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The human rights protection mechanism in the Organization of American States system

Introduction

By way of introduction, we should refer to the Organisation of American States, also known by its acronym, the OAS.

The OAS was established through the Charter of Bogotá, signed on 30/April 1948 and entered into force on 13/December 1951.

The OAS is the oldest regional IO and was established to achieve among its member states "an order of peace and justice, to promote their solidarity, to strengthen their collaboration and to defend their sovereignty, territorial integrity and independence".

It currently has 35 member states and its competence rests on four pillars of work: democracy, human rights, security and development.



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On these pillars, the OAS has built the so-called Inter-American System for the protection of Human Rights through two different legal sources, which produces a certain and partial overlapped:

- On the one hand, the system created through the OAS Charter of 1948 and certain related instruments, which encompasses its 35 Member States.

- On the other hand, the system of the American Convention on Human Rights (Pact of San José de Costa Rica-22/11/1969 and its Protocols): 23 States.

The system of human rights protection in the OAS Charter

In this dual system of protection, as we pointed out, the OAS designs a first step in its own constitutive Charter, which contains references to HR.

In its Preamble, it states that the true meaning of American solidarity and good neighbourliness can only mean the consolidation in this continent, within the framework of democratic institutions, of a regime of individual freedom and social justice based on respect for the essential rights of man.

In the former art. 5.j) (now 3.l) according to which The American States proclaim the fundamental rights of the individual without distinction as to race, nationality, creed or sex.

Or in former art. 13 (now 17) Every State has the right to develop freely and naturally its cultural, political and economic life. In this free development, the state shall respect the rights of the individual and the principles of universal morality.

This first system is developed through other texts or legal milestones.

The first of these is the American Declaration of the Rights and Duties of Man, 2 May 1948. This declaration contains civil, political, social, economic and cultural rights, accompanied by duties (a major novelty), recognising their indivisibility.

Following the proclamation of this text, the Inter-American Commission on Human Rights, 1959, was created in 1959. Since 1960, it has been responsible for the application of the American Declaration as a standard.

The original functions of the Commission were to prepare studies and reports on the States, and to issue recommendations to the governments.

In 1965, the possibility of receiving individual petitions on violations of the right to life, liberty and security; equality; freedom of religion; freedom of expression; access to justice; prohibition of arbitrary detention; and the right to a fair trial will be added.

The Amendment of the Charter by the Protocol of Buenos Aires of 27 February 1967 will modify the legal status of the Commission and reinforce the normative character of the Declaration.

Thus, Art. 51 Protocol (now Charter 106), will underline the role of the Commission in the promotion and defence of human rights, declaring it the advisory body of the OAS in this respect. It is envisaged that a Convention will be drafted, but until such drafting is finalised, the Protocol makes the Declaration a normative text whose character is strengthened.

The guarantor of this section of the protection system (that of the Charter and the Declaration) is the Inter-American Commission on Human Rights. It took on this role following the amendment of the Commission's Statute in 1979.

The Inter-American Commission on Human Rights

The Commission is composed of 7 members elected by the OAS General Assembly from a list of candidate OAS Member States, and is based in Washington, USA.

It does not operate on a permanent basis. Its meetings (ordinary/extraordinary) are reserved. With regard to decision-making, it is foreseen that procedural matters will be decided by simple majority, while decisions relating to States that are not party to the Convention must be taken by absolute majority.

The Statute of the Commission distinguishes its functions both as a body of the OAS, as regards States Parties to the Convention (Art. 19) and in relation to OAS Member States not party to the Convention (Art. 20).

It shall have Jurisdiction:

- To receive and examine individual petitions (individuals, groups, NGOs legally recognised in the Member States, on their own behalf or on behalf of individuals), on violations of the rights in the Declaration and even initiate proceedings on its own initiative. Against any OAS Member State, whether or not it is a party to the Convention, in case of violations of the Declaration.

- And to issue Reports on human rights in a State: General or special report on the human rights situation in a State, when it receives numerous individual petitions or when it has clear evidence of frequent violations.

The Human Rights Protection System in the American Convention on Human Rights

The second of the Human Rights protection systems established in the OAS is the one based on the American Convention on Human Rights of 22 November 1969, applicable only to its States parties. It contains civil and political rights, and correlative duties to the family, the community and humanity.

It has subsequently been supplemented by the Additional Protocol on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 17 November 1988 and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 8 June 1990.

The Convention determines that all States parties are obliged to:

- Respect and guarantee, without discrimination, the rights.

- Remove obstacles to their enjoyment and organise the apparatus of government to ensure their free exercise.
- Adopt legislative or other measures to give effect to them.
- And, by the additional protocol, to ensure the progressive realization of economic, social and cultural rights.

However, these obligations may be subject to derogation in case of war, public danger or emergency, independence or security of the State. With a general limit, the obligations of international law and non-discrimination, and a series of exceptions for rights that are considered absolute: legal personality, life, personal integrity, slavery and servitude, legality and retroactivity, freedom of conscience and religion, protection of the family, the right to a name, children's rights, nationality, political rights, indispensable judicial guarantees. In the case of the Convention system, two bodies share competence for its control.

On the one hand, the Inter-American Commission, whose main task is to promote the observance and defence of human rights

(Convention + trade union rights and the right to education of the Protocol of San Salvador).

The Commission, as mentioned above, is competent to hear individual petitions or complaints of violations presented by a person, group of persons, or NGOs legally recognised in the State party on violations of the Convention or on certain rights of the Protocols. In these cases, if the State has accepted the jurisdiction of the Inter-American Court and is deemed not to have complied with the recommendations of the report, the case will be submitted to the Court.

The Commission is also competent to receive communications (or complaints) from other states provided that such competence has been recognised.

The second body responsible for monitoring compliance with the Convention is the Inter-American Court of Human Rights.

The Court, as an independent judicial body, has jurisdiction to hear matters relating to compliance with the commitments (interpretation and application of the Convention).

The Court has its seat in San José de Costa Rica and is composed of seven judges elected by

secret ballot by an absolute majority of the States Parties to the Convention and nominated by the States.

The Court has a permanent functioning (ordinary/extraordinary sessions) and adopts its decisions by majority vote with public hearings, but private and secret deliberations.

The Court has two types of jurisdiction: contentious and advisory.

In the exercise of its contentious jurisdiction, the Court rules on cases concerning the application of the Convention, provided that the States have recognised this possibility by means of a special declaration or convention.

Prior to this, however, there must be exhaustion of the process before the Commission, as the cases are not brought by individuals but by other states parties or by the Commission.

The Advisory competence refers to the interpretation of the Convention or other treaties for the protection of human rights drafted within the framework of the OAS.

In this case, its jurisdiction is broad, as it can be accessed by OAS member states (whether or not they are parties to the Convention) and the organs

of Chapter VII of the OAS Charter on the interpretation of the Convention or other treaties for the protection of human rights in the American states.



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