

THE INTERAMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS, AND A REFLECTION OF THE COLOMBIAN SITUATION

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Introduction:

The Inter - American Human Rights Protection System (IHR) and the European Human Rights protection system (EHR), both had the same idea and finality: the protection of the person and their human rights through the recognition of rights, procedures and judicial institutions who take the dignity of the human being “seriously”².

Both systems recognized special rights and institutions outside the sovereignty of the States; and through the international instruments and treaties make it possible that the violations of the human rights in their own states will be punished through judicial actions and political mechanism.

After World War II, the International law played a new role and extended the protection of the rights of the person thinking about “the right” itself and not the institutions of empowerment that would be able to protect it. This new role makes important changes thinking about the measures of tutelage. In this topic, the international law improves their power to be able to have an enforcement mechanism to protect the human’s rights. Also, the international law became more effective with the introduction of treaties, international compromises and formal courts that guarantee the faculties recognized in the agreements. This power was also enforced with the recognition of the value of these treaties and courts from the Constitution of each State member.

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² Taking Rights Seriously is the name of the book from Ronald Dworkin, who considers that we scholars should study the “Rights”, not only as the “static” vision of the norm but also the “dynamic” sphere, studying also the measures of improvement and effectively of those Rights. (DWORKIN, Ronald, Taking Rights Seriously, London, Gerald Duckworth & co, 1977)

Nevertheless, different experiences of protection exist that depends on the regional contexts. Since 1950 the Europeans have had their own human rights protection system as well as the Latin American States. Some years later the Africans, Asians and Arabs, have also signed special treaties for human rights protection in their own regions. Each system of protection has their own character and particularities.

In this paper we will describe the Inter - American system of human rights protection (IHR) in terms of procedure, instances and the sentences or providence. Also, we will focus on the effectiveness of the measures taken by the instruments and organism in order to understand the binding of the system to enforce the rights with sanctions and constrictions.

We will empathize, also, in the importance of the context of protection to explain that the Inter – American right’s protection system is quite different from others, especially the European system, because the violation of the human rights in our region is higher in some sort and intensive. We are not proud of this fact, but it’s a reality that in our region human rights extremely related with life, liberty and the integrity of a person are constantly violated for particulars and the States.

In order to describe the Inter – American System, in the first part of this paper we will study the characteristics and peculiarities of the systems, through the study of the interregional compromises and the organism in the regions. In this chapter we will study the Declarations and Conventions signed and the procedures and systematization of the process after the Commission and the Court. In the second part of the work we will focus on the efficiency and practice of the system. Finally we will describe some experiences of cases in Colombia, especially from the year 2000 until now.

1. Characters of the protection of the Human Right’s protection system in the Inter – American Region:

When the Organization of American States (OAS) was created in 1948 in Bogotá, the developments of the field of human rights protection was increased in the region. In that year, and even before the Universal Declaration of Human rights was signed the “**The American Declaration on the rights and duties of man**” was passed and signed by 23 countries. This Declaration is still one of the treaties that deal with the human rights protection and was the first legal document that considers special rights and faculties of the person as a human being and not as a national of one state³.

Afterwards in the year 1959, the **Inter-American Commission on Human Rights** was established, and in 1969 “**The American Convention on Human Rights**” was passed in San José, Costa Rica. In the same year it was decided to establish an **Inter-American Court of Human Rights**. Nevertheless, the Court only came into effect in 1978, almost ten years after the Convention was signed, and began to operate when the internal Statute of the Court was established in the year 1980⁴. The Court was settled in San José. We will describe in the next paragraphs the powers and the functions as well as the procedures of the two main institutions in the Inter – American Human Rights protection system: The Commission and the Court.

2. The Commission on Human Rights:

³ This declaration has thirty eight articles. The first part is the Preamble, Chapter one from the article one to the twenty are listed the rights, and Chapter two, from article twenty nine to article thirty eight are listed the duties.

⁴ The history of the Inter - Americans institutions of humans rights protection are described for the Inter - American Court of Human Rights web page as follows:; “In order to safeguard the essentials rights of man in the American continent, the Convention created two organs to promote the observance and protection of human rights: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The first one was created in 1959 and entered into force in 1960 when the Council of the OAS approved its Statute and elected its first members. Nevertheless, the Court could not be settled and organized until the Convention entered into force. On May 22, 1979 the States Parties to the Convention elected, at the seventh special session of the OAS General Assembly, the first judges to sit on the Court. The Court’s first hearing was held on June 29 and 30, 1979 at the OAS’ seat in Washington,D.C. On July 1, 1978, the OAS General Assembly recommended to approve the Costa Rican Government’s formal offer to establish the seat of the Court in this country. This decision was ratified by the States Parties at the Convention during the sixth special session of the General Assembly in November 1978. The settling ceremony of the Court was celebrated in San José on September 3, 1979. During the ninth regular session of the OAS General Assembly the **Statute** of the Court was approved and in August 1980, the Court approved its Rules of Procedure which include the procedure provisions (en: www.corteidh.or.cr/historia.cfm)

The procedural of the protection of the human rights violations in the region have changed through the years. At first the Commission's authority was restricted to handling inter-state complaints only. This changed in 1965 as a result of a conference in Rio de Janeiro. Since then, the Commission has also been authorized to deal with **individual complaints**. The Commission has its headquarters in Washington D.C; it has seven members who act independently, without representing any particular country. The members of the Commission are elected by the General Assembly of the OAS⁵. This autonomous organ has two main powers: political and diplomatic power and judicial power⁶.

a. The **political and diplomatic** power is related to some type of functions that are connected with the ability of “deal” with the State that is accused on human rights violations. This power allows the Commission to take measures or stop those violations. Moreover the political functions are related with the Commission’s ability to promote and protect human rights violations using political and diplomatic tools from advice and international pressure in order to improve the human rights situation of a member State⁷. Some tools are the so call visits *in loco* (on – site visits) and the observations that come after the visit, the general and specials reports, the Special Relator and the Consultive function from the OAS ‘s General Secretary to the Commission.

The Commission, also, has special powers, for example, the faculty to ask for Consultive opinions from the Inter – American Court especially regarding questions of interpretation of the American Convention. In the same way the Commission has the faculty to ask the Court to order special and “urgent provisional measures” in order to protect individuals situations, and lastly the faculty to ask for amendments of the Inter – American Convention through the presentation of “Additional Protocols” (“Protocolos adicionales”) in order to include new rights to protect it and to renew the procedural system, as

⁵ <http://www.cidh.oas.org/what.htm>

⁶ PINZÓN RODRIGUEZ, Diego, *La Comisión Interamericana de Derechos Humanos*, en: AA.VV., “Derecho Internacional de los Derechos Humanos, México, Universidad Iberoamericana, 2004, p. 177

⁷ *Ibíd.*

happened on May 1 of 2001 when the Commission's internal regulation system was changed.

The political tools, have begun to be used since the early sixties. By 1961, the IACHR had begun to carry out **on-site visits** to observe the general human rights situation in a country or to investigate specific situations⁸. The main goal of these visits *in loco* is to find some information making interviews with the NGO's, victims, official's functionaries and other local's actors in order to understand the whole situation of the violation.

Since 1961, the IACHR has carried out 69 visits *in loco* to 23 member States⁹. In relation to its visits for the observation of the general human rights situation of a country, the IACHR has published 44 special **country reports**.

Another political function of the Commission is the General and Special informs¹⁰, referring to the faculty of making notice to the public opinion and the States members of the OAS of the human rights situation in the region. The General inform ("Informe General") is published and sent to the OAS's General Assembly each year¹¹, and refers to special issues as the mass violations of humans rights for one of the States members, the political rights and democracy, exceptional States measures and the limitations of the humans rights, torture, the forced disappearances in one State, and thematic topics as the right of asylum, the mental disability person's rights, the rights of the children, and other topics that have had special interest through that year¹². Also in Chapter V of the General Inform it becomes usual to include the "Recommendations" that the Commissions has made to the States in order to protect the Human Rights of its inhabitants.

⁸ Those visits had taking place in Argentina, Bahamas, Brazil, Bolivia, Canada, Chile, Colombia, El Salvador, United States, Guatemala, French Guyana, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Dominican Republic, Surinam, and Venezuela. "One of the most import ant's visit took place in 1979 in Argentina, that could prove that the *facto* government was doing arbitrary detentions and disappearances" (PINZÓN RODRIGUEZ, Diego, Op. cit., p. 179)

⁹ *Ibíd.*

¹⁰ Articles (b), (c) and (d) from the Convention, and Article 18 (b), (c) and (d) from the Internal Statute.

¹¹ The first one was the report on the human rights situation in Cuba, in the year 1962, and the latest is the Human rights report in Venezuela in the year 2003. (*Ibíd*)

¹² PINZÓN RODRIGUEZ, Diego, Op. cit., p. 182

Other political functions of the Commissions is the faculty to choose one member Commission to make the role of “Special Relator”, who has the function of making special reports on a issue such of the rights of the indigenous, the right of the women in the region etc. Moreover, the Commission has the power to consult and question the Inter – American Court of the topic of human right protection, while the Commission itself has the function to answer the questions that each State member of the OAS wants to make in topics related with the protection of human rights¹³.

b. The judicial dimension of the Commission is another functioning part of this organism. It means that the Commission plays the role of the prosecutor of the cause for the “individual’s petitions”, that each person, organization or anyone who has interest in the case has to claim after the Court the so called *action popularis*¹⁴. The Commission may only process individual cases where it is alleged that one of the member States of the OAS is responsible for the human rights violation at issue. The Commission applies the Convention to process cases brought against those States which are parties to that instrument¹⁵. The petitions presented to the Commission must show that the victim **has exhausted** all means of remedying the situation domestically. If domestic remedies have

¹³ Article 18 (e)

¹⁴ The Convention said that: “Any person, group of persons or non-governmental organization may present a petition to the Commission alleging violations of the rights protected in the American Convention and/or the American Declaration”. The right of “any person” (*action popularis*) to present a petition to the Commission is an exception of the *locus standi* rule; it means that it is not a request that the claim may be presented for the victim and the representatives. This right called for example for the professor Aida Fenandez de los Campos *Jus Standi*, make it possible to persuade the truth and justice also for the society. Augustine Kaheeru Bahemuka said: “(...) the *action popularis* that allows other persons than the real victims to petition (Article 44 of the Convention in essence allows *action popularis*. This enables NGOs to lodge complaints on behalf of victims. Of course NGO’s are better equipped than the individuals that have limited accesses to legal aid with expertise, knowledge of the system and financial resources, NGO’s are able to help create a more equal situation between defendant States and victims) (KAHEERU BAHEMUKA, Augustine, “Using the law to alleviate poverty: *opportunities and challenges*, Master thesis, [http://www.jur.lu.se/Internet/english/essay/Masterth.nsf/0/C22393784A7F3379C1256B2800573246/\\$File/xsmall.pdf?OpenElement](http://www.jur.lu.se/Internet/english/essay/Masterth.nsf/0/C22393784A7F3379C1256B2800573246/$File/xsmall.pdf?OpenElement)

¹⁵ For those States which are not parties, the Commission applies the American Declaration (<http://www.cidh.oas.org/what.htm>)

not been exhausted, it must be shown that the victim tried to exhaust domestic remedies but for some reason failed¹⁶.

It is also a period of time when the petition must be claimed; it is the so called “six month rule” (*Regla de los seis meses*). The petition must be presented within six months after the final decision in the domestic proceedings were exhausted¹⁷. If domestic remedies have not been exhausted, and the process is still in course in their own State member it could be possible to present the petition to the Commission when, for any reason, justice is denied or an inadequate due process is taking place. In those cases the petition must be presented within a “*reasonable time*” after the occurrence of the complained of events¹⁸.

In two cases the Commission should study the petitions alleging that human rights are violated: when the violations were committed by State agents, and also cases where it is asserted that a State failed to act to prevent a violation of human rights or failed to carry out proper follow-up after a violation, including the investigation and sanction of those responsible as well as the payment of compensation to the victim¹⁹. Therefore the responsibility of the State members occurs in positive action of one of their members or organism, and in negative or neglectful conduct of the State in providing protection and carrying out justice to the victims of the human’s right violations.

The admission of the petition is a crucial stage of the process²⁰. Until the mid nineties the admission of one “Petition to the Commission” had unconscious and relative, methodology, practice that jeopardizes the whole system of protection. In that time the Commission acted like the U.S Supreme Court *writ of certiorari* reviewing the case only when it happened to be important, for political reasons, but certainly with not special rules and methodology.

¹⁶Because: 1) those remedies do not provide for adequate due process; 2) effective access to those remedies was denied, or; 3) there has been undue delay in the decision on those remedies. Article 46.1 of the Convention: (CANYADO TRINIDADE, Antonio Augusto, *The application of the Rule of Exhaustion of Local remedies in International Law*, New York, Cambridge, University press publications, 1983, in: PINZÓN RODRIGUEZ, Diego, *Op. cit.*, p. 195), *Ibíd.*

¹⁷ Article 46. 1 (b)

¹⁸ Article 32.2

¹⁹ <http://www.cidh.oas.org/what.htm>

²⁰ PINZÓN RODRIGUEZ, Diego, *Op. cit.*, p. 194

Professor Diego Rodriguez – Pinzón²¹ explains that until 2001, when the new internal regulation process was amended, the system of admission was organized. The new Statute orders that when the Commission receives a petition it assigns a number and begins to process it as a case²². If the Commission decides that a case is inadmissible, it must issue an **express decision** to that effect, which is usually published²³. When a case is opened the pertinent parts of the petition are sent to the Government with a request for relevant information. During the processing of the case, each party is asked to comment on the responses of the other party²⁴.

The Commission is able also to ask the State to decree prevention measures (*medidas cautelares*) in order to protect the victim, the proofs or evidences, when it appears to be urgent or necessary²⁵; also when the Commission has taken *prime facie* the jurisdiction of the case, it could decree the measures itself. In this last case, the Commission has said that in order to protect the interest of the international community it is better to ask for these measures than an irreparable damage to take place.

According to article 48. 1. (d)²⁶ the Commission also may carry out its own investigations “*in situ*”. It means that in order to recollect evidences, testimonies, proofs and every measure that is related with the information about the individual case; the State

²¹ *Ibíd.*, p. 188

²² “This decision to open a case does not prejudice the Commission's eventual decision on the admissibility or the merits of the case. This means that the Commission may still declare the petition inadmissible and terminate the process without reaching the merits or may find that no violation has occurred” (<http://www.cidh.oas.org/what.htm>)

²³ “On the other hand, the Commission need not formally declare a case admissible before addressing the merits. In some, but not all, cases, the Commission will declare a petition admissible before reaching a decision on the merits. In other cases, the Commission will include its discussion regarding the admissibility of a petition with its final decision on the merits” (*Ibíd.*)

²⁴ *Ibíd.* Article 48.1 (e) of the Convention. These audiences usually are held between March and September when the Commission sessions in Washington D.C.

²⁵ Article 25.2 of the internal Statue of the Commission.

²⁶ Article 48. 1 (d) “If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities”

members should help with that concern. This mechanism is not usual and it depends of the States consent²⁷.

It is also an important to emphasize that in this judicial role, the Commission is able in the whole process to make *a friendly arrangement*, between the State member and the victims or representatives²⁸. This possibility makes a new understanding of the “justice”, because with the arrangement ends the process taking measures as the compensation, the acceptance of the international responsibility from the State or other methods more creative and more related with the dignity of the person as the destination of funds and lands to repair their families victims or the society²⁹.

The judicial process in the Commission finishes when it decides that it has sufficient information. In that stage according to article 50 of the Convention, the Commission prepares a report which includes its conclusions and might have the recommendations that should take the State concerned in the process Also in this last draft, the Commission should resume the facts, if a friend arrangement has taken place during the process of if any of the members do not agree with the decision if should do a separate paper telling of his discordance and opinion³⁰.

²⁷ In some cases the States doesn't want to consent such measures, for example in the case No 1684 when the Brazilian government denies the consent to the Commission investigation “in situ”. The case was related with the arbitrary execution, tortures and arbitrary detentions that took place in that country in the earliest eighties (PINZÓN RODRIGUEZ, Diego, Op. cit., p. 193).

²⁸ The article 48.1 (f) of the American Convention said that: “*The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention*”.

²⁹ The reparations forms have being changed for example with the *Joinet principles* adopted by the UN Commission on Human Rights in 2005, that explained the rights and measures of reparation through the principles in searching the true and the justice with restoration measures no only in the individual person, but also in the society .

³⁰ Article 50: “If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e Article 48 shall also be attached to the report. 2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it, 3. In transmitting the report, the Commission may take such proposal and recommendations as it sees fit”. Also: VENTURA – ROBLES, Manuel E., “Los artículos 50 y 51 de la Convención Americana sobre Derechos Humanos”, en: AA.VV, *La Corte y el sistema interamericano de derechos humanos*, San José, OEA, 1994, pp 553 – 569,

This last report is not public and the Commission gives the State a period of time to resolve the situation and to comply with the recommendations of the Commission. According to article 51 of the Convention after the report is communicated to the State the Commission has two options. First of all, it can prepare a second report similar to the initial report where the State is given a **second period** of time to solve the situation and to comply with the recommendations of the Commission, if such recommendations are made³¹.

The second option is that, the Commission may decide to take the case to the Inter-American Court. In that case, the Commission has **three months** from the date in which it transmits its initial report to the State concerned. The initial report of the Commission will be attached to the application to the Court³². The Commission will appear in all proceedings before the Court as a representative of the victims of the human's rights violations for one State member.

Lastly we have to remember that the Commissions juridical power is not a fourth instance or an appellation stage. It means that the Commission could not base its accusation in the review of the States Court decisions in order to find wrong interpretation of the law or judicial errors³³. The Commission only has the power to take the case to the Court when it finds an arbitrary decision or a denegation of justice.

As we have studied in this part, the Commission has many powers and measures in order to achieve its generic function of promotion, protection and defense of the human rights of the inhabitants of the region. Nevertheless, the judicial power is no completed with the action of the Commission itself³⁴ and will only be finished with the second instance that is developed for the Inter – American System: the Court, as we will analyze in the third part of this work.

³¹ <http://www.cidh.oas.org/what.htm>

³² *Ibíd.*

³³ The Commission developed this rule in the case *Marzioni c. Argentina* (Case 11.673, Inform No 73, 1996)

³⁴ With the exception of the friendly agreement of the possibility of not to take the case to the Court.

3. The Inter – American Court of Human Rights:

The Inter – American Court began operating in August 1980, when its Statute was approved. The Court is the judicial branch of the system of protection, and interprets and applies mainly the “Inter - American Human Rights Convention” (Pacto the San José de Costa Rica of 1969), signed in year 1978 that began ruling after the eleven country member of the treaty had compromised to apply it³⁵.

The Court is composed of seven judges, nationals of the OAS members. They are elected in a personal title that means that the judge represents his own point of view and doesn't have any particular commitment and relationship with the country of his or her nationality³⁶. The candidates must have special studies in international law and human rights, and they can be promoted by any of the States members³⁷.

The election of the judges is made in the General Assembly of the OAS³⁸ and the period of each judge will be six years with a possibility of one reelection³⁹. Also the judges can extend their period when they have taken part in the discussion of the case where the Court has made their final verdict, in said case and according to article 54 (3) of the Convention: “(...) *they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges*”⁴⁰.

³⁵ But also can apply other Inter - American treaties as the “American Declaration of the Rights and Duties of Man”, “The Protocol of San Salvador” for the protection of the Economic and cultural rights.

³⁶ This idea for example in the book of KELSEN, Hans, *Peace through the law*, North Carolina, University of Carolina Press, 1997. It is a translation into Spanish, KELSEN, Hans, *La paz por medio del derecho*, Madrid, Trotta, 2003, pp. 83 - 84

³⁷ For example the judge Thomas Buergenthal, American, was proposed for Costa Rica.

³⁸ Secret vote and absolute majority. Article 53 (1) of the Convention. It is not possible that in the Court is composed for more than two judges with the same nationality. This idea comes also in the proposal of law by Hans Kelsen, *Op. cit.*, p. 82

³⁹ Article 54 (1). The judge who replaced other who had died, is unable to do the charge or have resign, completes the period of the absent judge.

⁴⁰ <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm>. The interpretation of this article was problematic because the translations to Spanish, French, Portuguese and English have different meaning. The Court have done a Resolution that order that the new judge can take part of an old case in measures as the determination and quantification of the prejudices of the sentence, but not in the knowledge and study of the charges. (MARTIN, Claudia, *Op. cit.*, p. 212)

The Court has three specific functions: the judicial or *contentious* competence, the advisory competence (articles 62 and 64 from the Convention), and the ability of adopting “Provisional measures” in urgent and extremely grave cases where the victim or victims could have an irreparable hurt or damage (article 63.2 of the Convention)⁴¹.

Since their creation, until 2007 the Court has carried out 87 contentious cases⁴² the first, was the **Velásquez Rodríguez vs. Honduras** case sentenced in July 29 of 1988, and the last case was the “**La Rochela**” **Massacre vs. Colombia** passed to sentence in June 8 of 2007. In the first years of work the Court only applied its advisory function but in the last years, especially since 2003⁴³, the Court has doubled it’s work in the knowledge and judgment of human rights violations in “individual cases”.

This change could be possible after combinations of legal amendments in the Commission and the Court procedures. The new Internal Statute of the Commission⁴⁴ and the new “Rules of Procedure” in the Court⁴⁵ made the process clearer, quicker and more efficient, and the new instruments and institutions found a new role in order to protect the Human Rights in the region.

In the *Contentious competence* the Court can only revised the cases that are sent by the Commission of other State (in the inter – state complaints), so in this part of the judicial process, the individuals, NGO’s of the group of people cannot act alone after the Court (Art. 61.1).The State demanded after the Court had to have accepted the contentious jurisdiction of the Court and this competence could be limited in the acceptance agreement. For example Trinidad and Tobago had made a reservation with their allowing

⁴¹MARTIN, Claudia, “La Corte Interamericana de Derechos Humanos: funciones y competencia”, en: AA.VV, “Derecho Internacional de los Derechos Humanos, México, Universidad Iberoamericana, 2004, p. 210.

⁴² Identify with the letter C. look the page: <http://www.corteidh.or.cr/casos.cfm>.

⁴³ In September of 2003 the judicial cases sentenced by the Court were 47, the Consultative Opinions were 18 and the Provisional Measures were 43 (MARTIN, Claudia, Op. cit., p. 210)

⁴⁴ Entered into force on January the first of 2003. This internal Statue was changed again between October 6 and 24 of 2003. (Ibíd)

⁴⁵ Entered into force on November 25, 2003 during the LXI regular session

of the Death penalty in their country⁴⁶. We have argued before, that the individuals might not be able to concur after the Court in accordance with the International law interpretation that the International law and treaties are between the States and not the individuals.

Nevertheless, since the first cases the Court enables the individuals, their representatives and groups as the NGO's organizations, to take part of the process. The practice was taken from the European Court experience and began to operate with the Velasquez vs. Honduras case in 1989. The idea is that the victim's lawyers and organizations are allowed to examine proofs, to make questions to the witnesses and to present the final's arguments in the same sue of the Commission.

Also since November 2000, when a Procedural Amendment of the Court took place, the Victims and their Representatives were allowed to participate in the reparation stage of the Process, and with a new modification of the rules of procedure in October of 2003, the petitioners had the right to present their demands, arguments and evidences after the Court in the entered process with the autonomy and independence of the Commission (Article 23). Moreover, the victim's representative, in accordance with the article 25.3 of the Statue, might be able to order **urgent and provisional measures** in order to protect the rights of the victims, victim's relatives and witnesses.

Nevertheless, until now, the victim's participation is not campaigned with the financial aid to take care cost of the process for paying for example the recollection of the proofs and evidences. So at least, the victim had the financial help of the NGO's or a social organization it is very difficult to them to take charge of the whole cost of the process⁴⁷.

⁴⁶ Until today 21 States have recognized the Contentious competence of the Court, so in the region the Court have competence over the causes related with Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, México, Nicaragua, Panama, Paraguay, Peru, Surinam, Uruguay, Venezuela. Only Granada and Jamaica who have signed the American Convention have not contentious Competence.

⁴⁷ PAEZ RAMIREZ, Manuel Jasser, Sistema Interamericano de derechos humanos: funcionamiento y precedente, Bogotá, Universidad Externado, 2007, p. 27

Also we have to emphasize that the Court has in their interpretation the faculty to apply the principle “Iure Novit Curia”. That means that the International Instrument must be related with the facts of the case itself and in the study of the case the Court can confront **all the norms** of the International treaty dealing with the case.

This faculty of the interpretation had extended the power of the Court and had creating new rights and principles not original listed, for example the rights of the women’s in prison in the “Penal Miguel Castro Castro vs. Perú” case, (November 2006); the rights of children and the military duty in “Vargas Areco vs. Paraguay” case (September 2006); and specially with the creation of a new prohibition “of forced movement of persons” in several cases specially related with the internal conflict in Colombia⁴⁸.

In the last example, the participation of the victims and their representatives changed the initial point of view that the Court had over the interpretation of Article 27 of the Convention the right “of the free movement and residence”, that became into a new prohibition “of forced movement of persons” practice that violated many fundamental rights protected in the Inter - American Convention as life, integrity of the person, property, dignity and others.

Nevertheless the Court has extended its faculty of interpretation depending on the argumentation of the participants in the process, protecting the right in some cases and in others not making the system of precedent uncertain and unclear⁴⁹.

For example in the case of the “19 Tradesmen vs. Colombia” that took place in July of 2004 the Court didn’t use their “Iure Novit Curia” faculty and limited its sentence to the formal charges presented by the Commission in the demand. That interpretation changed one year later in the case “Moiwana's Community vs. Surinam” where the Court used the International law principles of “Iure Novit Curia” and “Pro Homine” to protect the victims not only for the rights alleged by the Commission, but also for the prohibition of

⁴⁸ *Ibíd.*

⁴⁹ *Ibíd.*

“internal and forced movement of persons”⁵⁰. The facts were similar to the case of the “19 Tradesmen” but the protection of the victim’s was different and unequal.

The interpretation of the extension of the article 22 to the forced movement of persons was used in another Case related with Colombia: the Case “Mapiripan’s Massacre vs. Colombia” where the Court extended the Interpretation used in the “Moiwana’s Community” case in the motivation part of the Sentence, but was not used in the Resolutive part, where the Court didn’t extended the right into a duty alleging the lack of information about the names of the family’s members, especially because were not well represented in the allegations submitted to the Court.

Lastly we have to emphasis the importance of the Reparation measures that the Inter – American Court used in the last sentences, especially after the Van Boven inform in 2001⁵¹. In this inform Van Boven, the Special Human Rights Commission of the U.N, had noticed that the reparation of the victim, family members and communities must not only be monetary compensation, but also with other measures more related with the dignity of the human being.

In order to follow this recommendation and also using other Principles related with this idea (mainly the Joinet Principles of truth, justice and reparation) the Court has extended their faculty to punish one State with measures such the searching of the victim’s body, the searching of the guilty of the crimes, to show respect to the victims memory through the constructions of monuments or to plea public forgiveness.

Also in the Reparation Sentence, the Court could order to change a law not according to the Convention, for example in the Case: “The last temptation of Christ vs. Chile” the Court orders the State to amend a constitutional article. In order to enforce these measures the Court can also create a Committee of Vigilance of the measures itself, as

⁵⁰ *Ibíd.*

⁵¹ MEJIA GÓMEZ, Camilo, *La reparación integral con énfasis: en las medidas de reparación no pecuniarias en el Sistema interamericano de Derechos Humanos*, Bogotá, Universidad Externado de Colombia, 2005, p. 14

happened in the Case of the “19 Tradesmen vs. Colombia”. Here the Court checked the alternative measures of reparation, because the authorities of the State, in this case Colombia, didn’t pay much attention and realized the reparation measures without care and seriousness.

The last four years of the Court activity in the Inter - American System has increased. In 2003, 15 cases were solve, in 2004, 12 cases, in 2005, 10 cases, and in 2006, 14 cases. That “Boom” and new role of the Court in the Region, became possible because the new rules of procedure changed in the year 2003, but also because the Court has noticed the power of its faculties.

In the case of Colombia, the Inter – American Human’s Rights protection system, created a new understanding of the Human Rights. That doesn’t mean that after the Court decisions the Colombians authorities haven’t violated any of the rights declared in the Convention. Unfortunately the violations of Human Rights in Colombia continues, but the inhabitants, victims, family victims, communities etc. have proof that a least their Rights can be protected in the interregional stage. The Government and the State authorities also promised that they will take more measures in order to prevent and protect the live, integrity and dignity of the Colombians people, especially for our internal conflict related with drug dealers, paramilitary and guerrilla.

The Inter – American Rights Protection System must play a new and special role in the violations of the human’s rights in our Region. The commitment of the States must to be higher and the process must to be clearer and quicker. We have to understand that the State is not the only institution in charge of the Rights protections and the regional and the international protection system had to become the first step for a future globalization of the human’s rights around the world as we believe it comes in the future.

