

Institutional Framework for Human Rights Protection in Americas: The Inter-American Court of Human Rights

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ABSTRACT

The next chapter is devoted to the analysis of the institutional framework of human rights protection in Americas, concretely to the Inter-American Court of Human Rights. It aims to present its legal background, its position within the Inter-American regional human rights system and its relationship with the most influential actors, such as the Inter-American Commission. The research in the first half of the work examines the aspects of the contentious jurisdiction and advisory jurisdiction. Through these subchapters the author explains the methods and the modus operandi of the procedures before the Court. The analysis of individual petitions presents the most influential and effective means of the system. Furthermore, the work, via the advisory jurisdiction, presents the nature and the position of the Court in the system, as well as the most significant principles governing the Inter-American human rights framework. The following final part explores the criteria of admissibility which are fundamental for establishing the jurisdiction of the Court.

KEYWORDS

Inter-American human rights system, Inter-American Court of Human Rights, Inter-American Commission, contentious jurisdiction, advisory opinion

1. Introduction

The Inter-American human rights framework is understood as a system composed of a combination of national and international set of rules, which are established in order to respect and protect human rights in the member countries. The Latin American approach is unique as it enables different subjects to form both the practical and the theoretical concept of human rights through the community. The common interactions of the national and international legal orders develop a specific legal order, which applies and interprets international human rights through the lenses of

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the Latin American constitutional standards.¹ Nevertheless, the influence of national over the international order may create a more suitable system, as certain regions continue to struggle with various issues, such as inequality or violations of the rule of law. Not to mention the derogations from treaties, which cause the erosion of the applicability and thus the effectivity of the system itself.²

The two main tools of the frameworks are its two core institutions: the Inter-American Court of Human Rights (the Court) and the Inter-American Commission (the Commission), which are fundamental elements of the system. Both the Court and the Commission play a significant role in the framework of human rights protection in the Americas, which would have no real impact or effectivity without them, as these organizations are responsible for upholding the rights enshrined in the American Convention on Human Rights (“ACHR”) and numerous other documents adopted and ratified by the Inter-American States.³

The Court’s scope of competence is yet curtailed by the fact that it has competence to rule only in those countries which have accepted its compulsory jurisdiction. It is only in these countries that the Commission has the power to decide whether it will forward the case to the Court itself. The Commission’s position is, in this sense irreplaceable, as it is upon its sole discretion to determine if a case should be sent to the Court. The Commission has therefore the responsibility to guarantee that the individuals who claim to be victims have a voice before the Court’s decision. Hence, the system recognises various obstacles to ensure that individuals have access to justice.⁴

2. Organisation and Competence

The Court was established in 1979, almost 90 years after the formation of the predecessor of the OAS, the Pan American Union. It has seven judges who are elected as part of the OAS General Assembly by the State Parties to the ACHR. These judges are selected from a list of national candidates of the OAS Member States. Each state has the right to propose three candidates who are chosen by an absolute majority through a secret ballot. They serve a term of six years and can be reelected on one occasion. The Plenary of the Court elects its President and Vice-Presidents for a term of two years, with the possibility of being reelected one more time. The judges are prohibited from deciding on cases which concern their home country. Nonetheless, in inter-state cases there is the possibility of calling for an ad hoc judge from the respective country in order to fully comprehend the domestic specificities.

1 Bogdandy and Uruena, 2020, p. 403.

2 Helfer, 2021, p. 20.

3 Bogdandy *et. al.*, 2024, p. 1.

4 Gossman, 2024, p. 35.

The Court's headquarters are located in the city of San Jose, Costa Rica. The city itself has a long-standing tradition of promoting human rights, hence it serves as an ideal place for the Court.⁵ The Court generally holds six Ordinary Sessions at its seat and two Special ones at various locations, every year in a different member country. The Court has no powers to make assertions about the general situation of a member state, hence e.g. even when visiting, it cannot universally proclaim the observed issues. Nevertheless, its Rules of Procedure enables it to demand the collection of evidence in situ in order to analyse them during the proceedings of a contentious case. Based on the above, the Court has already made several visits to the territories of State Parties such as Honduras or Suriname.⁶

In order for the Court to operate smoothly, it has a Secretariat, which consists of a Secretary and Deputy Secretary who mostly provide administrative but also legal assistance in the work of the Court. The Secretariat is responsible for preparing certain documents of the Court public, such as judgements, separate opinions, dissenting opinions or concurrences. However, should the judges decide otherwise, parts of these documents may be kept confidential on the basis of their irrelevancy or when they are considered to be incorrect. The functioning of the Court is financed via the regular fund of the OAS which is approved by the General Assembly for the fiscal year. The annual budget is typically around 5 million USD. In addition to these finances, the Court receives voluntary financial aid from states or from international cooperation projects.⁷

With the adoption of the ACHR, a dual system of human rights protection was established in the region, which consequently instituted the Court. The Convention was ratified by 23 member countries of the OAS, and since then, two countries presented denunciation under Article 78: Venezuela and Trinidad and Tobago. The Court's main duties rest upon contentions jurisdiction, the advisory opinions and the additional precautionary measures. Possibly the most important one, i.e. contentions jurisdiction is recognised by 20 Member States of the ACHR. Its' advanced jurisprudence has made it one of the leading judicial institutions interpreting human rights. This is represented by the significant number of citations of its case-law by scholars not only from Americas, but also from other regions of the world. Some even claim that the Court is shooting for the stars, when its transforming social practices through not only international, but constitutional law.⁸

5 Crahan, 2006, p. 549. During a lengthy period the country was surrounded by wars fought in other countries. As the territory wanted to preserve its security and peace it delved into international activism. E.g. initiating the Esquipulas peace process, taking part in humanitarian intervention or building diplomatic relations.

6 Art. 58 of the Rules of Procedure of the Inter-American Court of Human Rights, 2000.

7 Abc: The Inter-American Court of Human Rights, 2019, p. 6.

8 Pasqualucci, 2003, p. 10.

2.1. Contentious Jurisdiction

Its main role stems from the contentious jurisdiction over cases where alleged violations of those rights arise which are enshrined in the ACHR and its two protocols (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, commonly known as the “Protocol of San Salvador,” and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty). Hence, this autonomous judicial institution is generally responsible for the interpretation and application of the ACHR. In contrast to the Commission that has the right to issue recommendations and reports, the Court can issue *inter partes* binding judgements. These decisions may shed light on domestic issues and render compensation, including recommendations to amend the national legislation of Member States. The Court’s final judgements are not subject to appeal and are enforceable. The necessary quorum for the final judgement is five judges. The votes are either yes or no, and no abstention from voting is permitted. If a judge does not agree with the final judgement, he/she may craft an explanation added to the attached document forming a separate opinion.⁹

The jurisdiction is initiated either by the submission from the Commission or by a Member State. Nevertheless, as numerous countries of the OAS have not acknowledged the competence of the Court, it has generally limited competence. Consequently, the victims have no direct possibility to file a case to the Court and they can only do this through the Commission. Initially, the victim had no independent role in the proceedings. However, under the 2001 and 2009 Rules of Procedure, those individuals, groups and non-governmental organisations that claimed to be victims have been given a position as parties following the referral of the case to the Court. Accordingly, they have the right to submit their brief including pleadings, motions, as well as evidence. Furthermore, the position of an Inter-American defender has been set up to secure the rights of those who do not have duly accredited legal representation. The Court has also established the Legal Assistance Fund which helps those, who have no possibility to pay for their legal assistance. Both of these institutions were established in order to secure effective defence, as well as the rule of law.¹⁰

When a submission reaches the Court, it becomes responsible for the rigorous examination of all the aspects of the case. These include the facts, the legal arguments besides evidence, which was set forth by the applicant and the respected state. The activities referred to are part of the written stage of the hearing. The Court has the additional right to hold hearings, perform interviews or request further information, as part of the oral stage of the case. During the oral hearing, in addition to the Court, the Commission also has the right to ask questions from the parties. The parties have the additional right of reacting contrary to the allegations and arguments. For the purposes of gathering information, the Court has the right to request further explanation from the experts. All of these actions have to be performed while upholding

9 See: Antkowiak and Gonza, 2017.

10 Art. 25 and Art. 37 of the Rules of Procedure 2009.

the principle of a fair and impartial procedure. The assessment is followed by the judgement, which establishes whether a violation of the ACHR or its protocols have taken place. If the Court establishes a violation, it has the right to stipulate proper remedies or compensation.¹¹

In order to submit a claim to initiate the contentious jurisdiction, numerous criteria have to be fulfilled. The foremost requirement is the admissibility criteria, where only those states, which have ratified the ACHR, including the Court's jurisdiction, may be subject to the petition. The initial assessment of this criteria is performed by the Commission, which decides whether to proceed further with the case. The Commission is the one to decide upon another criteria, the fundamental necessity of the case to be heard before the Court, i.e. whether the case is well-founded and sufficiently serious. Furthermore, the Commission has to consider whether the alleged violation of the right happened to the actual victim presenting itself. Consequently, the petitions cannot be anonymous.¹²

The stages of the process before the Court are determined by the ACHR and the Rules of Procedure. These stipulate that the process begins with the submission of the initial written pleadings. The applicant is generally represented by the Commission which is contested by the respondent state. Consequently, the Commission is always part of the proceedings before the Court. Both of the parties file their arguments based on evidence and legal representation, including the presentation of the respective legal principles. In the following step the Court holds the hearing, where it gathers additional evidence from the sides and witnesses. The hearings are generally public, nonetheless the Court may decide to hold a private hearing. These stages are superseded by the private deliberations of the judges who should base their decision based upon the relevant international human rights standards. These private deliberations may last for numerous weeks and can even be suspended and reinitiated in a subsequent new session in case the questions are complex. During the deliberations, the drafts of the judgements are re-read and when a judge proposes a change to some detail, a new draft is made, which is again submitted to all the judges for discussion. The judges have to approve all the sections and paragraphs of the judgement with the necessary quorum of five judges. Their decision is presented via the judgement, which either establishes the violation or non-violation of the ACHR. This is followed by the presentation of reparations and remedies, as the Court has a wide scope of possibilities to specify the form of reparation it deems necessary. Monetary compensation, restitution, guarantee of non-repetition or rehabilitation are the most commonly used forms of restitution. When guarantees of non-repetition is a reparation applied, the Court has the power to order the affected country to either draft and adopt or amend legislative reforms in its national system. It may also demand the change of application of these national rules if the textual basis seems adequate, but the application

11 Bantekas and Oette, 2020, pp. 270-271.

12 American Convention on Human Rights, Pact of San Jose, Costa Rica, OAS, 1969.

has gaps.¹³ The violations may directly occur because of systemic gaps in the national law. In these cases, the Court definitely requires adjustments of the regulations or public policy. This form of remediation has a wide and public impact, many times unpleasant for the affected states but effective in the public eye. The aim to resolve structural problems is thus beneficial not only for the direct victims, but also the broader segments of the society, accordingly having positive impact as preventive measures against future violations.¹⁴

In order for the state to complete its ordered obligation, the Court has a compliance monitoring mechanism in place, according to which it has the right to supervise the practical implementation of the measures delivered in the judgement. In this mechanism the Court first calls for information regarding the actions the state has taken, intended to comply with the already delivered decision of the Court. During this period the Court is additionally collecting evidence both from the victims and the Commission to get a complete picture of the actual situation. Additionally, the Court may call for a hearing, which is rather expeditious, lasting up to two hours. If the Court finds gaps in the steps taken by the countries, it may render additional recommendations.¹⁵ The drafters of the ACHR and the practitioners of human rights in the region do believe that the effective implementation of the judgements is fundamental to the human rights system. Without it the Latin American human rights mechanism would be illusory.¹⁶

Similarly, to other human rights courts, this Court has likewise the authority to issue provisional measures to prevent irreparable harm or to stop further damage. With regard to its adoption, the Court can hold a hearing where the parties and the Commission have the possibility to present their arguments on behalf or against the adoption of the provisional measure. In order to adopt such a measure, the case has to be *prima facie* serious, urgent and necessary. The opposing state is required to argue against the adoption with determination and ideally present that the concerning facts no longer support the presumptions. The hearings can be held both in public and in private, depending on the circumstances of the case. These measures have a binding nature, but again affect only those countries that have accepted the authority of the Court.¹⁷

The Court's perspective is known for its *pro-homine* stance including the attention towards the general human rights issues which affect the region of Latin America. This is represented in the advanced practice of hearing detailed evidence or in the deep commitment to effectiveness of its remedies. In this sense, various scholars claim that its case-law on remedies is a significant contribution to the international human rights law.¹⁸

13 Principle n. 23 of the Resolution 60/147, 16 December 2005.

14 See: Hernández Ramos *et al.*, 2017.

15 See: Rules of Procedure of the Inter-American Court of Human Rights, 2000.

16 *Abc*: The Inter-American Court of Human Rights, 2023, p. 11.

17 Art. 62 of the American Convention on Human Rights, Pact of San Jose, Costa Rica, OAS, 1969.

18 Paqualucci, 2013, pp. 12–14.

The Court also applies the doctrine of the conventionality control, which allows domestic judges to directly apply international norms as well as to interpret national legislation in the light of international law. Nonetheless, the understanding of the Court goes further when it claims that in the case of a collision of national and international rule, the rule enshrined in the ACHR should prevail over the national norm. Consequently, the Court transfers the responsibility of the appropriate application of ACHR to the national judges. Notwithstanding that the doctrine as such is also common in the European human rights, it cannot be found in either the wording of the ACHR nor in its *travaux préparatoires*. The nuances of the mentioned approach is only to be found in the jurisprudence of the Court, which has introduced the understanding in the 2006 *Almonacid Arellano* against Chile decision.¹⁹ In this sense, various scholars claim that the Court offers no real justification for the respective demand, although on the other hand, the justification may be found within the scope and purpose of the Vienna Convention and the *pacta sunt servanda* principle, applicable upon all states.²⁰

2.2. Advisory Jurisdiction

The second, not less important duty of the Court is its authority to present advisory opinions on legal matters connected to the ACHR and generally human rights and their application. Through this authority, it has the possibility to offer guidance in the field of human rights to the OAS itself, to Member States and generally human rights litigators. As some scholars claim, the advisory competence of this Court is one of the most extensive out of all the human rights courts we currently know. This is also proven by the *travaux préparatoires* of the ACHR, where the drafters voluntarily created a broad authority of the Court in order to provide access to its work not only for states or specific bodies of the OAS, but also for other subjects, that would have the same possibility to consult with the Court.²¹ According to Saavedra Alessandri, in order to fully understand and analyse the effectiveness of the Court, it is necessary to deeply consider its advisory opinions.²² These opinions are presented on the basis of a request from the authorised entities referred to above. These subjects may request interpretation and clarification of the rights enshrined in the ACHR as well as other treaties concerning the protection of human rights in the Latin American states. The Court has even broadened its scope and declared that advisory opinions help Member States and the whole OAS to comply with their obligations stemming from international human rights law. In this sense, the opinions clarify the international rules and additionally, assist to guarantee these rights in the region. Already in 1982, the Court added that states have the obligation to take into account both the jurisprudence in contentious competence and the work through advisory competence. However, it is

19 Case of *Almonacid Arellano v. Chile*, IACtHR, Judgement of 26 September 2006, para. 124.

20 Contesse, 2018, pp. 1170–1171.

21 Martin, 2021, para. 7.

22 Saavedra Alessandri, 2024, pp. 537–539.

necessary to add here that the Court does not and cannot monitor the compliance with its advisory opinions as it does so after contentious cases, and thus their effectiveness cannot be proven in reality.²³

During its first years of existence the Court dedicated most of its work to create advisory opinions, as the Commission was at the start reluctant to proceed the cases before its fora. The rivalry between the two institutions resulted in the advisory opinion of 1985, where besides reviewing the issue of freedom of expression in the practice of journalism, the Court stated that the Commission's prolonged refusal to refer cases to the Court impaired the delicate balance of the system which is established by the ACHR.²⁴

According to the Court's review, it has generally 20–25 contentious cases annually. The duration of the cases takes up to approximately 22–23 months. Consequently, the work of the Court is continuous in contentious matters, nonetheless it is complete only with its power to release advisory opinions, which likewise contributes to the development of the interpretations on the scope of rights enshrined in the ACHR and other Inter-American instruments. Through these opinions, the Court has regularly broadened the scope of protection, including various vulnerable groups such as children, migrants or foreign nationals.²⁵

Once a demand for an advisory opinion is presented from authorised subjects, the Court thoroughly examines the question and its legal issues, which is followed by the gathering of related legal principles, jurisprudence and other international human rights standards. However, the Court has the power to call for hearings and also request additional evidence. When the Court collected all the necessary information, it carries out a comprehensive evaluation of the influencing details and its interpretations. The advisory opinion is prepared thereon, as a guidance and answer to the requested issues. Even though the opinions have a strong impact on the interpretation of human rights in the region, they are legally non-binding on the relevant parties. Yet, the opinions still shape the application of the scope of human rights in Latin America.

The opinions of the Court has, on several occasions, helped with the adequate interpretation of notions of human rights as well as with the proper understanding of the entire regional human rights framework. In its opinion of 1989, the Court was successful in straightening out the relationship between the two core instruments of the system. It declared that the American Declaration of the Rights and Duties of Man enhances and interprets fundamental human rights which are also encompassed in the Charter of the OAS. Hence, the application of the Charter cannot be exclusively implied without referring to the rules of human rights including the practice of the organs of OAS. Nevertheless, those referred to above do not automatically include the

23 Advisory Opinion OC-2/82 The Effect of Reservations on the Entry into Force of the American Convention on Human Rights, 24 September 1982, Ser. A no. 2, para. 29.

24 Advisory Opinion of the IACtHR n. 5, 1985, para 26.

25 Martin, 2021, para. 5.

work of the Court, and some may argue that the whole regional cooperation of the OAS has shifted towards a more comprehensive human rights framework.²⁶ Furthermore, one year later, the Court emphasised the importance of the international human rights law *corpus iuris*, when it stipulated that the whole international set of rules consists of different legal instruments with varying scope and function and that this variety of aspects presents how the development of human rights proceeds. It adds, that recognition of certain international treaties is definitely having consequences on the Inter-American regional framework as well.²⁷

We can observe the influence of the advisory opinions through different perspectives. For instance, the Protocol of San Salvador enables direct justiciability to victims of trade union rights or in the case of rights to education. As some of these rights were not yet directly interpreted through proceedings in contentious jurisdiction, the Court has the option of interpreting and applying them through the means of its advisory opinions. For example, in its advisory opinion no. 22 titled “Entitlement of legal entities to hold rights under the Inter-American Human Rights System”, the Court enjoyed its competence and interpreted the rights of trade unions in a way that both physical and legal entities enjoy these rights, even before a concrete claim would appear.²⁸ Additionally, the significant impact of the advisory opinions may be observed through the fact that various constitutional courts of the State Parties have implemented parts of the text of the opinions into their reasoning in national cases. Consequently, the Court’s advisory competence can be directly traceable in national application.²⁹

The Court’s advisory competence rests upon the role of the Court being the guardian of human rights in the region. Through the formation of interpretations of the ACHR and its protocols, the Court presents counselling on legal issues and thus it contributes to the evolution of international human rights law. It offers opportunity for dialogue, strengthens the rule of law, increases efficacy and promotes consistency when dealing with fundamental values of human rights.

3. The Court’s Admissibility Criteria

The Court’s admissibility criteria are set in the Commission’s admissibility criteria, which are similar to those known from other systems as well as those already set up in national procedures. The circumstances of admissibility have to be fulfilled requisitely in order for the claim to proceed adequately. Hence, it is necessary to analyse

26 Advisory Opinion OC-10/98 Interpretation of the American Declaration of the Rights and Duties of Man in the context of Art. 64 of the American Convention on Human Rights, 1989, Ser. A no. 10, para 43.

27 Advisory Opinion OC-16/99 The right to information on consular assistance in the framework of the guarantees of the due process of law, 1999, Ser. A no. 16, para 115.

28 Advisory Opinion OC-22/16 Entitlement of legal entities to hold rights under the Inter-American Human Rights System, 26 February 2016, Ser. A. no. 22, para 97.

29 Ortiz Ocana and Pérez-Linán, 2024, p. 181.

them. The main criteria are established in Article 46 of the ACHR. First of all, it's the exhaustion of the ordinary and extraordinary domestic remedies, which are deemed as suitable for providing protection in the case of such violation. The applicant has the additional possibility of pursuing extraordinary remedies, if these are generally considered reasonable. Thus, the remedial procedure has to be accessible, clearly understandable (clarity of the procedural action which should be followed) and effective. The petition to instigate the contentious jurisdiction requires the claim to be filed within a period of six months from the date of the domestic final judgement. Furthermore, the admissibility declares the principle of *res judicata*, i.e. the claim cannot be already decided or pending before another body, either any other international human rights body or any other monitoring bodies of the OAS. Lastly, as above declared claim cannot be anonymous.³⁰

In general, the main admissibility criteria stems from the ACHR and its interpretation is provided by the Court or the Commission. As the legal theory provides, we will shortly discuss the criteria of the jurisdiction *rationae personae*, *rationae materiae*, *rationae loci* and *rationae temporis*.

3.1. *Jurisdiction Rationae Personae*

State Parties to the ACHR are the main actors, whose national law may be subjected to the scrutiny of the Court. States are also those who may submit a request for an advisory opinion regarding the interpretation of the OAS human rights treaties, mainly the ACHR. They may require help in the proper application of human rights provisions including their compatibility with the national law. The submission can come from one state or a group of states. The Court enabled countries to have the possibility of seeking interpretation and compatibility in the submission, simultaneously.³¹

As regards the personal jurisdiction of the Court, we may find one fundamental difference between the contentious and advisory power of the body. Essentially, the power of the Court applies to the OAS Member States that ratified the ACHR. The contentious jurisdiction is without a doubt applied only to those parties that accepted this authority, however, there is no explicit requirement that only ACHR parties may seek an advisory opinion. In its Article 64 the ACHR stipulates that OAS member States may consult the Court. Consequently, applying indirectly, even those who did not consent, may require assistance in human rights issues.³² Nevertheless, such an application may give rise to an indirect consent that the Court has jurisdiction to review the legal issues of even those countries who did not consent to the jurisdiction of the Court. So far none of these countries requested an opinion, even though the Court had referred to facts in these other countries numerous times. We should mention the advisory opinion where Mexico submitted that the United States breached the right to consular

30 Art. 46 of the American Convention on Human Rights.

31 See: Advisory Opinion OC-13/93 Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50, and 51 of the American Convention on Human Rights), 1993, Ser. A no. 13.

32 Art. 64 of the ACHR.

assistance. The US subsequently insisted that the submission sought to bring the country to the Court, regardless of the fact that it had not ratified the ACHR.³³

The Court declared that although it has a rather wide scope of possibilities in advisory jurisdiction, it has no contentious jurisdictional rights to determine the human rights obligations in states which are not part of the Inter-American System. This limitation applies even in those situations when these countries have ratified treaties whose provisions are subject to the opinion. The Court admitted that by doing so, it helped the international human rights protection, but still kept to the limits of its jurisdiction.³⁴

The jurisdiction of the Court concerning its organs is again narrower. The Court has the authority to only interpret the ACHR and other international treaties, where these organs have a legitimate institutional interest. Nonetheless, under these entities we may subsume various organs of the OAS, such as: the Commission, the General Assembly, the Meeting of Consultation of Ministers of Foreign Affairs, the Councils and Committees or the Specialised Organisations of the OAS. Yet, until today, besides the Commission, only the Secretary General has submitted a request for an opinion. Thus, the most influential relationship is definitely the one with the Commission, which acts as an advisory organ to the Court besides promoting human rights and being the “first touch” when dealing with allegations of human rights violations. The Commission is the one which is able to oversee the compliance with human rights standards of the whole OAS, as it is not limited to the ACHR and its protocols, as is the Court. Consequently, the Commission is a significant contribution to the efforts of the Court and has an absolute right to request advisory opinions from it.³⁵

Lastly, individuals have no real power to demand an action from the Court, but they can pressure the Commission to submit their issue and continue their contentious case or to request for an advisory opinion to contemplate on certain issues. The Inter-American system allows any person, group of people or non-governmental organisations to submit their claim to the Commission. The requirement in Article 44 sets, that the claim has to include a concrete victim, hence it cannot be anonymous. The Commission has emphasised that the status of victim is determined by the ACHR and not the national courts, thus, providing a status also for those, who faced obstacles when trying to reach justice through domestic remedies.³⁶

Interestingly, individuals and organisations of the society can take part in the proceedings through the submission of *amici curiae*. The inclusion of the wider society increases the discussion, further legitimising the decision and making the litigation more transparent. Not to mention, that the inclusion of public enhances the acceptance of such decisions and their effective application by national public

33 Advisory Opinion OC- 16/99 Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, 1999, Ser. A no. 16, para 46.

34 Martin, 2021, para. 19.

35 See: Ferrer Mac-Gregor, 2015, pp. 93–99.

36 Report no. 12/18, Petition No. 178–10, 2018, para. 28.

authorities.³⁷ Although legal entities have the right to submit petitions, the victims of the violations have to be in all cases individuals. The rights of companies, unions or political parties are understood through individual lenses as rights and obligations of members, owners or agents acting on behalf of the company. These entities have the possibility to exercise their right to claim before the Court (through the Commission), however as their existence is fictional, the legal entity cannot suffer harm itself.³⁸

Furthermore, the approach of the Court to indigenous communities is definitely worth mentioning. The Court's decisions on provisional measures have been pivotal in establishing recognition of indigenous communities as distinct groups deserving protection under the Latin-American System. These decisions granted protection to large numbers of previously unlisted individuals who were identifiable and at risk due to their membership in an indigenous community. This effectively extended the frameworks protection to these vulnerable populations. The Court, when considering admissibility criteria, considered special circumstances of these vulnerable groups, as territorial, political or cultural elements of their existence. Contrary to companies, unions or other legal entities the Court understands the indigenous communities as having collective exercise of rights. However, the Court in its opinion refers only to the right of freedom of expression and cultural rights. Nevertheless, as the Court interprets these communities as collective rights-holders united by a special way of life, we may assume that other rights could fulfil these criteria, when collectively exercised. Additionally, the Court acknowledges that there can be a circumstance, when it is impossible to identify each victim by name, but there is relevant evidence of a collective damage.³⁹

3.2. *Jurisdiction Rationae Materiae*

As it was already stated several times, the Court has jurisdiction over rights enshrined in the ACHR and its additional protocols. The Statute of the Court adds to this understanding that under the notion of human rights, the Court, besides the ACHR, also understands the rights stipulated in the American Declaration of the Rights and Duties of Man. The latter was widened by the Court, claiming that other international instruments to which the OAS is party to are applicable to the OAS countries, given that these include binding obligations. Nevertheless, the Commission has established that with the ACHR entering into force, the ACHR becomes the primary source of law applicable by the Commission and the Court. Although it is necessary to mention that, on the domestic level, the ACHR is distinguished by the self-executing and

37 Novak, 2020, para. 11.

38 See: Request for an advisory opinion on the interpretation and scope of Art. 1.2 (Art. 1, para. 2.) of the Convention (Legal Entities) submitted on March 28, 2014.

39 Request for provisional measures, Order, September 1, 2016, para. 15, Matter of Kichwa Indigenous People of Sarayaku regarding Ecuador; Provisional Measures, Order, July 6, 2004, para. 9; I/A, Matter of the Communities of Jiguamiandó and Curvaradó regarding Colombia.

autonomous nature of its provisions, which the state applies taking into account the margin of appreciation.⁴⁰

The Commission in its reports added to the material framework of the Court some other instruments which are fundamentally connected to the rights enshrined in the ACHR. In 2017 the Court connected the Convention of Belen Do Pará with Article 7, the right to personal liberty. Consequently, this enabled the Commission, and through its application, the Court to examine the violation of Articles 2 and 4 of the said Convention. This competence is foreseen in the Convention's Article 12 as well as indirectly connected to Article 7 of the ACHR.⁴¹ Similarly, the Court connected the Inter-American Convention on Forced Disappearance of Persons with Article 3 of the ACHR, or the Inter-American Convention to Prevent and Punish Torture with Article 5, the right to humane treatment as well as Article 8, the right to a fair trial of the ACHR. The Court adds that through the said Article 8, the Court establishes a general clause of jurisdiction to the pertinent treaties on prevention of torture and forced disappearance, accepted by countries when ratifying the ACHR.⁴² Given, that some of the instruments are, as referred to above, directly linked and explicitly referred to in the reports of the Commission, there are still numerous instruments which lack enforceability through the instruments of the Court or the Commission. In this sense, the Commission has no competence over e.g. the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disability.⁴³

3.3. *Jurisdiction Rationae Loci*

When the ACHR was being drafted, the Specialised Conference on Human Rights decided to omit the use of the notion *territory* and instead agreed to establish obligations of ratifying countries to respect the rights enshrined in their jurisdiction. Consequently, including extraterritorial acts which may be attributable to these states, i.e. acts of the state agents abroad having causal nexus to the alleged violations.⁴⁴ This was concretely, acknowledged in the El-Masri case, where notwithstanding the allegations of acts happening in Macedonia, the indications about the involvement of United States fulfilled their requirements enough to have the merits of the case interpreted by the organs of the OAS.⁴⁵

Although the Court is authorised to investigate claims of violations only on the territory of State Parties to the ACHR, the Commission has the possibility to receive

40 Report no. 180/18, Petition 1616-07, Admissibility, A.G.A. and family. Colombia. December 26, 2018, para. 17.

41 Report no. 174/17, Petition 831-11, Admissibility, Hester Suzanne Van Nierop and family. Mexico, December 30, 2017, para. 11.

42 Report no. 70/19, Petition 858-09, Admissibility, Luiz José da Cunha "Crioulo" and family. Brazil, May 5, 2019, para.12.

43 Digest of the Inter-American Commission on Human Rights on its Admissibility and Competence Criteria, 2020, para. 78.

44 Shaver, 2010, p. 643.

45 Report no. 17/12. Admissibility. Djamel Ameziane, United States, March 20, 2012, paras. 29–35.

and examine any petition coming from a country which did not ratify the treaty. The basis for such understanding may rest upon various facts. On the one hand, its aim is to provide a possibility for exceptional ad hoc cases for non-state parties and thus widen the scope of the Court. On the other hand, numerous rights are understood as customary law, therefore these are considered as binding without the given explicit acceptance from the country.⁴⁶

3.4. Jurisdiction Rationae Temporis

The temporal applicability of the instruments provided in the section of material jurisdiction is set over facts which occurred after their entry into force or before entry into force, but continuing after the date of entry. The Court additionally takes into account the denunciation of the Convention during the time of the alleged acts. In relation to the protocols, the Court declared that its power extends to incidents occurring after the protocol came into effect. Furthermore, the Court can consider the ongoing consequences of events that began before the treaty's enactment but continued afterward. The Commission, in its report of 2005, adds that some actions automatically constitute a situation of continuity, as the uncertainty of a victims' whereabouts and the impunity of the crime, hence the temporal competence may be based on actions occurring before a treaty's entry into force.⁴⁷

4. Conclusion

The Court has the authority to issue final rulings on complaints submitted to the Commission and subsequently brought before the Court's contentious jurisdiction. By lodging these applications, the Commission acknowledges the Court as the ultimate decision-maker. It is the Court's role, when reviewing these applications, to determine the legality of the Commission's actions in each specific instance. The Court, besides the Commission, is becoming an increasingly influential actor in the protection of human rights on a regional level as well as on a domestic level of those countries which ratified the ACHR. This is presented by numerous acts of the Court which were performed in the recent years, such as the intervention in Peru regarding the granting of immunity to those who violated human rights in the name of the Fujimori Government.⁴⁸

Yet, the system including the Court itself, still faces significant challenges. The system, as many others, delivers delayed judgements and prolonged advisory opinions. Moreover, it is unavoidable to emphasise the Court's limitations when we reflect on its jurisdiction. The Court is limited to the States Parties to the ACHR, which are

46 Report no. 153/11, Petition 189-03, Admissibility, Danny Honorio Bastidas Meneses and others. Ecuador. November 2, 2011, para. 21.

47 Report no. 65/05, Petition 777-01, Admissibility, Rosendo Radilla Pacheco. Mexico. October 12, 2005, para. 16.

48 enter for Justice and International Law Gazette, 2004, p. 1.

23 countries of the OAS. Only 20 of these recognise the contentious jurisdiction of the Court. Consequently, out of 34 countries of the Inter-American human rights system, in fact only 20 fully acknowledge the authority of an “external” Court to consider its actions. Hence, the real limitations of the system lay mostly in political reasons besides economic and legal issues.

We may find additional procedural imbalance in favour of the state parties regarding the question of admissibility. When the Commission holds a claim inadmissible, there is no possibility to appeal. On top of that, as already mentioned, the duration of the system’s proceedings are generally understood as problematic, as they do not meet the requirement of procedural promptness. As the Court already acknowledged this deficiency, in 2003 it enacted a partial reform of its rules of procedure, which entered into force in 2004. The aim of the amendments was to ensure greater swiftness and strengthen the victims’ participation. The rules established new and stricter deadlines and reduced the time periods of certain phases of the procedure before the Court. The amendment was in fact a response to the challenges of the current fast changing society. Yet, the lack of promptness is still part of the criticism.⁴⁹

In order for the frameworks’ organs to sustain and enhance their authority, it is vital that they uphold their independence. This independence has to be presented in an impartial, consistent, and balanced manner in which they operate. Furthermore, there are procedural and structural adjustments that can reinforce both the actual impartiality of the system and the public’s perception of the organ’s actions. Some claim that it is necessary for the Court to decline participation in political discussions and make no public statements related to political situations, thus avoiding favouring any country or its political leaders. The moral standing of judges represents another aspect which influences the acceptance of its decisions and helps its general acknowledgment.⁵⁰ The strong separation from any political influence may be observed through the absence of the possibility for an intervention of a political organ that would perform the enforcement of the judgements, as there exists in the European system via the Committee of Ministers of the Council of Europe. On the one hand, the lack of a similar authority may cause the weakening of the system’s efficacy, on the other hand it aims to present a more independent judicial body.⁵¹

The Court’s jurisprudence is a great asset to the international human rights framework and its interpretation of rights influences other regions, such as the Europe or Africa. The respect for human rights, being the fundamental aspect of the OAS, became the basis for the societal development of the region. The Court interpreted that its material scope means not only negative obligations but also corresponding positive obligations that are the foundation of these rights and freedoms. Consequently, the Court established the obligation of states to guarantee human rights under their jurisdiction. This means that under reasonable circumstances the

49 See: Pasqualucci, 2009, pp. 385–390.

50 Faúndez Ledesma, 2007, pp. 182–190.

51 Ibid, p. 51.

state secures the free and full exercise of these rights to its citizens and foreigners. The measures taken by national authorities must be effective and comprehensive. Concretely, these measures are part of prevention, but so are investigations of alleged violations committed within its jurisdiction, which is followed by appropriate sanctions including the compensation of the victim.⁵²

Various approaches are used to address human rights concerns, starting from comprehensive legal judgements to short public announcements. Although each perspective seeks to influence human rights problems, their means of doing so differ. Scholars have categorised these approaches into six main functions: guiding, reframing, documenting, standard-setting, positioning, and helping. However, generally, a single approach may perform multiple functions at the same time. For instance, a court decision can both mandate specific actions for those directly involved and establish a broader precedent applicable beyond the immediate case.⁵³ All of these functions are observed in the work of the Court. On a domestic level, the national courts have begun to refer to the provisions of the system, including referring to concrete decisions of the Court. The purpose of the Court and the Commission's existence is the promotion, observance and defence of human rights in the region. The applicability of human rights have risen from a domestic level to the level of an international concern, which is followed by the vice versa application domestically. It is the success of the system itself, that the current discussion is more likely regarding the relationship of the Commission and the Court and less likely about dictatorial regimes in countries.⁵⁴

Finally, one rightly assumes that the Court has a prestigious and reputable standing in the international human right systems worldwide. Its commitment to transparency, impartiality and expertise gives credibility to the whole Inter-American system. Its jurisprudence is widely respected and thus has an impact even externally on the non-Latin-American regions. It has managed to establish significant precedents, including principles. The Court, existing less than 50 years today, has demonstrated valuable results in the human rights law playing a crucial part in the advancement of justice and the protection of fundamental rights.

52 Case of *Juan Humberto Sánchez*, Judgement of June 7, 2003, Ser. C no. 99, para.142.

53 Ortiz Ocana and Pérez-Linán, 2024, p. 181.

54 Pinto, 1993, p. 18.

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