



The Development and Evolution of the Right to Life in the Inter-American Court of Human Rights

Sabrina Judith Kaliman

PhD Candidate
University of Szeged,
Doctoral School of Law and Political Science
kalimansabrina@gmail.com



Abstract

Aim: To examine different aspects of the evolution and development of the right to life in the Inter-American Court of Human Rights. Moreover, to analyse certain cases related to the violation of this right and its procedural and substantial aspects.

Methodology: The methods chosen for this article are Documental Analysis and Case Study. To conduct the research, the methodological technique of documental investigation will be used. The objectives will be reached through the examination, reading, and critique analysis of the documents. The methodological technique selected allows through the observation and the analysis of documentation to look back, understand, and interpret the current reality. The subject of study is the Inter-American Court of Human Rights (IACHR). The main documents are going to be texts of doctrine about this tribunal and the right to life and the case-law of contentious cases of this Court.

Findings: This text establishes theoretical definitions. Furthermore, tries to define the crime of enforced disappearances that have been very important for the development of the right to life in the IACHR and which is a crime against humanity. Other important characteristic of this paper is that it examines the obligation to investigate, the procedural aspect of the right to life, the interpretation of Article 4 of the American Convention of Human Rights (Right to Life) and the proportionality of the use of the force of security forces in relation with the violation of the right to life.

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Value: To give important concepts about the study of the right to life taking as case study the evolution and development of this right in the Inter-American Court of Human Rights.

Keywords: Right to Life, Inter-American Court of Human Rights, Proportionality, American Convention of Human Rights

Some characteristics of this work

I chose this subject for this article because this issue is important in a world where the right to life has, and is, being violated at a massive reach. Because of this, it is relevant to establish these subjects and put out the knowledge I acquired.

It is relevant to emphasise in connection with this work the relations between the right to life with the right to the security and liberty of a person; as well as the prohibition against torture, degrading or inhuman treatment or punishment that are observed in Article 5 of the American Convention on Human Rights. These rights are all connected to each other in different ways.

Furthermore, it is important to clarify that the judgments of the Inter-American Court of Human Rights are ones about the background and merits of the matter. It will exclude provisional measures and preliminary exceptions.

The right to life in the main instruments of human rights

There are multiple conventions, treaties or declarations that establish the protection of the right to life. Among them, the most important instrument of human rights is the Universal Declaration of Human Rights of 1948. The base of these instruments is the prohibition of arbitrary deprivation of the life of a person. The radical change in the protection of the right to life that supposed to understand this right in an integral, universal and indivisible way rises from the protective instruments of the Vienna Convention of 1993.

The Inter-American Convention about Enforced Disappearance of Persons

The Inter-American Convention to prevent, sanction and eradicate the violence against women, also named *Convention of Belém do Pará* (Costa Rodríguez, 2005).

Currently, human rights are seen as indivisible from each other. The first instrument that established the protection of human rights was the Universal

Declaration of Human Rights of 1948. Article III determines: *'Everyone has the right to life, liberty and security of person'*. It is essential to highlight that this article shows how indivisible human rights are in general and mostly these three rights: life, liberty and security that generally are violated together. This declaration was not binding and for that, it was established the International Covenant on Civil and Political Rights gives mandatory character to the protection of this right.

The protection of the right to life is established in the American Convention on Human Rights in its Article 4. This norm establishes the protection of the right to life and the prohibition of the arbitrary deprivation of the right to life in the first sub-section. However, the following sub-sections are about the death penalty that has been prohibited in the countries which are parties of the IACHR.

Costa Rodríguez establishes this recognition of the intrinsic dignity of the human being. This author also relates this article with Article 9 of the International Covenant on Civil and Political Rights that establishes the prohibition of arbitrary arrest detention or exile (Costa Rodríguez, 2005). Most of the cases of violation of the right to life examined in this work are related to arbitrary detention like the cases of enforced disappearances. Other cases are related to the arbitrary use of force or torture. Costa Rodríguez determines that for all human rights to be effective it has to be complying with the right to life and it is a positive obligation of all states to assure this (Costa Rodríguez, 2005).

In the book *American Convention: life, Personal Integrity, Personal Liberty, Due Process and Judicial Recourse* by Cecilia Medina Quiroga it is established that the reach and content of the protection of the right to life is a complex work. This is related to the debate about how this right is guaranteed and is hard to find a conciliation between different positions (Medina Quiroga, 2005).

Concerning the right to life and its difference from other rights, there is a debate about whether it is only a right or if staying alive is also an obligation of the people which has to be assured by the State. The interpretation of Article 4 of the American Convention is very complex. Because of that other research is necessary to determine what the IACHR is trying to establish in its judgments and stating as international law.

The subject of the right to life has a very rich literature about several aspects of this right. As it was mentioned above there are texts about the right to life and its meaning, its characteristics and even debates concerning this one (abortion, euthanasia, etc.). All of this is very helpful to introduce the subject. In this way is possible a holistic view of the right to life before analysing the cases of the Court.

Medina Quiroga does not dedicate her work to the importance of dignity in the right to life, her analysis is interesting from another perspective that related

to the obligation of the state to investigate the violation of the right to life (due process) and the different forms of reparation of the right to life that are a very relevant aspect of this human right.

Definitions and concepts of the right to life

Renata Cenedesi Bom Costa Rodrigues establishes about the IACHR the importance of dignity as an essential attribute of the human condition independent of sex, race, religion, nationality, social position or any other specificity (2005). The importance of the dignity of the human person was established and developed by Hannah Arendt when this author determined the importance of human rights even before these were named as such. Arendt focuses on several problems related to human rights but does not develop a theory. However, her political theory is centred around the problems that had its roots in the failure of the rights of the people to ensure human dignity (Isaac, 1996).

Costa Rodrigues aims to establish why there is a necessity for an extension of the juridical protection of life starting with the judgments ruled by the Inter-American Court of Human Rights. It is important to highlight that Costa Rodrigues wants to prove that the jurisprudence of the IACHR has amplified the concept of the right to life. Costa Rodrigues proposes to analyse the role of IACHR in the protection of the right to life. There are two organs in the Inter-American System of Human Rights: The International Court of Human Rights and the Inter-American Commission of Human Rights (Costa Rodríguez, 2005).

This represents the rescue and the reaffirmation of the principle of indivisibility of human rights and the dignity of the person. These are the two principles that could be considered the axis of transformation of this right. The idea is to offer an amplified concept of the right to life that also includes the aspects of civil and political rights, such as economic, social and cultural rights (Costa Rodríguez, 2005).

To analyse the crimes against life it is important to define what is considered life. Costa Rodríguez establishes that according to the dictionary of the Royal Spanish Academy “Vida” (life in Spanish) comes from the Latin Vita ([URL1](#)). This means force or activity substantial intern through which the being that possesses it works. Furthermore, a more accurate conception could be that it is the space that happens from the birth of a person, animal or vegetal until its deceased. In a pure naturalistic concept, it is safe to say that the right to life is the right to the own physiological and biological existence (Costa Rodríguez, (2005).

It is possible to determine: for the authors examined here the right to life is intrinsically united to the dignity of every human being except for García Huidoboro

(García-Huidoboro, 2014). I follow the ideas of Arendt and Costa Rodrigues about the importance of the dignity of the person in the right to life.

Certain peculiarities of this right must be taken into account to understand the crime against the right to life:

- 1) Is the ontological basis of all other rights;
- 2) The violation of this right is irreversible, it is impossible to give back the life to a human being, and this implies that disappearance of the titular of this right;
- 3) The definition of life generates conflicts between ethical, moral and religious concepts, which gives rise to debates about abortion or euthanasia (García-Huidoboro, 2014).

This work will not enter into debate with the discussions about abortion, euthanasia or the death penalty even though they are part of the natural debate of the right to life.

For this article, it is vital to recognise the existence of a right to the juridical protection of life that is acknowledged as a human right both at a national and international level. This means that all humans are the recipients of this right for the mere fact of being human.

Different conceptions of the right to life

It is relevant to establish the ideas of the text of García-Huidobro about the five different conceptions of the right to life. The author states that is possible to identify five conceptions of the right to life:

- 1) One of them sustains that the right to life consists of the right to live, or to live with dignity.
- 2) Other suggests that this right consists of the right to live well or live with dignity.
- 3) A third proposes understanding that the right to life consists of the right to receive everything which is minimally necessary to not die immediately.
- 4) This conception proposes to understand the right to life simply as the right to not be killed.
- 5) A fifth posture subscribes to the idea that this right consists in which we are not killed arbitrarily (García-Huidoboro, 2014).

The author established in the first part of his work the right to not be killed arbitrarily. This conception parts from the base that the object to the right to life

is not life as a phenomenal reality but a conduct of third parties, that kill arbitrarily another person. This concept differs from the biological concept of life, which understands the period from birth to death. (García-Huidoboro, 2014).

There are several reasons for the distinction between the right to life and the life and understanding that the object of the right to life is not the life itself.

To determine the object of the right to life is necessary to begin with a general consideration. The right is something that implies a juridical relation with other subjects. The object of a right cannot be a thing or an entity, because the right will be structured as a dyadic relation between the titular and the thing. The dyadic relations do not have juridical relevance because it does not regulate the conduct of third parties.

Another reason to discard that the object of the right to life would be life is that someone can lose their life as a phenomenal reality (or biological support) without their right to life having been violated. In effect, a person can die without being killed arbitrarily. The contrary to this is that all the deaths occurred by homicide.

The development of constitutional jurisprudence compared to the right to life (García-Huidoboro, 2014). The author establishes the different conceptions of the right to life. The first conception sustains that the right to life consists of the right to live, to remain alive or to continue living.

García-Huidoboro criticised this posture by saying that:

- a) Firstly, having a right to live or remain living will imply a right to not die. According to the author, this is absurd, as this is an ephemeral physiological state. In effect, all the known form of life dies at some moment. This conception of the right to life supposes immortality.
- b) Secondly, many factors can contribute to the fact that a person cannot keep living or remain alive. According to the author, the biggest example is when a person is sick with an incurable illness and dies. We cannot conceive the rights in a way that they can be understood as violated even if no human being, or the State, had anything to do with them.
- c) García states that we must understand the rights like they are assured by the State, at least in some sense. For this, we cannot comprehend the right to life as the right to live because the State cannot ensure living because human beings are not immortal. It is important to establish the difference between saying that the right to life means the right to live and that the right to life implies the right to not be killed arbitrarily. The difference resides in that the last idea does not demand immortality (García-Huidoboro, 2014).

The author also criticizes the second conception which says the right to life is not only the right to live but also the right to live well with dignity. He establishes

that living well is a vague idea. Also, the dignity and the material and spiritual conditions of human existence may have no relation with the State and its conduct (García-Huidoboro, 2014). I disagree with this posture of the author taking into account that the interpretation of the treaties and the International Covenant of Economic, Social and Cultural Rights has established that the material conditions for a person to live with dignity must be given by the State. The idea of these norms is that a person can fulfil the minimum conditions such as food, house or education to live with dignity. The same argument can be applied to the third conception of the right to life which establishes that the right to life includes the right to be given that one minimally requires for life to continue (García-Huidoboro, 2014).

The fourth conception sustains that the right to life consists of the right to not be killed. The author sustains that this conception is not acceptable because if it does not include the clause of arbitrariness it transforms this right into an absolute right. The problem with this is the legitimate defence (García-Huidoboro, 2014). A person may kill another if it is in danger of his or her own life. On this point, I agree with the author.

It is important to clarify that I believe the author has valuable arguments about the different conceptions of the right to life, however I cannot interpret the ones he describes as he does to understand it and I am not in concordance with their arguments in many cases.

In resume, the author summarises that for him the only way to understand the right to life is as the right that people not get killed arbitrarily. He establishes as a synthesis that the right to life means:

- a) The primary obligation of not killing arbitrarily another person.
- b) Positive secondary obligations to prevent somebody is being killed arbitrarily. These obligations are several and must be determined.
- c) Eventually positive obligations are directed to satisfy and comply with the right that should be determined (García-Huidoboro, 2014).

In the last part, I agree with the author who is developing the subject of this research about the violation of the right to life by homicide, the killing of a person arbitrarily.

I chose two authors for this section who are on opposite sides regarding the dignity linked to the right to life. Costa Rodrigues, whose opinion is the line of thought I follow, believes that the intrinsic dignity of human beings is interlinked with the right to life of a person. García Huidoboro, although establishes conceptions with the idea that the first and second above-mentioned conceptions of the right to life are linked to dignity, criticised this conception and

concluded that the only real conception of the right to life is to not be killed arbitrarily. I believe that is important to know all perspectives and ideas and for that, it is interesting to analyse authors that do not have the same line of thought.

Enforced disappearances in the Inter-American Court of Human Rights

One of the notorious crimes in the jurisprudence of the IACHR is the enforced disappearances. This crime is an infamous violation of the right to life and has been recognised as such in the IACHR. This tribunal has established that this constitutes a breach of the obligation of the state to guarantee the right to life in a preventive and effective way. The crime of enforced disappearance of a person constitutes a multiple and continuous violation of several rights acknowledged in the American Convention of Human Rights. For Latin America, the enforced disappearances started during the decade of 1970 and unfortunately, this crime still exists. This crime is committed to create a generalised state of fear and insecurity in society (Costa Rodríguez, 2005).

The first case of enforced disappearance was ruled by the IACHR in 1989. During the decade of 1990, with the adoption of the Inter-American Convention about Enforced Disappearance, great changes were seen in the internal regulations of the state parties. This instrument defines enforced disappearance and establishes the impossibility of the state of exemption of responsibilities to a person who alleged due obedience to superior instructions that authorised or established the enforced disappearance. Furthermore, this convention established: the responsible for this crime only can be judged by the common jurisdictions which are competent, removing all possibility of a special jurisdiction like the military and eliminating the immunities for these charges (Costa Rodríguez, 2005). This was a major change taking into account what had been established by the countries with dictatorships that allow these immunities or judgments. The only extenuating situations are that the disappeared person appears living or that the person who is being judged contributes information about the crime.

It could be determined that the enforced disappearances are a violation of three rights: Article 5 – personal integrity, Article 7 – personal liberty and Article 4 – right to life. The Court decided that it would be a violation of the right to life even when the death is not proven. The IACHR has established that there has been a violation of the right to life in all cases of forced disappearance that the Court has ruled, and all of them referred to the victims whose corpses have not appeared (Medina Quiroga, 2005).

The violations of several rights in enforced disappearances

The first case about the enforced disappearance in the practice of the IACHR was Velásquez Rodríguez V. Honduras. The IACHR has determined that this crime constitutes a breach of the obligation of the State to guarantee the right to life in a preventive and efficient way. After this judgment, there was an extension of the juridical protection of the right to life in the decisions of the IACHR in the '90. In the year 1994, the Inter-American Convention on Forced Disappearance of Persons was adopted (Case Velásquez Rodríguez V. Honduras).

Honduras was condemned for not guaranteeing of the duty of preventing any violation of the rights established in the Convention. The case of Velásquez Rodríguez was a paradigmatic point for the IACHR and other tribunals and this judgment was quoted and used as background in numerous subsequent decisions. Renata Cenedesi Bom Costa Rodrigues establishes the importance of this case by stating: *'This judgment represents the first step to the extension to the concept of the right to life for not conceiving this right in a restrictive form, demanding of the states the positive obligation of taking all the necessary providences to protect and preserve the right to life.'* (Costa Rodríguez, 2005).

It is established the obligation of the State to protect the life by omission and by action. This means that the State has both a positive and a negative obligation to protect the lives of human beings.

Interpretation of Article 4 of the American Convention on Human Rights and the cases in relation

It is relevant to interpret Article 4 of the American Convention on Human Rights. Article 4 of the American Convention on Human Rights establishes *'Article 4. Right to Life.*

- 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.*
- 2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and under a final judgment rendered by a competent court and under a law establishing such punishment, enacted before the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.*
- 3. The death penalty shall not be reestablished in states that have abolished it.*

4. *In no case shall capital punishment be inflicted for political offences or related common crimes.*
5. *Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.*
6. *Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending a decision by the competent authority.*' (American Convention of Human Rights).

Reading only the first subsection, it seems that the right consists of not being arbitrarily deprived of life, that this right belongs to every human being, and it is stated that this right is protected by law. The following five subsections established the death penalty. The editors of this Convention were mostly against the death penalty, but there was no conciliation with the states at the moment of writing the Convention. For that, the primary idea is to try eliminating as much as possible from the opportunities of the state to deprive the life of a person. Medina Quiroga establishes that this article must be interpreted as the respect for the right to life, but, also understanding the obligation of the States. A positive and negative obligation of guaranteeing the execution of actions that allow the effective enjoyment of the right.

This author establishes: subsection 1 of Article 4 consecrates the right to life of every person who respects his or her life, and because of this, nobody can arbitrarily be deprived of it. This implies that at least in certain circumstances, it is prohibited for the State to deprive a person of his or her life (Costa Rodríguez, 2005).

The right to life is not absolute in the sense that some situations exist in which is possible to deprive the life of a person without incurring the violation of Article 4.1 of the Convention. A possibility that it could happen is through the imposition of the death penalty established by a tribunal (Costa Rodríguez, 2005).

Another possibility is the deprivation of life by an individual in legitimate defence, own or of a third party. This means the circumstances that lead to a legitimate defence that is not specifically in the letter of Article 4 of the American Convention but it does appear in Article 2 of the European Convention of Human Rights that protects the right to life. A third possibility of the deprivation of life is by the security forces as a result of the legal use of the force in the persecution of legitimate purpose (Costa Rodríguez, 2005). This is a very dangerous concept because sometimes the security forces exceed their function and abuse their strength causing the deaths of people.

Subsection 4.1. of the Article adds that the right to life '*will be protected by the law*' establishing the positive obligation of the State. This amplifies the field of participation for the State. It includes actions that can affect the conduct of the agents of the State, as well as particulars. By this positive obligation, the State must take the necessary measures, legislative of other nature, to prevent violation of the right to life or punish those that occur taking into account what the American Convention states and the development of its norms through the jurisprudence (Costa Rodríguez, 2005).

As the author summarized the principles in many of its decisions the Inter-American Court of Human Rights has established: '*The active protection of the right to life and other rights consecrated in the American Convention, it is framed in the State's duty of guarantee the free and plain exercise of the rights of all people under the jurisdiction of the State and requires that this adopts the necessary measures to punish the deprivation of life and other violations to human rights, and to prevent the violation of any of these rights by the own security forces of third parties acting under their acquiescence.*' (Case Bulacio V. Argentina).

Furthermore, if a person is arrested by the police, this is a very sensitive moment since they loses contact with the outside world, and their other fundamental rights such as physical integrity may be at risk.

According to Medina Quiroga, it opens a new field for the action of the State that is related to the formulation of adequate procedure norms to control their agents, the establishment of an independent and impartial organ that proceeds the control and the regular application of these measures, without discrimination, with the end of talk out eventual offenders.

Medina Quiroga highlights what the IACHR has determined about the importance of the punishment of the perpetrators of the violation of the right to life, and all human rights, which has to do with how the ECtHR has developed the right to life in its jurisprudence.

The IACHR has established: if '*a violation remains unpunished in a State in a way that the victim is not restored the fullness of their rights*' (Case Bulacio V. Argentina). It is understood as the duty of guaranteeing the free and plain exercise of the people subject to its jurisdiction.

The more frequent form of impunity is produced by the passivity of the Tribunal to whom it belongs to decide in a case of an alleged violation of the right to life. However, the most evident is the one that is produced as a consequence of the laws of amnesty.

When death is not the result of necessarily wanted use of force, corresponds to the superior organ to examine the facts taking into account what is established

in the American Convention. In this way, it will be decided if it is an affectation of a human right compatible with the Convention. First, it is necessary to examine if there was a norm that authorised the use of the force of the respective agent. Secondly, if the force was used to achieve a permitted purpose by the law. Finally, if the measure that results in the deprivation of life is '*necessary in a democratic society*'. It is vital to examine if the measure is conducive and proportional and if it does not exist another alternative to achieve the objective.

There are several interesting cases to analyse in the practice of the IACHR about the right to life in this special aspect. The first case of enforced disappearance was the one ruled by the IACHR: Velásquez Rodríguez vs. Honduras (Case Velásquez Rodríguez V. Honduras). This judgment was a paradigmatic point for this and other tribunals and was quoted and used as background in numerous subsequent decisions. '*This judgment represents the first step to the extension to the concept of the right to life for not conceiving this right in a restrictive form, demanding of the states the positive obligation of taking all the necessary providences to protect and preserve the right to life.*' (Costa Rodríguez, 2005). This case was interposed by the Inter-American Commission of Human Rights before the Court on 24 April 1986. The requirement established that there was a violation of Article 4 (right to life), Article 5 (right to personal integrity) and Article 7 (right to liberty). Manfredo Velásquez Rodríguez was deprived of his liberty without a judicial warrant by the members of the armed forces of the state of Honduras and disappeared without leaving a trace. Honduras was condemned for the violation of the articles of the American Convention of Human Rights named above. The state was also condemned for not guaranteeing the duty of preventing any violation of the rights established in the convention. It is necessary to highlight that it shows both obligations of the state: the positive, which includes the inviolability of the right to life, and the negative.

Another critical case of the IACHR is Panel Blanca (Paniagua Morales and Others) because expands the concept of the victim (Case of the 'Panel Blanca' [Paniagua Morales y otros] V. Guatemala). Before this judgment, the victim was considered only as the person who has been killed, tortured or disappeared, among other crimes. This decision expands the concept of the victim to the relatives of the direct victim of the crime. The court condemned the state to pay compensation to the siblings of the person who disappeared because of moral damage. These were the indirect victims that according to the court, and they did not need to show that there was an affective relation being enough the consanguinity.

In the judgment in the case of Garrido and Baigorra V. Argentina 1996, it was determined that '*Argentina has the juridical obligation of investigating the facts that lead to the disappearance (...) and to submit the process and sanction their*

authors, or partners and all the people who had participated in the events' (Case Garrido y Baigorria V. Argentina).

In this case, it is documented that the obligation of guarantee is different from the obligation of repair, establishing that the victim of a violation of human rights can renounce the compensation that is due and the State does not have to pay, but, if the particular forgives the author of the violation, this is not exempt to the State of the obligation of sanction, except in the case of a prosecutable crime at the request of the individual (Case Garrido y Baigorria V. Argentina).

About the proportionality of the measure if it is conducive and proportional and if does not exist another alternative to achieve the objective is important and for example the Case of Neira Alegría and Others V. Peru. The legitimation of the death of 118 inmates in a pavilion of the prison San Juan Bautista was called into question. This was a consequence of the order given by the Peruvian Navy to demolish the pavilion after the inmates, who had mutinied, surrendered. In the judgment, it was considered that Peru had the duty and the right to execute the demolition of the mutiny. This one had produced the detention of three agents as hostages, lesions to other four agents and a shooting that caused deaths among the forces which tried to finish the insurrection. For these conditions named above, the Court introduced the standard of the 'necessity in a democratic society' and added that the right of Peru did not allow the exercise of power without any limit. Based on several proofs, it was concluded that the elements of the case did not justify the volume of the force that was used (Case Neira Alegría and others V. Peru).

There was a similar situation in the Case of Durand and Ugarte V. Peru. The Court determined that it was proven that a pavilion was demolished by the forces of the Peruvian Navy, who made a disproportionate use of force about the danger of the mutiny (Case Durand y Ugarte V. Peru).

Obligation to investigate

There are some aspects of the obligation to investigate that are not clear in Article 4 and its interpretation. One of them is the identification of the violated right in case it does not comply with the obligation to investigate, process and sanction and the identification of who can be recognised as victims of the breach of this obligation.

Medina Quiroga highlights what the IACHR implies is that the State must proceed *ex officio* to investigate, process and sanction. This obligation is its juridical duty that must be fulfilled whatever agent the violence can be attributed,

even with particulars. This obligation must be fulfilled regularly, inescapably and without discrimination. All the mentioned above, regarding the obligation of investigate, process and sanction brings the incompatibility with the Convention and the phenomenon of impunity as a consequence. This word can be established as *'the lack in its set of investigation, prosecution, capture, trial and condemnation of the responsible of the violations of the protected rights by the American Convention'* (Medina Quiroga, 2005).

Medina Quiroga determines that the obligation to investigate is necessary in the cases when the death has been wanted, as well as, if it was not a product of desired use of the force. The first type of case is the one that will be the object of this research. The importance of the complement of the obligation to investigate has been highlighted by the IACHR in some judgments when holding that *'are inadmissible the dispositions of the prescription or any obstacle of domestic law though which is pretend to avoid the investigations and sanction of the responsible of the violations of human rights'* (Case Bulacio, Case Trujillo Oroza, Case Barrios Altos).

Furthermore, it can be considered that the obligation belongs to the right to life (or the right to personal integrity that are interlinked.) If this obligation does not comply, it violates these rights (Medina Quiroga, 2005).

The task of investigating, processing and sanctioning must be undertaken *'with seriousness and do not as a simple formality condemns beforehand to be fruitless'* (Case Bulacio, Case Trujillo Oroza, Case Barrios Altos). There is a necessity for a serious investigation, previous to the judicial procedure, to determine the circumstances of the death by hands of third parties. This is necessary to decide if there is a base for the State to exercise its punitive faculty, demand the guarantees of independence and impartiality to the non-judicial organs that realise the first tasks of the investigation (Medina Quiroga, 2005).

This is what is was established in the case Velásquez Rodríguez V. Honduras (mentioned above) where it was declared: *'Honduras has violated in prejudice of Ángel Manfredo Velásquez Rodríguez the duty of guarantee the right to life recognized on Article 4 of the American Convention.'* (Case Velásquez Rodríguez V. Honduras).

Medina Quiroga mentions the Case Blake V. Guatemala, where it was decided by the Court that it was incompetent in this matter. This was because the IACHR established that it was unqualified to know about the violation of the right to life. After all, the body of the victim was found and it was accredited that the death, and the kidnapping, of Mr. Blake were previous to the date of acknowledgement of the contentious competence of the IACHR by the State of Guatemala (Case Blake V. Guatemala. Merits).

This judgment examines the problem of the lack of investigation into the possible rights of the relatives of Mr. Blake. It concludes, quoting the United Nations Declaration about the Forced Disappearance of Persons, in Article 8.1, which comprehends the right of relatives as victims with judicial guarantees. This gives the relatives of Mr. Blake the right to the effective investigation of the disappearance and death by the authorities of Guatemala. Also, this includes the compensation for damages (Medina Quiroga, 2005).

Medina Quiroga states that the Court could have been in a difficult position due to the jurisdiction to examine the death of the victim, whose relatives were the ones alleged to be the indirect victims. This problem of lack of jurisdiction does not explain that this has been extended interpretation to other cases where the Court had competence abandoning the idea of the obligation of investigate that comes with the substantive right (Medina Quiroga, 2005).

In the case of Paniagua Morales and Others, (named above) the ruling declared that the State violated the right to life of the victims because it was proven that agents of the State were the ones who deprived several persons of their lives. But in this example, that the examination of the lack of investigation would be in respect of the facts of the case, denounced by the Commission under Article 8 of the Convention:

'8.1 Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature.

8.2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;*
- b. prior notification in detail to the accused of the charges against him;*
- c. adequate time and means for the preparation of his defence;*
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;*
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;*

- f. *the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;*
- g. *the right not to be compelled to be a witness against himself or to plead guilty; and*
- h. *the right to appeal the judgment to a higher court.*

8.3. *A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.*

8.4. *An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.*

8.5. *Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice. The case of Blake was a few months before Paniagua Morales and as a reason, the Court did not consider the concept of indirect victims that was born with this judgment.*’ (American Convention of Human Rights).

Another aspect that must be cleared up is the relation with the nature of the obligation to investigate. For Medina Quiroga, to know the truth is an important part of the reparation. According to this, the obligation to investigate has two purposes: prevent and satisfy through the prevention (Medina Quiroga, 2005).

This author determines that an indispensable attribute of the State is the guarantee of the right which includes reparation. The right to life demands that the State have mechanisms and manners of reparation for the event of being violated. The truth is also considered as a form of reparation. The reparation normally will consist of pecuniary compensation, but other modalities may be required (Medina Quiroga, 2005).

The Court has ordered a reparation in money for the relatives of the deceased victim, which it established normally at a later stage in the background ruling. Despite the compensation, the Court may order other possible reparations such as typifying the crime of disappearance in the domestic legal system of a country. Another form of reparation is to find the remains of the victim and deliver them to the relatives (Medina Quiroga, 2005).

The conclusion about what has been mentioned from the perspective of the author is that the obligation to protect the right to life which demands the State to take a set of dissuasive actions, of prevention, of control of deprivation of life in the hands of third parties and reparation of violations to this right. These actions cannot be described precisely for each case, but the States must obey the central objective of the obligation of guarantee, and choose the best possible form to decrease the possibility of the infractions to the right to life and,

when they even occur, of taking the necessary measures so that the infraction is not immune and to compensate the moral and material damage suffered by the victim (Medina Quiroga, 2005).

Medina Quiroga establishes the connection between the phenomenon of disappearances and the right to life. In the cases I referred, the Court chose the path of describing the figure of the disappearance in terms of the violations of human rights of the Convention that this implied, but without specifying that these violations must be treated as a unity (Medina Quiroga, 2005).

The Court stated: about the violated rights established the disappearance *'constitutes multiple and continuous violations of several rights recognised in the Convention. The practice of disappearances has implied with frequency the execution of the detained, in secret and without formula of judgment followed by the concealment of the corpse with the object of erasing every material trace of the crime and seeking the impunity of whose committed, what it means a brutal violation of the right to life.'* (Case Velásquez Rodríguez V. Honduras).

The IACHR has delivered several judgments related to enforced disappearances and has maintained what was stated before. In the majority of the cases, the state was found guilty.

I believe that there has been a development in the process in various aspects since the Court began ruling judgments related to the violation of the right to life.

The first issue is the concept of victim. As it was explained in the case 'Panel Blanca', the concept of the victim was not just the person who died or disappeared but also there were indirect victims as the relatives of the direct victim. Another aspect that was developed was the differing cases of enforced disappearances, which in the beginning seemed like separate crimes and now the Court take these cases as a unity, or maybe is better to call it as a category of violation of the right to life by security forces. From 1989 until today the Court has acknowledged the similarities in these cases and why they form a unity. Another development was that no more amnesty was accepted before the Court. If the domestic law gave impunity to a criminal that violated the right to life and the case went to the Court, after careful consideration and investigation the Court decides whether this person is guilty or not without taking into account the possibility of an amnesty or impunity. These situations were also less frequent in domestic courts.

Another improvement has been the reparation to the victim or the relatives. The evolution of cases has shown that the Court has taken this situation seriously stating in its judgments several ways of reparations for the harmed. Finally, the Court only can take cases that were decided on every step of the domestic legal system, but it is prone to revise that the investigation of the state parties has been effective and impartial and that the state investigated, processed and

sanctioned ex-officio. If this does not happen, the Court will punish the state for the lack of an effective investigation.

The proportionality of the use of force by security forces

The proportionality also must be examined to create a whole tableau of these cases. It is an important subject for the violation of the right to life by security forces, when they use force that is not proportional with the situation they are facing.

One can find several judgments about the disproportionality of the use of force in the IACHR. One example is the mentioned above Case Neira Alegría and Others v. Peru. I chose this case because is a good example of the disproportionate use of the force by security forces that can establish how, sometimes, these can overreact with the situation and as result people died when these deaths could be avoided. This case is about the disproportionally use of force by agents of security of the State. In this case, it was established the positive obligation of the State of the protection to the right to life.

There was a violation of the right to life provided in Article 4 of the American Convention of Human Rights. This judgment is related to the right of the State to use force although this implies the deprivation of life in the maintenance of the order. Despite that in this case there was a riot in a prison and the inmates were very aggressive and had guns, it was established that the government gave orders that had as a consequence an unjustified number of deaths. There was a disproportion of the employee war potential and a dissimilar use of violence by security forces about the given situation that they were facing. Regarding the disproportionate use of force, it is safe to establish a reasonable conclusion that people were arbitrarily deprived of their lives. The IACHR determined that despite the existence of a right and a duty correspondent to the State of maintaining the legality and the internal order, even with the use of force, this right cannot imply the violation of the obligation to protect the life that is the ultimate goal of all democratic State (Case Neira Alegría V. Peru).

Another exemplary case of the disproportionate use of force is the IACHR Bulacio V. Argentina. This is an example of police brutality when police forces arrested a boy and he was beaten to death. The Court established that this practice was incompatible with the respect of human rights. The IACHR determined that the State must prevent the security forces or third parties acting under their authority from violating the rights established in the American Convention. It was declared that the security forces must respect the right to life of every person under its jurisdiction (Case Bulacio V. Argentina).

Then, in the case *Massacre La Rochela V. Colombia* the State of Colombia confessed the facts and partially flattened the pretensions. The IACHR established violation of Article 4 of the American Convention of Human Rights, the State was responsible for the death of 12 officials that integrated the Judicial Commission and there was a violation of the article concerning the three survivors. The Court accepted the international responsibility of the State for the facts that occurred on 18 January 1989 (Case *Massacre La Rochela V. Colombia*).

Another relevant case about police brutality is *Brothers Landaeta Mejías and Other V. Venezuela*. In this judgment, the IACHR affirmed that Venezuela had not complied with its obligation to guarantee the right to life through adequate legislation about the use of force (Case *Brothers Landaeta Mejías and Other V. Venezuela*).

Finally, in the case *Omeara Carrascal and Other V. Colombia*, the Court found the existence of links between members of the public security forces of Colombia and paramilitary groups (Case *Omeara Carrascal and Other V. Colombia*). It was verified the relationship that these groups had maintained at that time with the State security body called the *Unidad Nacional Antisecuestro y Extorsión (UNASE)* integrated by members of the National Army, National Police and the Administrative Department of Security.

The development of these cases is relevant to understand how these forces can use an extreme coerce that cause deaths that are not necessary. It is important to understand that security forces are in a great pressure during these situations; however, they had the training to act under tension. For this reason, they should be prepared to face these situations, evaluate the scene and try to avoid the major numbers of casualties as possible. It is important to examine these cases for the security forces so if they are in a similar position in the future they understand the situation that they are facing and the dissimilar proportion between them and the people they meet.

Conclusion

This paper tries to give a vision of how the Inter-American Court of Human Rights works and decides about cases related to the violation of the right to life by security forces of the state. The idea is to show an evolution of how this Court started to condemn countries for serious violations and crimes against humanity committed by their security forces concerning the enforced disappearances of persons since the beginning. This Court has ruled on several cases of this crime. In the majority, they found the state guilty.

It is possible to observe that in several of the cases that were named in this section, the IACHR has condemned the state for the violation of the right to life.

The literature I chose helped me to create the structure of this work. By comparing authors with different insights about the right to life it was possible to establish why this right is so hard and interesting to examine in this narrowed perspective. Also, the text of Medina Quiroga gave this approach to understanding Article 4 and how can be interpreted from different points of view which is what I wanted to accomplish in this work. It is not an easy task to understand and apply the right to life in these cases, and for that is so important how the IACHR decide in the cases related to the violation of this right. The idea was to give an expanded panorama of how the Court has been deciding all these years about the right to life and the evolution that it had in its 34 years of existence about the right to life. Furthermore, is important to see how there is an evolution of the law constantly and that this Court has followed this through time.

I hope in the future practice of the Court will decide more cases related to violation of the right to life, that already occurred. In this way it is possible that in the future the security forces and other perpetrators of violation of the right to life abstain themselves from committing atrocities. There is an opportunity that with the practice of the IACHR less cases of violation of the right to life will take place. Furthermore, it is feasible that fewer cases of violation to the right to life will get to the IACHR because they can be solved in the domestic courts.

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Inter-American Convention about Enforced Disappearance

Inter-American Convention on Forced Disappearance of Persons

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Corresponding author

The corresponding author of this article is Sabrina Judith Kaliman, who can be contacted at kalimansabrina@gmail.com.