proceedings before the Court. Before this change, the petitioner was not consulted whether the case should be submitted to the Court and was subjected to the direction of the Commission's delegate.[52] The 2001 Rules of Procedure enabled victims, their next of kin and representatives to submit their brief containing pleadings, motions and evidence.[53]

Unlike the ECtHR, the IACtHR has a tradition of public hearings and including alleged violation victims and their next of kin. This was reflected in its Rules of Procedure.[54] The Court enables alleged victims to share their experience and civil society groups to list the legal arguments or remedies they deem fit at the hearing.[55] For example, during the hearing of *Nelson Carvajal Carvajal and Family v. Colombia*, the Court heard the testimony of the victim's sister, who focused on the circumstances of her brother's death and the family's suffering.[56]

The institutional framework and approach of both Courts for handling cases may seem different. Although designed similarly, the current differences in structure stem from the Protocol and its consequences, which resulted in a heavy caseload. Hence, the ECtHR had to develop new mechanisms for decreasing its caseload. Regarding the Inter-American system, some backlog exists at the Commission.[57] Furthermore, the differences between these two regional systems stem from the context and circumstances of their operations, which are based on the material differences between the ACHR and the ECHR.

50 Yildiz, 2020, p. 327.
51 IACtHR, Rules of Procedure of the Inter-American Court of Human Rights in Effect as of 1 January 1997, Arts. 22–23.
52 Cerna, 2001, p. 3.
53 See more: Yildiz, 2020, p. 328.
54 IACtHR, Rules of Procedure of the Inter-American Court of Human Rights, Approved1 by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009, Art. 25.
55 More: Yildiz, 2020, p. 329.
56 Ibid. See also: Trotti, 2017.
57 The year 2022 ended with 1,446 petitions pending notification. The year 2023 ended with 664 petitions pending notification: More: IACmHR, Annual Report 2023, p. 65.

3. American and European Regional Human Rights Protection Systems: Comparison of the ACHR and the ECHR

The differences between the American and European human rights systems are based on numerous factors. Apart from the environment, in which both regimes evolved, and their institutional framework, the core documents of both systems differ substantially. First, they were not adopted at the same time. The ECHR dates back to 1950, whereas the ACHR was adopted in 1969 and benefitted from certain experiences and solutions introduced in the ECHR. Second, the scope of the rights and freedoms protected is significantly wider in the ACHR. Apart from first generation human rights,[58] it covers second generation rights[59] and focuses explicitly on personal responsibilities.[60] However, the ECHR focuses only on first generation of human rights, leaving the scope of economic, social and cultural rights to the European Social Charter (ESC).[61] Moreover, their material differences are noticeable after an examination of particular provisions of both treaties. Both start with a preamble, referring to the UDHR and the regional heritage of human rights values. While the ACHR relates to the OAS Charter and the ADRDM,[62] the ECHR focuses mostly on 'profound belief in fundamental freedoms' shared by European countries, which are 'like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law'.[63]

The construction of the state's obligations to ensure the rights and freedoms enshrined in both treaties differs substantially. It is very concise under the ECHR: 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention'.[64] The realisation of this obligation was widely examined by the ECtHR's jurisprudence, which contributed to the development of a wide structure of states' positive obligations under the ECHR.[65] The ACHR is clearer in this respect and dedicates a chapter to this issue. Article 1 stresses the states' obligation 'to respect the rights and freedoms (...) and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination'.[66] It clarifies that 'person' means every human being.[67] Article 2 states that obligations should be realised with 'legislative or other measures as may be necessary to give effect to those rights or freedoms'.[68] This forms

58 See: ACHR, Chapter II.
59 Ibid., Chapter III.
60 Ibid., Art. 32.
61 See: European Social Charter, 18 October 1961, ETS No. 035; and Revised European Social Charter, 3 May 1996, ETS No. 163.
62 ACHR, Preamble.
63 ECHR, Preamble.
64 Ibid., Art.1.
65 More: Czepek, 2014.
66 ACHR, Art. 1, para. 1.
67 Ibid., para 2.
68 Ibid., Art. 2.

the basis for material, institutional and procedural obligations.[69] Moreover, Articles 1 and 2 of the ACHR are closely linked and, to some degree, may be co-dependent.[70]

The protection of the right to life differs between both treaties. This difference starts with the notion of 'person'. The Inter-American system interprets the 'person' as the human being.[71] Hence, Article 4 protects the right to life 'in general, from the moment of conception'.[72] However, the right to life in Article 2 of the ECHR does not go that far. It guarantees protection of 'everyone's right to life'. Nonetheless, as the ECtHR stressed in *Vo v. France*, it is neither desirable nor possible for the Court to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the ECHR.[73] Both provisions refer to the death penalty; however, the ACHR focuses on it extensively.[74] The ACHR prohibits imposing capital punishment on persons below the age of 18 years or over the age of 70 years. It further prohibits the sentencing of pregnant women.[75] Article 2 of the ECHR does not refer to death penalty in such detail. Both treaties developed additional protocols abolishing death penalty.[76] The protection of the right to life under the ECHR does not regard deprivation of life as a violation of Article 2 if it is a result of the absolutely necessary use of force. It concerns legitimate defence, effecting a lawful arrest or preventing the escape of a lawfully detained individual and quelling a riot or insurrection.[77] However, Article 4 of the ACHR does not foresee such exceptions.

Prohibition of torture and other forms of ill treatment differs under both treaties. Article 3 of the ECHR consists of one sentence: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'.[78] The necessary standards concerning Article 3 were developed in the ECtHR's jurisprudence. In comparison, Article 5 of the ACHR, guaranteeing right to humane treatment, consists of five paragraphs. It prohibits 'torture, cruel, inhuman, or degrading punishment or treatment', whereas Article 3 of the ECHR omits the adjective 'cruel'. This difference does not have severe consequences because every form of torture or inhuman treatment will, by its nature, be 'cruel'. Furthermore, Article 5 of the ACHR sets certain minimal standards, for instance, guaranteeing separation of remand prisoners from convicted persons and separation of minors form adult detainees.[79] Cases of minors are examined

69 Czepek, 2021, p. 76 et seq.
70 Ibid. See also: Hennebel, 2007, pp. 367–368.
71 ACHR, Art. 1, para. 2.
72 Ibid., Art. 4, para. 1.
73 ECtHR Judgment *Vo v. France*, 8 July 2004, App no. 53924/00, § 85.
74 ACHR, Art. 4, paras. 2–6.
75 Ibid., para 5.
76 Protocol to the ACHR to Abolish the Death Penalty, 8 June 1990, Asunción, Paraguay, 20th session of the General Assembly; Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty, Strasbourg, 28 April 1983, ETS No. 114; Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, Vilnius, 3 May 2002, ETS No. 187.
77 ECHR, Art. 2, para. 2.
78 Ibid., Art. 3.
79 ACHR, Art. 5, paras. 4–5.

by specialised tribunals and treated in accordance with their particular status.[80] The ACHR refers to the purpose of deprivation of liberty, which should aim at reforming and social readaptation of the prisoners.[81]

Some guarantees, such as freedom from slavery, servitude, forced or compulsory labour (Article 4 of the ECHR and Article 6 of the ACHR), right to personal liberty and security (Article 5 of the ECHR and Article 7 of the ACHR) and right to a fair trial (Article 6 of the ECHR and Article 8 of the ACHR) in material terms seem alike in both Conventions. Certain differences exist; however, these should be considered as minor in comparison to those arising between other provisions. Article 10 of the ACHR provides the right to compensation in the event of sentencing of an individual by a final judgment through a miscarriage of justice. It addresses this issue in a separate provision. The drafters of the ECHR did not foresee such necessity. A guarantee providing a right to compensation for unlawful arrest or detention was added to the provision safeguarding the right to liberty and security of an individual.[82]

The right to privacy refers to private life and family (life), home and correspondence in both systems. However, while the ECHR refers to 'family life', the ACHR focuses on 'family', which is entitled to separate protection under Article 17 of the ACHR. The ACHR protects individual from 'unlawful attacks on his honor or reputation' and provides the right to the 'protection of the law against such interference or attacks'.[83] The ECHR formulated Article 8 as the 'right to respect for'. This is a unique construction and only such example under the European Convention. This provision was in initially proposed as 'immunity from arbitrary interference'.[84] The construction of 'right to respect for' entails negative obligations; however, as the ECtHR stressed in *Marckx v. Begium*, it may also include positive obligations.[85] Article 8 para 2 of the ECHR provides a limitation clause regarding the right to privacy, whereas Article 11 of the ACHR did not foresee such a necessity. In turn, Article 11 guarantees the right 'to have his honor respected and his dignity recognised'.[86] This relationship to personal dignity, concerning the right to privacy, is important in the context of establishing this guarantee. It should be stressed that the ACHR rarely uses this notion. It refers to dignity only in respect to freedom from torture, forced or compulsory labour and privacy.[87]

Freedom of conscience and religion is enshrined in Article 12 of the ACHR and Article 9 of the ECHR. While the ECHR guarantees protection of freedom of thought within this provision, the ACHR connects freedom of thought with freedom of

80 Ibid., para. 5.
81 Ibid., para. 6.
82 ECHR, Art. 5, para. 5.
83 ACHR, Art.11, paras. 2–3.
84 Council of Europe, European Commission on Human Rights, Preparatory Work on Article 8 of the European Convention on Human Rights, DH (56)12, 9 August 1956, p. 3.
85 ECtHR Judgment *Marckx v. Begium*, 16 June 1979, Application no. 6833/74, § 90. See also: Czepek, 2014, p. 145.
86 ACHR, Art. 11, para. 1.
87 Ibid., Art. 5, para 2; Art. 6, para. 2; Art. 11 para. 1.

expression (Article13). Article 12 of the ACHR and Article 9 of the ECHR are mostly similar. Both provide freedom to change one's religion or belief and manifest (profess) it either individually or in community with others, in public or private.[88] Both provide limitation clauses as well.[89] Additionally, the ACHR entails prohibition of subjecting an individual to restrictions that might impair one's religion or beliefs and enshrines the guarantee to provide for the religious and moral education of children or wards following the convictions of parents or guardians.[90]

Freedom of expression is guaranteed under Article 10 of the ECHR and Article 13 of the ACHR. As mentioned, under the ACHR, freedom of expression is connected with freedom of thought. Freedom of expression in both systems is considered a key element for individual autonomy and a major tool for the functioning of democracy.[91] Both systems perceive this right as protecting dissemination of information and ideas that are received favourably or considered inoffensive or indifferent, including those that are disagreeable for the state or any sector of the population.[92] Both stress that this guarantee includes freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers.[93] The ACHR clarifies that the above provision concerns various forms of expression: oral, in writing, in print, in the form of art or through any other medium of one's choice.[94]

However, both provisions entail limitation clause for this guarantee.[95] The ECHR stresses that freedom of expression may be subject to formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.[96]

Under the ACHR, the right may not be restricted:

> 'By indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used

88 ACHR, Art. 12, para. 1; ECHR, Art. 9 para. 1.
89 ACHR, Art. 12, para. 3; ECHR, Art. 9, para. 2.
90 ACHR, Art. 12, paras. 2 and 4.
91 Hennebel and Tigroudja, 2022, p. 432.
92 IACtHR Judgment, *Granier et al. (Radio Caracas Television) v. Venezuela,* 22 June 2015, Series C No. 293. § 140; IACtHR Judgment, *„The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile,* 5 February 2001. Series C No. 73, § 69; ECtHR Judgment, *Handyside v. The United Kingdom,* 7 December 1976, Application no. 5493/72, § 49.
93 ECHR, Art. 10, para.1, ACHR, Art. 13, para. 1.
94 ACHR, Art. 13, para. 1.
95 ECHR, Art. 10, para. 2, ACHR, Art. 13, para. 2.
96 ECHR, Art. 10, para. 2.

> in the dissemination of information, or by any other means tending to impede the communication and circulation ideas and opinions.'[97]

The ACHR further prohibits war propaganda and advocacy of 'national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds.'[98]

Article 14 of the ACHR enshrines the right of reply. Neither the ECHR nor other international human rights treaties provide for such a guarantee explicitly.[99] Article 14 provides that anyone who has been injured by inaccurate or offensive statements or even by ideas disseminated must reply or make a correction by using the same medium. This provision counterbalances the broad scope of protection of freedom of expression. It is a means to compensate for the prohibition of prior censorship.[100] The right to reply is connected to freedom of thought and expression, which is reflected in the ACHR's text, whereby the right to reply directly follows the freedom of thought and expression. This guarantee enables the right to reply of individuals injured by inaccurate or offensive statements and provides a possibility of correction using the same communications outlet.[101] Article 14 para 2 stresses that the right to reply does not exhaust other forms of liability that may be imposed in case of harm to rights of others,[102] for instance, under the provisions of domestic law. Article 14 para 3 stresses that 'for the effective protection of honor and reputation', every publisher, newspaper, motion picture radio and television company should have 'a person responsible who is not protected by immunities or special privileges'.[103]

The ACHR formulates the 'right to assembly' and 'freedom of association' separately, while the ECHR joins both guarantees and provides for a joint 'freedom of assembly and association', under Article 11 of the ECHR. The right of assembly under the ACHR assumes legal protection only of 'peaceful assemblies'. In clarifies that such assembly must be unarmed ('without arms').[104] Article 15 of the ACHR entails a limitation clause in the interest of 'national security, public safety or public order, or to protect public health or morals or the rights or freedom of others'.[105] According to Hennebel and Tigroudja, Article 15 differs from other similar provisions under other human rights treaties semantically and reflects the international and regional

97 ACHR, Art. 13, para. 3.

98 Ibid., para. 5.

99 ECtHR jurisprudence raised the issue of positive obligations in regard of defamation. "ECtHR bears in mind the positive obligation on the State to ensure that persons subjected to defamation have a reasonable opportunity to exercise their right to reply by submitting a response to defamatory information in the same manner as it was disseminated" – see: ECtHR Decision *Vitrenko and Others v. Ukraine*, 16 December 2008, Application no. 23510/02.

100 Hennebel and Tigroudja, 2022, p. 466.

101 ACHR, Art. 14, para. 1.

102 Hennebel and Tigroudja, 2022, p. 467.

103 ACHR, Art. 14, para. 3.

104 ACHR, Art. 15.

105 Ibid.

consensus in this regard.[106] Article 16 of the ACHR enshrines freedom of association, which guarantees everyone 'the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes'.[107] It stresses that this provision does not bar 'the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police'.[108]

However, the ECHR guarantees the joint protection of freedom of assembly and association. Article 11 is concise in comparison to Articles 15 and 16 of the ACHR. It guarantees the right to 'freedom of peaceful assembly and freedom of association with others, including the right to form and to join trade unions for the protection of his interests'.[109] Similar to Articles 15 and 16 of the ACHR, Article 11 provides a limitation clause. The ECHR only protects the right to assembly which is 'peaceful'. This means that it does not cover a demonstration, during which the organisers and participants have violent intentions.[110] Hence, despite visible differences, both provisions have very similar scope.

Article 17 of the ACHR guarantees the rights of a family. The ECHR does not contain such an explicit provision; however, this aspect is partly covered within the right to respect for family life (Article 8 para 1) and, regarding the right to marry and to form a family, it is provided for in Article 12 of the ECHR. However, Article 17 of the ACHR goes further in this regard. It concerns the family as an entity, as a subject of protection 'by society and by the state'.[111] It confirms the importance of and legal protection granted to family, which is 'the natural and fundamental group unit of society'. Hence, it should be perceived as a particular subject of human rights protection. Paragraphs 2 and 3 of Article 17 refer to the right to marry and raise a family. Similar to Article 12 of the ECHR, this guarantee is available to the 'men and women of marriageable age'. Although the ACHR stresses the requirement of the free and full consent of the intending spouses,[112] Article 12 of the ECHR does not refer to the consent of spouses and focuses on compliance with 'national laws governing the exercise'.[113]

Article 17 of the ACHR further stresses the importance of equality of rights of spouses and 'adequate balancing of responsibilities' between them, both 'during the marriage, and in the event of its dissolution'.[114] It requires that states parties adopt provisions under domestic law to ensure the necessary protection of children on the

106 Hennebel and Tigroudja, 2022, pp. 476–477.
107 ACHR, Art. 15, para. 1.
108 Ibid., para. 3.
109 ECHR, Art. 11, para. 1.
110 E.g. ECtHR Judgment, *Kudrevičius and Others v. Lithuania*, 15 October 2015, Application no. 37553/05, § 92; 97-99.
111 ACHR, Art. 17, para. 1.
112 Ibid., Art.17, paras. 2–3.
113 ECHR, Art. 12.
114 ACHR, Art. 17, para. 4.

basis of their best interests.[115] Article 17 para 5 recognises equal protection of rights for children born out of and those in wedlock.[116] This is a unique provision compared to other international human rights treaties. It prohibits discrimination based on birth.[117] Even though the ECHR does not provide such guarantee, the Court, in *Marckx v Belgium*, found that regulations enabling differentiating legal situation of children born in and out of wedlock should be understood as discriminatory.[118] The right to family under the ACHR is a non-derogable right, that is, it cannot be suspended in time of war, public danger or other emergency that threatens the independence or security of a state.[119] This stresses the importance of the protection of the family in the American system.

The ACHR protects the right to a name, a provision that does not appear very often in international human rights treaties. The drafters of the ECHR did not foresee such a right. However, the name and surname of a person is granted certain protection in the ECtHR's jurisprudence,[120] within the ambit of private life, under Article 8 of the ECHR. Article 18 of the ACHR grants the right to a given name and surnames of one's parents or of one of them.[121] This focuses on the aspect of domestic implementation. It stresses the importance of ensuring this right by issuance of legal provisions or other measures. Moreover, the ACHR grants Article 18 a non-derogable status under Article 27 para 2.

Article 19 of the ACHR emphasises protection of the rights of the child. The ECHR does not contain such a provision; however, it safeguards the rights of children, as all the ECHR rights apply to them as well. The ACHR grants a child the 'right to the measures of protection required by his condition'. It takes into account the particular vulnerability of a child and provides them with appropriate measures of protection to remedy the vulnerability. The rights of the child are non-derogable under Article 27 para 2 of the Convention.

The ACHR in Article 20 ensures the right to nationality. If one does not have the right to any other nationality, the ACHR provides the right to a nationality of the state in whose territory a person was born. It prohibits the arbitrary deprivation of one's nationality or the changing of it.[122] However, it does not protect an individual from statelessness.[123] Neither the ECHR nor its Additional Protocols[124] recognise the right to nationality. Generally, this right cannot be protected under human rights treaties.

115 Ibid.
116 Ibid., Art. 17, para. 5.
117 Hennebel and Tigroudja, 2022, p. 514.
118 Marckx v. Begium, § 45–49.
119 ACHR, Art. 27, para. 1.
120 ECtHR Judgment, *Burghartz v. Switzerland*, 22 February 1994, Application no. 16213/90, § 24; ECtHR Judgment, *Henry Kismoun v. France*, 5 December 2013, Application no. 32265/10, § 25.
121 ACHR, Art. 18.
122 Ibid., Art. 20, paras. 1–3.
123 Hennebel and Tigroudja, 2022, p. 600.
124 See, however: Council of Europe, European Convention on Nationality, 6 November 1997, ETS No 166.

However, the ACHR refers to Article 19 of the ADRDM[125] and Article 15 of the UDHR.[126] The right to nationality cannot be subjected to any derogations under the ACHR.[127]

Article 21 of the ACHR enshrines the right to property. It entails 'the right to the use and enjoyment' of property.[128] The expropriation is possible only for reasons of public utility or social interest, must be established by law and be followed by payment of just compensation.[129] It prohibits usury and any other form of exploitation of man by man.[130] The ECHR provides for protection of property under Article 1 of the Additional Protocol No. 1 to the Convention. The guarantee concerns natural or legal persons and refers to 'peaceful enjoyment' of possession.[131] In this regard it differs slightly from the ACHR. The ECHR enables deprivation of liberty only 'in the public interest and subject to the conditions provided for by law and by the general principles of international law'.[132] The provision under the ACHR grants wider protection of property than Article 1 of the Additional Protocol of the ECHR. However, in practice, both guarantees are similar within the jurisprudence of the IACtHR and the ECtHR, respectively. Both systems interpret the notion of property in a broad sense.[133] However, the IACtHR applies an innovative approach in the right to collective property for indigenous peoples and their right to land.[134]

The ACHR enshrines the right to freedom of movement and residence. The IACtHR stressed that this right as an essential condition for the free development of the individual.[135] It includes two sets of rights: the right of all persons lawfully within a state to move freely and choose their place of residence, and their right to enter, remain in and leave the territory of the state without unlawful interference.[136] The scope of Article 22 of the ACHR is wide and grants the right to move and reside and leave a country.[137] It prohibits expelling people from the territory of the state of one's nationality or the deprivation of the right to enter it.[138] Article 22 of the ACHR

125 See: American Declaration of the Rights and Duties of Man, 2 May 1948, Ninth International Conference of American States, Art. 19.
126 UDHR, Art.15.
127 ACHR, Art. 27, para. 2.
128 Ibid., Art. 21, para. 1.
129 Ibid., para. 2.
130 Ibid., para. 3.
131 Additional Protocol to the ECHR No 1, Art. 1.
132 Ibid.
133 IACtHR Judgment *Palamara Iribarne v. Chile*, 22 November 2005. Series C No. 135; IACtHR Judgment National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru, 8 October 2020. Series C No. 413; ECtHR Judgment *Kopecký v. Slovakia*, 28 September 2004, Application no. 44912/98, § 35-52; ECtHR Judgment *Denisov v. Ukraine*, 25 September 2018, Application no. 76639/11, § 137.
134 See e.g.: *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*, 6 February 2020, Series C No. 400; *Sawhoyamaxa Indigenous Community v. Paraguay*, 29 March 2006. Series C No. 146; See more: Hennebel and Tigroudja, 2022, pp. 626–627.
135 IACtHR Judgment *Lysias Fleury et al. v. Haiti*, 23 November 2011, Series C No. 236, § 93.
136 Ibid.
137 ACHR, Art. 22, paras. 1-2.
138 Ibid., para. 5.

refers to the protection of aliens. An alien, who is residing lawfully in the territory of a state party, may be expelled only pursuant to a decision reached in accordance with law.[139] It prohibits deportation or returning of an alien to a country, where their right to life or personal freedom is in danger of being violated because of race, nationality, religion, social status or political opinions[140] and prohibits collective expulsion of aliens.[141] Article 22 para 7 grants the right to seek and be granted asylum, following domestic regulations and international treaties, in the event of being pursued for political offense-related common crimes.[142]

The ECHR does not approach this right so extensively. It only refers to freedom of movement and protection from expulsion.[143] It does not recognise the right to seek asylum. However, the ECtHR's jurisprudence regarding the protection of aliens is wide.[144] It prohibits expulsion if it would place an individual in danger due to the risk of violation of right to life and freedom from torture and ill-treatment.[145] Particularly, if there are substantial grounds for believing that the person concerned would, due to expulsion, face a real risk of being subjected in the host state to torture or ill-treatment, Article 3 imposes an obligation not to return the person to that state.[146]

The ACHR enshrines the right to participate in government. It focuses on political rights of citizens. Article 23 of the ACHR guarantees that every citizen will have the right to take part in the conduct of public affairs, vote and be elected in genuine periodic elections and have access, under general conditions of equality, to the public service of his country.[147] Article 23 represents one of the basic principles and the democratic aim of the OAS.[148] The IACtHR stresses that representative democracy is one of the pillars of the system of which the Convention forms a part and constitutes a principle reaffirmed by the OAS Charter.[149] The importance of the right to participate in government in the American human rights system is stressed by the fact that it is a non-derogable right under Article 27 para 2 of the ACHR.

However, the ECHR, in its core text, does not provide such provisions. The issue of free elections was raised in Additional Protocol No 1. Article 3 of the Additional Protocol states that states parties should 'hold free elections at reasonable intervals

139 Ibid., para. 6.
140 Ibid., para. 8.
141 Ibid., para. 9.
142 Ibid., para. 7.
143 AP No 4 to the ECHR, Arts. 3 and 4. See also: Czepek, 2024, pp. 48–60.
144 More: Karska *et al.*, 2023.
145 E.g. If following the expulsion an individual would be subjected to death penalty – see: ECtHR Judgment A.L (X.W.) v. Russia, 29 October 2015, Application no. 44095/14, § 66; ECtHR Judgment *Bader and Kanbor v. Sweden*, 8 November 2005, Application no. 44095/14, § 48.
146 ECtHR Judgment *Ilias and Ahmed v. Hungary*, 21 November 2019, Application no. 47287/15, § 126; ECtHR Judgment *Soering v. United Kingdom*, 7 July 1989, Application no. 14038/88, § 90–91, ECtHR Judgment *Vilvarajah and Others v. United Kingdom*, 30 October 1991, Application nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, § 103.
147 ACHR, Art. 23, para. 1.
148 Hennebel and Tigroudja, 2022, p. 690.
149 IACtHR Judgment *Petro Urrego v. Colombia*, 8 July 2020. Series C No. 406, § 90.

by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature'.[150] The ECtHR stressed that since Article 3 of the Additional Protocol enshrines a characteristic principle of democracy, it is 'of prime importance in the Convention system'.[151] It perceives this provision broadly, focusing on two aspects of this right: the right to vote and the right to stand for election.[152] According to the ECtHR, the unique phrasing of Article 3 of the Additional Protocol intended to give greater solemnity to the states' commitment and emphasise that they are required to take positive measures, rather than refraining from interference.[153]

Article 24 of the ACHR provides the right to equal protection. It states that 'all persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law'.[154] Equality is an important value within the American system. Article 1 para 1 of the ACHR obliges states to respect the rights and freedoms 'without any discrimination'.[155] The ECHR contains prohibition of discrimination under Article 14. It stresses that 'the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground'.[156] The scope of Article 14 was expanded by Protocol No. 12 to the ECHR, which stressed that the principle of equality is of fundamental character and all persons 'are equal before the law and are entitled to the equal protection of the law'.[157]

Both Conventions provide the right to effective remedy. This guarantee was enshrined under Article 13 of the ECHR, which states that everyone whose rights and freedoms 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'.[158] The ACHR perceives this guarantee as the right to judicial protection. Article 25 para. 1 of the ACHR guarantees:

> 'The right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognised by the constitution or laws of the state concerned or by this Convention.'[159]

Hence, the scope of Article 25 para 1 is wider than Article 13 of the ECHR. The European Convention limits the right to an effective remedy only to the rights enshrined

150 AP No 1 to the ECHR, Art. 3.
151 ECtHR Judgment *Mathieu-Mohin and Clerfayt,* 2 March 1987, App. no 9267/81, § 47.
152 Ibid., § 46–51; ECtHR Judgment *Ždanoka v. Latvia,* 16 March 2006, App. no 58278/00, §102.
153 Mathieu-Mohin and Clerfayt, § 50; ECtHR Judgment *Hirst v. United Kingdom* (No, 2), 6 October 2005, Application no. 74025/01, § 57.
154 ACHR, Art. 24.
155 Ibid., Art. 1, para. 1.
156 ECHR, Art. 14.
157 AP No 12 to the ECHR, Preamble.
158 ECHR, Art.13.
159 ACHR, Art. 25, para. 1.

in the Convention, whereas Article 25 of the ACHR refers to the fundamental rights recognised by the ACHR and the constitution or laws of the state. Moreover, under the ECHR, Article 13 is not an autonomous right and must be applied in connection with other rights or freedoms (e.g., with Article 3 of the ECHR). The ACHR does not require an alleged violation of another substantive right to claim a violation of Article 25.[160] Article 25 imposes certain positive obligations on states parties, which strengthen the guarantees of this provision. Article 25 para 2 stresses that states parties should ensure determination of rights of any person claiming a remedy by a competent authority provided by the legal system of the state, develop a judicial remedy and ensure the enforcement of the remedy by the competent authorities.[161] Article 13 of the ECHR imposes certain positive obligations on the states. However, these obligations were mostly expressed by the jurisprudence of the ECtHR. Their scope is mostly dependent on the character of the material right or freedom, which was raised in conjunction with Article 13.[162]

The ACHR provides the protection of economic, social and cultural rights, which the ECHR system does not contain. The European Convention focuses on first generation of human rights, leaving the protection of second generation to the ESC.[163] The American Convention dedicates Chapter III to economic, social and cultural rights. However, this chapter is particularly short and consists only one article. Article 26 stresses that states parties should adopt measures, 'especially those of an economic and technical nature', 'with a view to achieving progressively the full realisation of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter as amended by the Protocol of Buenos Aires'.[164] However, it does not provide subjective rights and is directed to states parties. According to Hennebel and Tigroudja, it is a normative compromise, allowing economic, social and cultural rights to appear in the ACHR without granting them a legal status.[165] Hence, the provision places the ACHR halfway between older international normative treaty instruments, such as ECHR and ICCPR, which contain no provision relating to this category of rights and treaties, and modern treaties, such as the African Charter of Human and Peoples' Rights and Arab Charter on Human Rights, which place civil and political rights and economic, social and cultural rights on equal footing and relate to individual and collective rights.[166] The IACtHR referred to the states' obligations under Article 26. It noted that the obligations regarding the progressive realisation of the economic, social and cultural rights require the continual execution

160 Hennebel and Tigroudja, 2022, p. 750.
161 ACHR, Art. 25, para. 2.
162 More on specificity of Art. 13 and its relation with other rights and freedoms: Chanturia, pp. 9–24.
163 European Social Charter, 18 October 1961, ETS No. 035; European Social Charter (revised), 3 May 1996, ETS No. 163.
164 ACHR, Art. 26.
165 Hennebel and Tigroudja, 2022, p. 759.
166 Ibid.

of actions to achieve the full enjoyment of these rights. Thus, the progressive dimension of these rights, although acknowledging the gradual nature of their realisation, includes a sense of progress, which calls for an effective improvement in the exercise of these rights, so that social inequalities are corrected and the vulnerable groups are included.[167]

Despite certain similarities, the guarantees of rights and freedoms protected within both human rights systems differ concerning the scope and formulation of particular provisions and their interpretation. The ACHR provides guarantees that the core text of the ECHR omits and the scope of certain provisions is wider under the ACHR. However, a deeper examination highlights that the ECHR system has developed wide interpretations of certain rights and freedoms within the ECtHR jurisprudence, such as Article 8. The differences between both systems stem from their regions, the scope of human rights protection within other OAS and CoE regimes, the time of adoption and the intentions of the drafters, along with the interpretation of both Conventions by the ECtHR and IACtHR.

4. The Mutual Influence of the Case Law of the Inter-American and European Systems of Human Rights

From a comparative perspective, it is crucial to examine the ECHR and ACHR based on their mutual influence. The analysis of their respective case law is crucial in this regard. The Courts may enter into judicial dialogue[168] and refer to the international standards developed within the case law of other judicial organs. The jurisprudence of other human rights bodies, universally and regionally, may develop certain interpretations of particular rights or freedoms, which serve as inspiration and a valuable comparative material.

Both Courts, and the IACmHR, enter into judicial dialogue and refer to standards of other relevant international human rights systems and their jurisprudence, universally and regionally. This means that both IACtHR and IACmHR frequently quote the ECtHR case law and vice versa. Hence, both systems, to some degree, are influenced by each other. Such exchange contributes to the development of both regional regimes and strengthens the overall standard of human rights protection. The scope of influence of the ECtHR's jurisprudence on the case law of the IACtHR and IACmHR, and the influence of the IACtHR on the ECHR case law should be examined separately.

167 IACtHR Judgment *Cuscul Pivaral et al. v. Guatemala*, 23 August 2018, Series C No. 359, §146; More: Ferrer-MacGregor, 2024, p. 217 et seq.; See also: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights : "Protocol of San Salvador" : Signed at San Salvador, El Salvador, 17 November 1988.
168 Ferrer Mac-Gregor, 2017, pp. 99–106.

4.1. The Influence of the European System of Human Rights on the Case Law of the IACMHR and the IACtHR

The ECHR system is the most effective human rights protection system worldwide. Its effectiveness stems from the reform of Protocol 11, which 'opened' the Court for individual applications. The success of the ECtHR and the scope of its jurisprudence is unprecedented. It would be difficult to compare the IACtHR and the ECtHR in their number of judgments. In 2023, the European Court decided 38,260 cases (39,570 in 2022),[169] while the Inter-American Court gave 31 judgments in 2023 (34 in 2022).[170] The wide gap shows that, even from statistical possibility, the European Court's case law influence on the IACtHR is broad. The ECtHR jurisprudence is relevant material for the interpretation of international law on human rights. The scope of the ECtHR's jurisprudence suggests that on several occasions the IACtHR may be inspired by it and refer to its case law.

This concerns the scope of interpretation of particular rights or freedoms and certain doctrines adopted by the ECtHR. An example of this approach is the evolutive interpretation of the Convention, as a 'living instrument', which should be interpreted in present-day conditions.[171] The IACtHR, in its advisory opinion 'The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law', stressed that 'this guidance is particularly relevant in the case of international human rights law, which has made great headway thanks to an evolutive interpretation of international instruments of protection'.[172] The Court emphasised that it is consistent with the general rules of treaty interpretation established in the 1969 Vienna Convention.[173] The IACtHR concluded that it must adopt such approach 'in the context of the evolution of the fundamental rights of the human person in contemporary international law'.[174]

The IACtHR referred to the ECtHR's interpretation of specificity of human rights treaties. It found that modern human rights treaties are not multilateral treaties of the traditional type, concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting states. Their object and purpose are the protection of the basic rights of individual human beings, irrespective of their nationality, against the state of their nationality and all other contracting states.[175] In this regard, the IACtHR referred to the former ECmHR, which stated that the obligations of the ECHR are of an objective character, designed to protect the fundamental rights of individual human beings from infringements, rather than create subjective and

169 ECtHR, Statistics 2023.
170 IACtHR, Jurisprudence of the I/A Court H.R.
171 ECtHR Judgment *Tyrer v. United Kingdom*, 25 April 1978, Application no. 5856/72, § 31.
172 IACtHR, Advisory Opinion, 'The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law', 1 October 1999, OC-16/99, §114.
173 Ibid.
174 Ibid., § 115.
175 IACtHR Advisory Opinion, The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75), 24 September 1982, OC-2/82, § 29.

reciprocal rights for states parties.[176] The IACtHR further referred to the ECtHR case law when it stressed that the concept of 'laws' cannot be interpreted in the abstract and must not be divorced from the context of the legal system, which gives meaning to the term 'laws' and affects its application.[177]

Neuman notes the 'regional consensus' or 'consensus within CoE member states'[178] doctrine.[179] The role of such consensus is more modest within the ACtHR's jurisprudence than within the ECtHR's case law. According to Neuman, within the European system, 'regional consensus' serves both affirmative and negative functions. The consistent approach to a particular human rights issue between the Member States may indicate the presence of an underlying European value that guides a specific interpretation of a right or its stricter application. A similar understanding of a guarantee within the CoE sometimes substitutes the comparison of national practices and may provide elements of political consent, along with evidence of normative consensus. However, the absence of such consensus may demonstrate unresolved conflicts of values or that policy regarding new social conditions is in flux.[180] Within the Inter-American system, setting international standards by referring to existing national practice would risk the adoption of low targets. Neuman further notes the relative absence of the OAS from participation in the elaboration of human rights standards. Hence, the cooperation and harmonisation of standards within the CoE and EU have produced more common basis in this regard than the efforts in the Americas.[181]

The influence of the European human rights system on its American counterpart is significant. It is particularly visible in relation to certain rights and freedoms. On many occasions the Inter-American Court refers to the case law of its European counterpart to support progressive interpretation of the ACHR or strengthen its argumentation by presenting similar reasoning adopted by the ECtHR. Such influence is visible within the scope of rights that are universally recognised and are perceived similarly. Freedom from torture and ill-treatment is an example of such guarantee. However, within the scope of this provision, the IACtHR relies on the ECtHR's jurisprudence. The Inter-American Court referred to the ECtHR's findings in *Selmouni v. France,* concerning the necessity to classify certain forms of ill-treatment as torture due to the necessity of 'vigorous response in dealing with infractions of the basic

176 ECmHR Decision, *Austria v. Italy,* 11 January 1961, Application No. 788.60, p. 19.
177 ECtHR Judgment Sunday Times v. the United Kingdom (No 1), 26 April 1979, Application no. 6538/74, § 49; IACtHR Advisory Opinion, The word „Laws" in Article 30 of the American Convention on Human Rights, 9 May 1986, OC-6/86, § 20. See also: Neuman, 2008, p. 106.
178 ECtHR Judgment *Humpert and Others v. Germany,* 14 December 2023, Application nos. 59433/18, 59477/18, 59481/18, 59494/18, § 86. In certain cases the ECtHR refers to a wider, international consensus: ECtHR Judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* 9 April 2024, Application no. 53600/20, § 333.
179 Neuman, 2008, p. 107.
180 Ibid.
181 Ibid.

values of democratic societies'.[182] Furthermore, the IACtHR relied on the ECtHR case law concerning the severe character of Article 3 violation,[183] accounting for physical suffering and moral anguish.[184]

The ECtHR's jurisprudence was quoted by the IACtHR in the issue of conditions of detention. It relied on *Kudła v. Poland*,[185] where the ECtHR stressed that, according to Article 3 of the ECHR, the state must ensure that a person is detained in conditions with due respect to his human dignity, the manner and methods used to exercise the measure does not submit them to anguish or difficulty that exceed the inevitable level of suffering intrinsic to the detention and, given the practical demands of the imprisonment, their health and well-being are adequately insured, offering them, among other things, the required medical assistance.[186] The IACtHR relied on the ECtHR's jurisprudence for the right to a fair trial (Article 6 of the ECHR and 8 of the ACHR). Within this guarantee, the Court referred to the right to trial within a reasonable time. The IACtHR agreed with the ECtHR that three factors should be taken into account in determining the reasonableness of the time: a) the case complexity, b) the procedural activity of the interested party and c) the conduct of the judicial authorities.[187]

The European standards were raised in the opinions provided by certain IACtHR judges. Such references may serve as an argumentation or recapitulation of international human rights standards. Regarding Article 6, Judge Cançado Trindade stressed that under the jurisprudence of both Courts, the 'reasonable time' contemplated in Article 8 of the American Convention is intimately linked to the effective, simple and prompt recourse contemplated in its Article 25.[188] Judge Trindade referred to the relation between Articles 6 and 13 of the ECtHR, following the interpretation adopted in *Kudła v. Poland*.[189] He criticised the ECtHR's approach. In his opinion, 'the attempt to dissociate Article 25 and Article 8 of the ACHR would be a setback to the prehistory of our Court's case-law'. He stressed that instead of continuing in the *avant garde* jurisprudence of the IACtHR, he fought to avoid a serious jurisprudential setback.[190]

The Inter-American Court included the European Court's approach regarding the freedom of expression. The ECtHR's landmark judgement, *Handyside v. The United*

182 ECtHR Judgment *Selmouni v. France,* 28 July 1999, Application no. 25803/94, § 101; IACtHR Judgment Cantoral *Benavides v. Peru,* 18 August 2000, Series C No. 69, § 99.
183 *Cantoral Benavides v. Peru,* § 95.
184 Ibid., § 102; *Soering v. United Kingdom,* § 110–111.
185 ECtHR Judgment *Kudła v. Poland*, 26 October 2000, Application No. 30210/96.
186 Ibid., § 94. IACtHR Judgment *López Álvarez v. Honduras,* 1 February 2006. Series C No. 141, § 106. See also: Zombory, 2023, p. 273 et seq.
187 IACtHR Judgment *Suárez Rosero v. Ecuador,* 12 November 1997, Series C No. 35, § 72; IACtHR Judgment *Genie Lacayo v. Nicaragua,* 29 January 1997, Series C No. 30., § 77; ECtHR Judgment, *Motta v. Italy,* 19 February 1991, Application no. 11557/85, § 17; ECtHR Judgment, *Ruiz-Mateos v. Spain,* 23 June 1993, Application no. 12952/87, § 30; IACtHR Judgment Hilaire, *Constantine and Benjamin et al. v. Trinidad and Tobago,* 21 June 2002. Series C No. 94, § 143.
188 IACtHR Judgment *López Álvarez v. Honduras,* Concurring vote of judge A.A. Cançado Trindade, 1 February 2006. Series C No. 141. § 18.
189 Ibid., § 43–48.
190 Ibid., § 49.

Kingdom, stressed that Article 10 para 2 of the ECHR is applicable to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference and to those that offend, shock or disturb the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.[191] The Inter-American Court reaffirmed this principle and similarly stated:

> 'This freedom should not only be guaranteed with regard to the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, but also with regard to those that offend, are unwelcome or shock the State or any sector of the population.'[192]

In *Herrera Ulloa v. Costa Rica*, the IACtHR summarised the ECtHR's jurisprudence regarding the scope of criticism of public officials and found that it is logical and appropriate that such statements should be accorded, under Article 13 para. 2 of the ACHR, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a democratic system. The foregoing considerations do not, by any means, signify that the honour of public officials or figures should not be legally protected; however, it should be protected in accordance with the principles of democratic pluralism.[193] Similarly, in *Ricardo Canese v. Paraguay*, the Court emphasised that politicians and individuals, who carry out activities subject to public scrutiny, must be much greater than that of individuals.[194]

The Inter-American Court was, to some degree, inspired by the ECtHR's construction of procedural obligations. Ironically, before that, the IACtHR inspired the European Court's adoption of states procedural obligations.[195] The Inter-American Court, in the Pueblo Bello Massacre case, reiterated that the ECtHR, within Article 2, read together with Article 1 of the Convention, developed the theory of 'procedural obligation' to carry out an effective official investigation in cases of violations of that right. Furthermore, in *Ergi v. Turkey*, the ECtHR decided that, even though there was no hard evidence that the security forces had caused the victim's death, the state had failed in its obligation to protect the right to life of the victim, taking into account the conduct of the security forces and the absence of an adequate and effective investigation, so that it had violated Article 2 of the ECHR.[196] On this basis, the IACtHR

191 *Handyside v. The United Kingdom*, § 49.

192 Ibid.; *„The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*, § 69; *Sunday Times v. the United Kingdom* (No 1), § 59 and 65; ECtHR Judgment.

Lingens v. Austria, 8 July 1986, Application no. 9815/82, § 41; ECtHR Judgment *Otto-Preminger-Institut v. Austria*, 20 September 1994, Application no. 13470/87, § 49; IACtHR Judgment *Ivcher Bronstein v. Peru*, 6 February 2001, Series C No. 74, § 152.

193 IACtHR Judgment *Herrera Ulloa v. Costa Rica*, 2 July 2004. Series C No. 107, § 128.

194 IACtHR Judgment *Ricardo Canese v. Paraguay*, 31 August 2004. Series C No. 111, § 103.

195 More: Subsection 4.2. of the Chapter.

196 ECtHR Judgment *Ergi v. Turkey*, 28 July 1998, Application no. 23818/94, § 85-86. See also: IACtHR Judgment the *Pueblo Bello Massacre v. Colombia*, 31 January 2006, Series C No. 140, § 147.

concluded that the state had not complied with its obligation to guarantee the human rights embodied in Articles 4, 5 and 7 of the ACHR concerning the persons disappeared and deprived of life, because it had failed to conduct a genuine, complete and effective investigation into the facts that motivated this judgment.[197] Interestingly, the IACtHR found the violation of Article 5 (right to humane treatment) regarding victims of abduction.[198] However, it did not adopt the standard of proof 'beyond reasonable doubt', applied by the ECtHR. Hence, it decided that the right to human treatment of the victims was violated. In similar cases, the ECtHR rarely found a violation of Article 3 concerning the treatment of victims of forced disappearances.[199] Hence, the IACtHR chooses particular elements of the ECtHR's jurisprudence as inspiration.

Similarly, the IACtHR is inspired by the ECtHR case law regarding Article 8 of the ECtHR to some degree. Following the European Court's approach, the definitional methodology is negative and non-exhaustive.[200] The IACtHR states that no one may be the object of arbitrary or abusive interference with their private life, including family life, home and correspondence. The sphere of privacy is characterised by being exempt from and immune to abusive and arbitrary invasion or attack by third parties or public authorities.[201] This guarantee emphasises the regulation of matters by the state, when necessary, to protect the rights of others[202] or encompassing a range of factors pertaining to the dignity of the in dividual (e.g., the ability to pursue the development of one's personality and aspirations, determine one's identity and define one's personal relationships).[203] The IACtHR referred to the ECtHR's jurisprudence in this regard, noting that the concept of private life is a wide-ranging term, which cannot be defined exhaustively,[204] but includes, among other protected forums, sexual life,[205] and the right to establish and develop relationships with other human beings.[206] Moreover, the Inter-American Court applied the European Court's jurisprudence in the case concerning rape.[207] IACtHR does not seem to be interpreting Article 11 of the ACHR in a scope scope as broad as this of Article 8 of the ECHR. In this regard, the references to the European case law seem to be rather modest.

Despite wide possibility of resorting to the ECtHR's jurisprudence, the IACtHR does not follow its jurisdiction in all aspects. In certain areas, such as freedom of

197 *Pueblo Bello Massacre v. Colombia*, § 150.

198 Ibid., § 155.

199 More: Czepek, 2013, p.12 et seq.

200 Hennebel and Tigroudja, 2022, p. 404.

201 IACtHR Judgment *Tristán Donoso v. Panama*, 27 January 2009, Series C No. 193, § 55.

202 IACmHR Decision *María Eugenia Morales de Sierra v. Guatemala*, 19 January 2001, 4/01, case 11.625, § 47.

203 Ibid., § 46.

204 ECtHR Judgment *Niemietz v. Germany*, 16 December 1992, Application no. 13710/88, § 29, ECtHR Judgment *Peck v. United Kingdom*, 28 January 2003, Application no. 44647/98, § 57.

205 ECtHR Judgment *Dudgeon v. the United Kingdom*, 22 October 1981, Application no. 7525/76, § 41, ECtHR Judgment *X and Y v. the Netherlands*, 26 March 1985, Application no. 8978/80, § 22.

206 *Niemietz v. Germany*, § 29; *Peck v. United Kingdom*, § 57.

207 IACtHR Judgment *Fernández Ortega et al. v. Mexico*, 30 August 2010. Series C No. 215, § 129.

expression, the Inter-American Court refers widely to the European Court's case law, whereas in others, such as the right to respect for private and family life, it seems to be reluctant to 'import' the Strasbourg viewpoint. The IACtHR refers mostly to 'classic' European case law. Notably, it does not quote latest ECtHR judgments. Instead, it focuses on older jurisprudence from the 1990s, 2000s or even earlier. In this regard, IACtHR seems to choose case law that 'stood the test of time' and implement interpretation that have proven its value over time. Therefore, the IACtHR does not follow all the progressive approaches adopted by the Court, for instance, regarding positive obligations of the state or within the broad interpretation of right to respect private and family life. The American Court is mindful of certain differences between both systems and, in conformity with Judge Trindade's statement, prefers to continue the *avant garde* jurisprudence of the IACtHR and avoid a serious jurisprudential setback.[208]

4.2. The Influence of the Inter-American System of Human Rights on the Protection of Human Rights in Europe

The relation of the two regional human rights protection systems is dominated by the wide influence of the ECtHR on the IACtHR. The vast disproportion in the scope of jurisprudence and its impact might suggest such relation. However, this is not the case. The Inter-American Court is not a passive importer of human rights interpretations, is selective and engages in innovative interpretations.[209] In this regard, the Inter-American Court aspires to be also the source of human rights interpretations.[210]

The IACtHR's very first judgment in the Velásquez Rodríguez case was proof of high-quality interpretation of human rights obligations, deriving from the American Convention. In the judgment, the Court examined the case of forced disappearance of Angel Manfredo Velásquez Rodríguez. He was abducted from a parking lot and his whereabouts since then were unknown. His kidnapping was carried out by persons connected with the Armed Forces or under its direction.[211] This was an example of systematic practice of disappearances.[212] The Court took this opportunity to examine the state's positive obligations in the right to life and contribute greatly to their development. The Court stated that states parties have an obligation to 'ensure' the free and full exercise of the rights recognised by the Convention to every person subject to its jurisdiction. This implies the duty to organise a governmental apparatus and, in general, all the structures through which public power is exercised, so that they can juridically ensure the free and full enjoyment of human rights. Consequently, states must prevent, investigate and punish any violation of the rights recognised by the Convention and, if possible, attempt to restore the right violated and provide

208 *López Álvarez v. Honduras,* Concurring vote of judge A.A. Cançado Trindade, § 49.
209 Neuman, 2008, p. 116.
210 Ibid.
211 *Velásquez Rodríguez v. Honduras,* § 147 e.
212 Ibid., § 147 g. See also: Grossman, 2008, p. 1269 et seq.

compensation, as warranted, for damages.[213] The IACtHR stressed that states parties have an obligation to take reasonable steps to prevent human rights violations and use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, identify those responsible, impose appropriate punishment and ensure the victim adequate compensation.[214]

The above statement was fundamental for the development of the IACtHR, which at the time was giving its first judgment, and all human rights systems. This was a groundbreaking judgment, which enabled the development of state positive obligations within right to life and other first generation human rights. It took the ECtHR a decade to develop the positive obligations formulated in Velásquez Rodríguez in 1988. The European Court formulated the material obligations in *Osman v. the United Kingdom*[215] *and L.C.B. v. the United Kingdom*.[216] It further developed the Velásquez Rodríguez formulae according to which 'states parties have an obligation to take reasonable steps to prevent human rights violations'. It stated that Article 2 of the Convention may 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. However, it must be established that the authorities knew or ought to have known of a real and immediate risk to the life of an identified individual(s) from the criminal acts of a third party and failed to take measures within the scope of their powers, which, judged reasonably, might have avoided the risk.[217]

Furthermore, the ECtHR formulated the procedural obligation to conduct effective investigation. It was based on Article 2, taken together with Article 1, of the ECHR. The Court expressed it for the first time in *McCann and Others v. the United Kingdom*.[218] The inspiration of the Velásquez Rodríguez case was evident. The ECtHR stressed that the obligation to protect the right to life (Article 2), in conjunction with the state's general duty under Article 1 of the ECHR to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention', requires that there should be some form of effective official investigation when individuals have been killed through the use of force by, *inter alios*, agents of the state.[219] This interpretation was a reaction to the IACtHR findings regarding states parties' obligations.[220]

Although the scope of procedural obligations within the ECHR system mentions only effective 'investigation', it goes beyond that notion and, similar to the ACtHR, requires effective judicial proceedings, punishment of the person responsible for the violation and compensation.[221] The material and procedural obligations under

213 Ibid., § 166. See also: Czepek, 2021, p. 78 et seq.

214 Ibid., § 174.

215 ECtHR Judgment *Osman v. the United Kingdom*, 28 October 1998, Application no. 23452/94.

216 ECtHR Judgment *L.C.B. v. the United Kingdom*, 9 June 1998, Application no. 23413/94.

217 *Osman v. the United Kingdom*, § 115–116.

218 ECtHR Judgment McCann and Others v. the United Kingdom, 27 September 1995, Application no. 18984/91. See more: Czepek, 2021, p. 167 et seq.

219 Ibid., § 161.

220 *Velásquez Rodríguez v. Honduras*, § 174.

221 Czepek, 2021, pp. 232–235.

Article 2 of the ECHR have evolved greatly since McCann and Others and Osman cases. Currently they form separate, independent[222] obligations under Article 2 and do not require the joint applications of Article 2 and 1. The impressive evolution of states' positive obligations within the ECHR system would not be possible without the Velásquez Rodríguez judgment, which influenced the ECtHR case law at the time.

Even though the Velásquez Rodríguez case is probably the most significant and visible example of the IACtHR's influence on the ECtHR's jurisprudence, the European Court frequently refers to the IACtHR's case law. Its judgments contain a section, in which the Court refers to relevant international human rights standards, both regional and universal. This section is valuable for strengthening the argumentation of the Court and presenting regional and universal perspectives. It may further serve comparative purposes. The ECtHR frequently refers to the ACHR and the IACtHR standards as well. According to Ferrer-MacGregor, the European Court has used the jurisprudence of the Inter-American Court on those 'paths' where the latter has already walked. The issue of enforced disappearances of individuals is an example of how the jurisprudence of the Inter-American Court 'inspired' the European Court in the construction of its jurisprudence.[223]

The European Court, before formulating its approach, relied on the OAS system, ACHR and IACtHR case law. In *Kurt v. Turkey,* ECtHR referred to the Inter-American Convention on Forced Disappearance of Persons[224] and IACtHR jurisprudence.[225] Furthermore, the case law of the Inter-American Court on enforced disappearances was cited extensively in *Varnava and Others v. Turkey*.[226] The ECtHR referred to IACtHR findings that procedural obligations arise in killings and disappearances under several provisions of the ACHR. In several cases, particularly those where the substantive limb of Article 4 (right to life) had not been breached, the IACtHR examined such procedural complaints autonomously under Article 8 (the right to a fair trial) and Article 25 (the right to judicial protection), in conjunction with Article 1 § 1 (obligation to respect rights).[227] The ECtHR referred to the IACtHR's jurisprudence in *Blake v. Guatemala,*[228] *Serrano-Cruz Sisters v. El Salvador*[229] *and Heliodoro Portugal v.*

222 See: ECtHR Judgment *Šilih v. Slovenia,* 9 April 2009, Application no. 71463/01.

223 Ferrer MacGregor, 2017, p. 105.

224 Inter-American Convention on Forced Disappearance of Persons, 9 June 1994, OAS/Ser. P AG/doc. 3114/94.

225 *Velásquez Rodríguez v. Honduras*; IACtHR Judgment *Godínez Cruz v. Honduras,* 20 January 1989, Series C No. 5; IACtHR Judgment *Cabellero-Delgado and Santana v. Colombia,* 8 December 1995; ECtHR Judgment *Kurt v. Turkey,* 25 May 1998, Application no. 24276/94, § 66–67.

226 ECtHR Judgment *Varnava and Others v. Turkey,* 18 September 2009, Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90.

227 Ibid., § 93.

228 IACtHR Judgment *Blake v. Guatemala,* 24 January 1998. Series C No. 36; *Varnava and Others v. Turkey* § 94–96.

229 IACtHR Judgment *Serrano Cruz Sisters v. El Salvador,* 1 March 1, 2005. Series C No. 120; *Varnava and Others v. Turkey* § 97.

Panama, in which the IACtHR examined the violation of the relatives' right to humane treatment.[230]

The Strasbourg Court is referring[231] to the San José Court jurisprudence in enforced disappearances. The ECtHR seemingly appreciated and noted the wide experience of the ACtHR in this regard. Despite the visible influence, the European Court relies on them mostly regarding relevant international human rights law and prefers to develop its interpretation on that basis. Similarly, the ECtHR refers to the American system regarding relevant international law and practice concerning other rights or freedoms regularly. Recently, the ECtHR relied on the Inter-American system in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.[232] It concerned the states' obligations relating to diminishing greenhouse gas emissions. The European Court referred to the Additional Protocol of the ACHR, which provides the right to a healthy environment,[233] and the Advisory Opinion of the IACtHR, 'The Environment and Human Rights'. The Inter-American Court stressed that states have certain positive obligations in this regard, including preventing significant environmental damage, cooperating in good faith, ensuring the right of access to information and ensuring access to justice.[234]

The European Court referred to Indigenous Communities of the Lhaka Honhat Association (Our Land) case, in which the IACtHR held Argentina responsible for violating indigenous communities' human rights through its failure to recognise and protect their lands. In that case, the Court examined the rights to a healthy environment, adequate food, water and cultural identity autonomously.[235] The ECtHR case law frequently refers to the IACtHR's jurisprudence in judgments dedicated to relevant international human rights law.[236] Such references may seem 'mandatory' honourable mentions; however, they contribute greatly to legal argumentation and influence the ECtHR's jurisprudence in a wider and evident scope. When referring to the IACtHR case law, the European Court mostly stops at the 'relevant international law' section and refrains from such quotations when making its conclusions. This creates an impression of indirect influence, which contributes to the development

230 *Heliodoro Portugal v. Panama,* 12 August 12, 2008. Series C No. 186; *Varnava and Others v. Turkey* § 98.

231 E.g. ECtHR Judgment *Aslakhanova and Others v. Russia,* 18 December 2012, Application nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10, § 64.

232 ECtHR Judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* 9 April 2024, Application no. 53600/20, § 223–228.

233 Ibid., § 223.

234 IACtHR Advisory Opinion, The Environment and Human Rights, 15 November 2017, OC-23/17, § 242; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* § 225.

235 IACtHR Judgment Indigenous Communities of the *Lhaka Honhat Association (Our Land) v. Argentina,* 6 February 2020, Series C No. 400; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* § 226.

236 See e.g. ECtHR Judgment *Öcalan v. Turkey,* 12 May 2005, Application no. 46221/99, § 60; ECtHR Judgment *Merabishvili v. Georgia,* 28 November 2017, Application no. 72508/13, §157–160; ECtHR Judgment *Hanan v. Germany,* 16 February 2021, Application no. 4871/16, § 89; ECtHR Judgment *Savickis and Others v. Latvia,* 9 June 2022, Application no. 49270/11, § 74–76.

of the Court's overall standard regarding Convention rights. Despite its partial and 'indirect' character, the influence of the IACtHR's jurisprudence on ECtHR case law is evident and should not be underestimated. Similarly, the jurisprudence of the Inter-American Court may be raised in dissenting or concurring opinions of ECtHR judges,[237] which contribute to wider interpretation of Convention rights.

5. Conclusions

The European and American human rights protection systems influence each other greatly. At the time of the adoption of the ACHR, the ECHR was already in place and set an example of a regional human rights treaty. *Nolens volens,* the drafters of the American Convention had to take account of the ECHR. However, there are more interactions between both systems than just the influence of the ECHR on the ACHR's drafting process.

Despite a similar scope of material rights and freedoms in both treaties, there are numerous differences between them, including the regional context and socio-political situation in which both systems operate. These led to the difference in the evolution of both systems and their jurisprudence, both institutionally and procedurally. The most significant change was the adoption of Protocol No. 11 to the ECHR, which 'opened' the ECtHR for individual applications. All the subsequent reforms simply addressed the results of the changes introduced by the Protocol.

Further differences were derived from the formulation of rights and freedoms under the ACHR and ECHR. These discrepancies stemmed from interpretation of rights, socio-political context, necessities, legal traditions in both regions and the intentions of the drafters. The same reasons impact the difference in approach by both Courts in their jurisprudence. A brief examination of the material scope of right enshrined in both texts leads to the conclusion that the scope of ACHR is wider. There are numerous rights (protection of rights of the child, protection of second generation rights, etc.), which the ECHR does not recognise in its core text. However, the ECHR enables a wide interpretation of the Convention rights by the ECtHR and numerous judgments given by the Court grant the possibility to examine a broader scope of a particular right or freedom. In fact, both systems are valuable and serve their purpose in their respective regions.

Both human rights systems interact with each other. This is particularly visible in the similar interpretation of certain provisions or scope of certain guarantees, (e.g., similar approach to the freedom of expression). Such interactions are further noticeable in the case law of both Courts. Due to the wide scope and quantity of the ECtHR's jurisprudence, its influence on the IACtHR is more visible. Hence, the IACtHR does not blindly follow the European jurisprudence and carefully chooses the doctrines

237 E.g. ECtHR Judgment *De Souza Ribeiro v. France,* 13 December 2012, Application no. 22689/07, Concurring Opinion of Judge Pinto de Albuquerque Joined by Judge Vučinić.

and case law that it intends to include in its practice. However, the impact of the IACtHR on ECtHR jurisprudence is less visible; nonetheless, it should not be omitted. The European Court refers to the case law of its American counterpart frequently in the 'comparative' section of judgments and, to some degree, includes its findings in its judgments. In Velásquez Rodríguez, the IACtHR developed the concept of positive obligations, (both material and procedural), which influenced the ECtHR case-law. The Strasbourg Court took note of San José Court regarding enforced disappearances. Hence, the mutual influence of both Courts will be further developed, as they continue to interact.

Bibliography

Literature

Balcerzak, M. (2008) *Zagadnienie precedensu w prawie międzynarodowym praw człowieka*. Toruń: TNOiK.

Cavallaro, J. L., Brewer, S. E. (2008) 'Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court', *American Journal of International Law,* 102(4).

Chanturia, L. (2023) 'Right to an effective remedy in the European Convention on Human Rights', *Journal of Law,* 2023 (1).

Contesse, J. (2017) 'The Final Word? Constitutional Dialogue and the Inter-American Court of Human Rights', *International Journal of Constitutional Law,* 15(2).

Czepek, J. (2013) 'Czy wymuszone zaginięcia mogą stanowić problem systemowy w kontekście orzecznictwa ETPC? Rozważania na temat wyroku ETPC w sprawie Aslakhanova i inni przeciwko Rosji', *Polski Rocznik Praw Człowieka i Prawa Humanitarnego,* 4/2013.

Czepek, J. (2013) 'European Court of Human Rights on Enforced Disappearances: Case-Law study', *Internal Security,* 5(1).

Czepek, J. (2014) *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka*. Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego w Olsztynie.

Czepek, J. (2018) 'The Application of the Pilot Judgment Procedure and Other Forms of Handling Large-Scale Dysfunctions in the Case Law of the European Court of Human Rights', *International Community Law Review,* 20 (3–4).

Czepek, J. (2021) Standard skutecznego śledztwa w sferze ochrony prawa do życia w systemie Europejskiej Konwencji Praw Człowieka, Warszawa: Wydawnictwo Naukowe UKSW.

Czepek, J.J. (2024) 'Prohibition of Collective Expulsion of Aliens under The European Convention on Human Rights', *Studia Iuridica,* 103. https://doi.org/10.31338/2544-3135.si.2024-103.3.

Dąbrowska, A. (2021) *Regionalne Trybunały Praw Człowieka. Analiza Prawnoporównanwcza*. Toruń:Wydawnictwo Adam Marszałek.

Deftou, M.L.(2020) 'Fostering the Rule of Law in the Americas: Is There Any Room for Judicial Dialogue between the IACtHR and National Courts?', *Nordic Journal of Human Rights,* 38(1).

Ferrer Mac-Gregor, E. (2017), 'What Do We Mean When We Talk about Judicial Dialogue: Reflections of a Judge of the Inter-American Court of Human Rights', *Harvard Human Rights Journal,* 30.

Ferrer-MacGregor, E. (2024) 'Impact of the Inter-American Jurisprudence on Economic, Social and Cultural, and Environmental Rights' in von Bogdandy, A., Piovesan, A., Ferrer-MacGregor, E., Morales Antoniazzi, M. (eds.) *The Impact of the Inter- American Human Rights System. Transformations on the Ground*. Oxford University Press. https://doi.org/10.1093/oso/9780197744161.003.0012.

Goldman, R.K. (2009) 'History and Action: the Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights', *Human Rights Quarterly*, 31(4).

Grossman, C. (2008) 'The Inter-American System of Human Rights: Challenges for the Future', *Indiana Law Journal*, 83 (4).

Hennebel, L. (2007) *La Convention Américaine des Droits de L'Homme. Mécanismes de Protection et Étendue des Droits et Libertés*. Bruxelles: Bruylant.

Hennebel, L. and Tigroudja, H. (2022) *The American Convention on Human Rights. A Commentary*. New York: Oxford University Press.

Hunneus, A., Madsen M. R. (2018) 'Between universalism and regional law and politics: A comparative history of the American, European, and African human rights systems'. *International Journal of Constitutional Law*, 16(1).

Karska, E., Morawska, E.H., Czepek, J., Dąbrowski, Ł.D., Oręziak, B., Gałka, K. (2023) 'Human Rights in the European Paradigm of the Protection of Aliens' in Karska, E. (ed.) *Human Rights and International Law* (No. 15), *Prawa Człowieka i Prawo Międzynarodowe* (r 15). Warszawa: Cardinal Stefan Wyszynski University in Warsaw. htps://doi.org/10.13166/hr/QHLC7301.

Madsen, M.R. (2016) 'The Challenging Authority of the European Court of Human Rights: From Cold War Legal Diplomacy to the Brighton Declaration and Backlash', *Law and Contemporary Problems*, 79(1).

Neuman, G. L. (2008) 'Import, Export, and Regional Consent in the Inter-American Court of Human Rights', *European Journal of International Law*, 19(1).

Villagran Sandoval, C.A., Carvalho Veçoso, F.F. (2017) 'A Human Right's Tale of Competing Narratives', *8 REVISTA DIREITO & PRAXIS*, 8(2).

Yildiz, E. (2020) 'Enduring Practices in Changing Circumstances: Comparison of the European Court of Human Rights and the Inter-American Court of Human Rights', *Temple International & Comparative Law Journal*, 34(2).

Zombory, K. (2023) *Prawnomiędzynarodowa ochrona praw kulturalnych mniejszości narodowych. Wybrane zagadnienia*, Warszawa: Wydawnictwo Instytutu Wymiaru Sprawiedliwości.

Legal Acts

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: "Protocol of San Salvador", San Salvador, 17 November 1988.

African Charter on Human and Peoples' Rights, 27 June 1981, entered into force 21 October 1986.

American Convention on Human Rights (Pact of San José), San José, 22 November 1969.
American Declaration of the Rights and Duties of Man, 2 May 1948, Ninth International Conference of American States.
Council of Europe, European Commission on Human Rights, Preparatory Work on Article 8.
Council of Europe, European Convention on Nationality, 6 November 1997, ETS No 166.
European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms), 4 November 1950.
European Social Charter (revised), 3 May 1996, ETS No. 163.
European Social Charter, 18 October 1961, ETS No. 035.
European Social Charter, 18 October 1961, ETS No. 035; and Revised European Social Charter, 3 May 1996, ETS No. 163.
IACtHR, Rules of Procedure of the Inter-American Court of Human Rights in Effect as of 1 January 1997.
IACtHR, Rules of Procedure of the Inter-American Court of Human Rights, Approved by the Court during its LXXXV Regular Period of Sessions, held from November 16 to 28, 2009.
Inter-American Convention on Forced Disappearance of Persons, 9 June 1994, OAS/Ser. P AG/doc. 3114/94.
European Convention on Human Rights, DH (56)12, 9 August 1956.
Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, 11 May 1994, ETS No 155.
Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, Vilnius, 3 May 2002, ETS No. 187.
Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty, Strasbourg, 28 April 1983, ETS No. 114.
Protocol of Amendment to the Charter of the Organisation of American States ("Protocol of Buenos Aires"), 27 February 1967.
Protocol to the ACHR to Abolish the Death Penalty, 8 June 1990, Asunción, Paraguay, 20th session of the General Assembly.
Universal Declaration of Human Rights, UN General Assembly Resolution 217A, 10 December 1948.

Jurisprudence

IACtHR and IACmHR Jurisprudence

IACmHR Decision María Eugenia Morales de Sierra v. Guatemala, 19 January 2001, 4/01, case 11.625.
IACtHR Advisory Opinion, The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75), 24 September 1982, OC-2/82.

IACtHR Advisory Opinion, The Environment and Human Right, 15 November 2017, OC-23/17.
IACtHR Advisory Opinion, The word "Laws" in Article 30 of the American Convention on Human Rights, 9 May 1986, OC-6/86.
IACtHR judgement, Gallardo v. Costa Rica, 13.11.1981, No. G 101/81.
IACtHR Judgment Almonacid Arellano et al. v. Chile, 26 September 2006, Series C No. 154.
IACtHR Judgment Blake v. Guatemala, 24 January 1998. Series C No. 36.
IACtHR Judgment Cabellero-Delgado and Santana v. Colombia, 8 December 1995.
IACtHR Judgment Cantoral Benavides v. Peru, 18 August 2000, Series C No. 69, § 99.
IACtHR Judgment Cuscul Pivaral et al. v. Guatemala, 23 August 2018, Series C No. 359.
IACtHR Judgment Fairén-Garbi and Solís-Corrales v. Honduras, 15 March 1989, Series C No. 6.
IACtHR Judgment Fernández Ortega et al. v. Mexico, 30 August 2010. Series C No. 215.
IACtHR Judgment Godínez Cruz v. Honduras, 20 January 1989, Series C No. 5.
IACtHR Judgment Godínez-Cruz v. Honduras, 20 January 1989, Series C No. 5.
IACtHR Judgment Heliodoro Portugal v. Panama, 12 August 12, 2008. Series C No. 186.
IACtHR Judgment Herrera Ulloa v. Costa Rica, 2 July 2004. Series C No. 107.
IACtHR Judgment Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. 21 June 2002. Series C No. 94.
IACtHR Judgment Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, 6 February 2020, Series C No. 400.
IACtHR Judgment Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, 6 February 2020, Series C No. 400.
IACtHR Judgment Ivcher Bronstein v. Peru, 6 February 2001, Series C No. 74.
IACtHR Judgment López Álvarez v. Honduras, 1 February 2006. Series C No. 141.
IACtHR Judgment López Álvarez v. Honduras, Concurring vote of judge A.A. Cançado Trindade, 1 February 2006. Series C No. 141.
IACtHR Judgment Lysias Fleury et al. v. Haiti, 23 November 2011, Series C No. 236.
IACtHR Judgment Moiwana Community v. Suriname, 15 June 2005, Series C No. 124.
IACtHR Judgment Myrna Mack Chang v. Guatemala, 25 November 2003, Series C No. 101.
IACtHR Judgment National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru, 8 October 2020. Series C No. 413.
IACtHR Judgment Palamara Iribarne v. Chile, 22 November 2005. Series C No. 135.
IACtHR Judgment Petro Urrego v. Colombia, 8 July 2020. Series C No. 406.
IACtHR Judgment Ricardo Canese v. Paraguay, 31 August 2004. Series C No. 111.
IACtHR Judgment Sawhoyamaxa Indigenous Community v. Paraguay, 29 March 2006. Series C No. 146.
IACtHR Judgment Serrano Cruz Sisters v. El Salvador, 1 March 1, 2005. Series C No. 120.
IACtHR Judgment Suárez Rosero v. Ecuador, 12 November 1997, Series C No. 35 § 72.

IACtHR Judgment Genie Lacayo v. Nicaragua, 29 January 1997, Series C No. 30.
IACtHR Judgment the Pueblo Bello Massacre v. Colombia, 31 January 2006, Series C No. 140.
IACtHR Judgment Tristán Donoso v. Panama, 27 January 2009, Series C No. 193.
IACtHR Judgment Velásquez Rodríguez v. Honduras, 29 July 1988, Series C No. 4.
IACtHR Judgment, "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, 5 February 2001. Series C No. 73.
IACtHR Judgment, Case of the Río Negro Massacres v. Guatemala, 4 September 2012, Series C No. 250.
IACtHR Judgment, Granier et al. (Radio Caracas Television) v. Venezuela. 22 June 2015, Series C No. 293.
IACtHR Judgment, Radilla Pacheco v. Mexico, 23 November 2009, Series C No. 209; IACtHR Judgment, Serrano Cruz Sisters v. El Salvador, 1 March 2005, Series C No. 120.
IACtHR, Advisory Opinion, 'The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law', 1 October 1999, OC-16/99.

ECtHR and ECmHR Jurisprudence

ECmHR Decision, Austria v. Italy, 11 January 1961, Application no. 788.60.
ECtHR communicated case Armenia v. Azerbaijan (II), Application no. 33412/21.
ECtHR communicated case Armenia v. Azerbaijan (III), Application no. 42445/21.
ECtHR communicated case Armenia v. Azerbaijan (IV), Application no. 15389/22.
ECtHR communicated case Armenia v. Azerbaijan, Application no. 42521/20.
ECtHR Decision Netherlands and Ukraine v. Russia, 30 November 2022, Application nos. 8019/16, 43800/14, 28525/20.
ECtHR Decision Vitrenko and Others v. Ukraine, 16 December 2008, Application no. 23510/02.
ECtHR Judgment A.L (X.W.) v. Russia, 29 October 2015, Application no. 44095/14.
ECtHR Judgment Airey v. Ireland, 9 October 1979, Application no. 6289/73, § 24.
ECtHR Judgment Aslakhanova and Others v. Russia, 18 December 2012, Application nos. 2944/06, 8300/07, 50184/07, 332/08, 42509/10.
ECtHR Judgment Bader and Kanbor v. Sweden, 8 November 2005, Application no. 44095/14.
ECtHR Judgment Broniowski and Others v. Poland, 22 June 2004, Application no. 31443/96.
ECtHR Judgment Burghartz v. Switzerland, 22 February 1994, Application no. 16213/90.
ECtHR Judgment Cyprus v. Turkey, 12 May 2014, Application no. 25781/94.
ECtHR Judgment De Souza Ribeiro v. France, 13 December 2012, Application no. 22689/07, Concurring Opinion of Judge Pinto de Albuquerque Joined by Judge Vučinić.
ECtHR Judgment Denisov v. Ukraine, 25 September 2018, Application no. 76639/11.
ECtHR Judgment Dudgeon v. the United Kingdom, 22 October 1981, Application no. 7525/76.

ECtHR Judgment X and Y v. the Netherlands, 26 March 1985, Application no. 8978/80.
ECtHR Judgment Ergi v. Turkey, 28 July 1998, Application no. 23818/94.
ECtHR Judgment Georgia v. Russia (I), 31 January 2019, Application no. 13255/07.
ECtHR Judgment Georgia v. Russia (II), 21 January 2021, Application no. 38263/08.
ECtHR Judgment Hanan v. Germany, 16 February 2021, Application no. 4871/16, § 89.
ECtHR Judgment Handyside v. The United Kingdom, 7 December 1976, Application no. 5493/72.
ECtHR Judgment Henry Kismoun v. France, 5 December 2013, Application no. 32265/10.
ECtHR Judgment Hirst v. United Kingdom (No, 2), 6 October 2005, Application no. 74025/01.
EtHR Judgment Humpert and Others v. Germany, 14 December 2023, Application nos. 59433/18, 5947/18, 59481/18, 59494/18.
ECtHR Judgment Ilaşcu and Others v. Moldova and Russia, 8 July 2004, Application no. 48787/99.
ECtHR Judgment Ilias and Ahmed v. Hungary, 21 November 2019, Application no. 47287/15.
ECtHR Judgment Kopecký v. Slovakia, 28 September 2004, Application no. 44912/98.
ECtHR Judgment Kudła v. Poland, 26 October 2000, Application no. 30210/96.
ECtHR Judgment Kudrevičius and Others v. Lithuania, 15 October 2015, Application no. 37553/05.
ECtHR Judgment Kurt v. Turkey, 25 May 1998, Application no. 24276/94.
ECtHR Judgment L.C.B. v. the United Kingdom, 9 June 1998, Application no. 23413/94.
ECtHR Judgment Lingens v. Austria, 8 July 1986, Application no. 9815/82.
ECtHR Judgment Marckx v. Begium, 16 June 1979, Application no. 6833/74.
ECtHR Judgment Mathieu-Mohin and Clerfayt, 2 March 1987, Application no. 9267/81.
ECtHR Judgment McCann and Others v. the United Kingdom, 27 September 1995, Application no. 18984/91.
ECtHR Judgment McHugh and Others v. United Kingdom, 10 May 2015, Application no. 51987/08 and 1,014 others.
ECtHR Judgment Merabishvili v. Georgia, 28 November 2017, Application no. 72508/13.
ECtHR Judgment Motta v. Italy, 19 February 1991, Application no. 11557/85.
ECtHR Judgment Niemietz v. Germany, 16 December 1992, Application no. 13710/88.
ECtHR Judgment Öcalan v. Turkey, 12 May 2005, Application no. 46221/99, § 60.
ECtHR Judgment Osman v. the United Kingdom, 28 October 1998, Application no. 23452/94.
ECtHR Judgment Otto-Preminger-Institut v. Austria 20 September 1994, Application no. 13470/87.
ECtHR Judgment Peck v. United Kingdom, 28 January 2003, Application no. 44647/98.
ECtHR Judgment Pitsayeva and Others v. Russia, 9 January 2014, Application nos. 53036/08, 61785/08, 8594/09 and others.
ECtHR Judgment Ruiz-Mateos v. Spain, 23 June 1993, Application no. 12952/87.
ECtHR Judgment Savickis and Others v. Latvia, 9 June 2022, Application no. 49270/11.

ECtHR Judgment Selmouni v. France, 28 July 1999, Application no. 25803/94.
ECtHR Judgment Šilih v. Slovenia, 9 April 2009, Application no. 71463/01.
ECtHR Judgment Soering v. United Kingdom, 7 July 1989, Application no. 14038/88.
ECtHR Judgment Sunday Times v. the United Kingdom (No 1), 26 April 1979, Application no. 6538/74.
ECtHR Judgment Tyrer v. United Kingdom, 25 April 1978, Application no. 5856/72.
ECtHR Judgment Tyrer v. United Kingdom, 25 April 1978, Application no. 5856/72.
ECtHR Judgment Tysiąc v. Poland, 20 March 2007, Application no. 5410/03, § 113.
ECtHR Judgment Ukraine v. Russia (re Crimea), 25 June 2024, Application nos. 20958/14, 38334/18.
ECtHR Judgment Varnava and Others v. Turkey, 18 September 2009, Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90.
ECtHR Judgment Verein Klima Seniorinnen Schweiz and Others v. Switzerland, 9 April 2024, Application no. 53600/20.
ECtHR Judgment Vilvarajah and Others v. United Kingdom, 30 October 1991, Application nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87.
ECtHR Judgment Vo v. France, 8 July 2004, Application no. 53924/00.
ECtHR Judgment Ždanoka v. Latvia, 16 March 2006, Application no. 58278/00.

Reports

OAS, IACtHR, Annual Report of the Inter-American Court of Human Rights to the General Assembly, 1980, OEA/Ser.LIV/III.3, 15 April 1981.

On-line content

Cerna, C. M., (2001), 'Introductory Note to the New Rules of Procedure of the Inter-American Commission on Human Rights' International Legal Materials 40(3) [Online]. Available at: https://www.corteidh.or.cr/tablas/r31628.pdf (Accessed:11 October 2024).
ECHR, Overview 1959-2020, p. 4, [Online]. Available at: https://www.echr.coe.int/documents/d/echr/Overview_19592020_ENG (Accessed: 8 October 2024).
ECtHR, Statistics 2023, [Online]. Available at: https://www.echr.coe.int/documents/d/echr/stats-annual-2023-eng?download=true (Accessed: 23 December 2024).
IACtHR, Jurisprudence of the I/A Court H.R., [Online]. Available at: https://jurisprudencia.corteidh.or.cr/en/ (Accessed: 23 December 2024).
Trotti R. (2017), Report of the Hearingat the Inter-American Court on the Nelson Carvajal Case, INTER-AM. PRESS ASS'N, 24 August 2017, [Online]. Available at: https://en.sipiapa.org/notas/1211646-report-of-the-hearing-at-the-inter-american-court-on-the-nelson-carvajal-case (Accessed: 8 October 2024).