

The Influence of the Decisions  
made by the Inter–American Court  
of Human Rights and the Inter-  
American Commission on Human  
Rights in the Criminal Law of the  
States Parties

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## **Influencia de las Decisiones de la Corte IDH y de La Comisión Interamericana de Derechos Humanos en el Derecho Penal de los Estados**

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### **Resumen**

El Salvador es uno de los pocos países de Iberoamérica que proclama, explícitamente en su Constitución, la existencia y validez de un ordenamiento jurídico internacional con jerarquía normativa supra legal. Desde 1978 es parte de la Convención Americana de Derechos Humanos (CADH) y en 1995 reconoció la competencia contenciosa de la Corte Interamericana de Derechos Humanos (Corte IDH). Sin embargo, las tres primeras de cuatro sentencias condenatorias – existentes hasta diciembre de 2012 – de dicha Corte contra este país, no han sido cumplidas en lo que atañe a la parte dispositiva que ordena continuar o reiniciar los procesos penales respectivos y superar las limitaciones u obstáculos de hecho y de derecho que impidan el cumplimiento de las investigaciones de manera efectiva. Este estudio trata acerca de ese y otros fenómenos, en tanto presenta un panorama de la influencia de las resoluciones de la Corte IDH en el derecho penal y procesal penal de El Salvador, y se analiza si las decisiones de dichos órganos son cumplidas en el ámbito interno y en qué medida lo son. Se divide en seis partes en las que se desarrollan, entre otros temas, los aspectos más relevantes de la incorporación del derecho internacional, especialmente de la CADH, en el ámbito interno, entre ellos el reconocimiento y la jerarquía de los tratados internacionales en el ordenamiento jurídico salvadoreño; la aplicación directa de la CADH y el reconocimiento en el derecho interno de la obligatoriedad estatal de cumplir con las decisiones de la Comisión Interamericana de Derechos Humanos (CIDH).

**PALABRAS CLAVE:** CORTE INTERAMERICANA DE DERECHOS HUMANOS – COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS – JURISPRUDENCIA – EL SALVADOR – CUMPLIMIENTO DE SENTENCIAS CONDENATORIAS.

## **The Influence of the Decisions made by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights in the Criminal Law of the States Parties**

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### **Abstract**

El Salvador is one of the few countries in Latin America proclaiming explicitly in its Constitution, the existence and validity of an international legal system with supra legal hierarchy. Since 1978, it is part of the American Convention on Human Rights (ACHR) and in 1995, it recognized the litigious competence of the Inter-American Court of Human Rights (IACHR). However, three of the first four condemnatory sentences - existing until December 2012 - of this Court against this country, have not been fulfilled regarded as the dispositive part in continuing ordering or restart the respective criminal proceedings and exceed the limitations or obstacles of fact and law that prevent the compliance investigations effectively. This study is about these and other phenomena, while presenting an overview of the influence of the resolutions of the Inter-American Court (IAC) in criminal law and criminal procedure of El Salvador, and analyzing whether the decisions of these bodies are fulfilled in the internal field and in what extent they are. It is divided into six parts that are developed, among other topics, the most relevant aspects of the incorporation of international law, especially of the ACHR, domestically, including recognition and hierarchy of international treaties in the Salvadoran legal system; direct application of the ACHR and recognition in the domestic law of the state obligation to comply with the decisions of the Inter-American Commission on Human Rights (IACHR).

**KEYWORDS:** INTER-AMERICAN COURT OF HUMAN RIGHTS – INTER-AMERICAN COMMISSION OF HUMAN RIGHTS – JURISPRUDENCE – EL SALVADOR – COMPLIANCE OF CONDEMNATORY SENTENCES.

# The Influence of the Decisions made by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights in the Criminal Law of the States Parties

Report of El Salvador<sup>1</sup>

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## Introduction

In this article, an overview is presented of the influence of the resolutions of the Inter – American Court of Human Rights, to be named also as The IACHR or The Court, and The Inter – American Commission on Human Rights, to be named also as IACHR or the commission, in the criminal law and criminal procedure of El Salvador, with the objective of exposing if the decisions of those bodies are fulfilled internationally and to what extent they are.

Decisions in this work are understood exclusively by three types of acts: first, the disposed by the court in the operative part of the judgments as a

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1 Article published originally in Kai Ambos, Ezequiel Malarino and Christian Steiner (editors): *Inter – American System of Protection of Human Rights and The International Criminal Law – Volume III*, Bogota: Konrad Adenauer Stiftung, Georg – August – Universität – Gottinger, 2013, p. 253 to 276. For publication this number of the magazine Right, has been adapted in aspects of shape.

2 Member of The Latin American group of studies about International Criminal Law, sponsored by the Program State of Rights for Latin American, of the Konrad Adenauer Foundation of Germany; under the academic leadership of the professors Kai Ambos and Ezequiel Malarino. Member of the Observatory of Organized Crime in Latin America and from the group of Studies on Regional Security in Central America, sponsored by the Regional Security Program of Fundación Friedrich Ebert from Germany. Former Director of Centro de Estudios Penales, (by its Spanish acronym CEPES), from La Fundación de Estudios para la Aplicación del Derecho (by its Spanish acronym FESPAD). Former Director of the de la Unidad de Justicia Juvenil de la Corte Suprema de Justicia de El Salvador. General Director of the National Academy of Public Security of El Salvador, from June 2009 to date.

remedy in contentious cases; second, what is suggested by The Court (IACHR) in an advisory opinion; three, what is recommended by The Commission at the end of a report according to articles 50 and 51 of the American Convention on Human Rights, ACHR.

The report is divided into six parts. First, the most relevant aspects of the incorporation of international law, especially the ACHR is developed internally, including the recognition and hierarchy of international treaties in the Salvadoran legal system; the direct application of the American Convention, and the recognition in the internal law of the state obligation to comply with the decisions of the IACHR and the Inter – American Court on Human Rights.

In the second part, the main focus of this study, the effects of the decisions of the Inter-American bodies on the criminal, and criminal procedure are treated, dividing such decisions for expository purposes, in decisions of the Inter-American Court in judgments of contentious cases, advisory opinions, and recommendations of the IACHR, each in three areas: in the legislation, in specific court cases and other types of effects in criminal matters and criminal procedure.

The third part answers the question whether there are legal mechanisms in El Salvador to implement the decisions of the Inter-American Court of Human Rights; the fourth part refers to the legal criteria or national jurisprudence used in relation to the compliance with the decisions of the Inter-American bodies in criminal and non-criminal cases; the fifth part explains whether there are legal or constitutional legal obstacles that oppose the compliance with the decisions of the Inter-American bodies; and, finally, in part six some conclusions are exposed.

# I. Incorporation of International Law, in particular, The American Convention on Human Rights (ACHR) in the internal area

## 1.1. Incorporation of Internal Law in general

El Salvador, together with Argentina, Costa Rica, Honduras, Paraguay, Peru and Venezuela, are part of the exceptionality of Ibero-American countries that have constitutional legal provisions or domestic legal provisions that recognize an international or supranational legal order.

Regarding the hierarchy of treaties within the Salvadoran legal system, they have a supralegal value as a constitutional provision, still being under the Constitution of the Republic though; this is what Article 144 of the Carta Magna provides by pre-writing that international treaties celebrated by El Salvador with other States or with international organizations constitute laws of The Republic upon entering into effectiveness, with a higher value than the ordinary laws, which cannot modify or repeal what was agreed in a current treaty for El Salvador, so if in certain circumstances the treaty and the law enter into conflict, the treaty will prevail.<sup>3</sup>

However, according to the constitutional text, the provisions of a treaty may not be over the Constitution of the Republic, since international treaties or conventions have a higher value than common laws, but the first ones are not incorporated into the Constitutional text, they are not part of the so-called constitutionality block and, consequently, if at a certain moment it

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3 The Constitutional provision says: "Art. 144.- The international treaties agreed by El Salvador with other states or international organisms, constitute laws of the Republic once they enter into effect, in conformity with the dispositions of the same treaty and this Constitution. The law shall not modify or repeal that agreed in a treaty in effect for El Salvador. In case of conflict between the treaty and the law, the treaty shall prevail".

is determined that a conventional provision is contrary to the Constitution, it cannot prevail over the Constitution of the Republic.<sup>4</sup>

Regarding the competent authority and the procedure to be followed for the signing and ratification of international treaties, article 168, ordinal 4, of the Salvadoran Constitution, establishes the attribution of the President of the Republic, to conclude international treaties and conventions, submit them to the ratification of the Legislative Assembly, and to monitor its fulfillment, attribution that according to the Internal Regulation of the Executive Branch, the President exercises through the Ministry of Foreign Relations.<sup>5</sup>

At the same time, the Art. 131, Ordinal 7th of the Constitution, prescribes that it is the attribution of the Legislative Assembly to ratify such treaties.<sup>6</sup>

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4 At least this is the official position that the Salvadoran State has sustained and has continuously maintained in coherence with the declaration expressed in the instrument of ratification of the American Convention, deposited in the Secretaria General (General Secretariat) of the OAS (known in English as Organization of American States).

5 This regulation states:  
*"Art. 32 - It concerns to the Ministry of Foreign affairs (known in Spanish as Ministerio de Relaciones Exteriores):*

*2 - Manage, negotiate, sign, and denounce treaties, conventions, and international agreements by hearing the opinion of the interested Secretary when necessary;"*

6 The ratification of treaties, as a general rule, requires the vote of a simple majority of elected deputies. There are two exceptions in which the vote of a qualified majority of two types is demanded: two-thirds of the votes of the elected deputies, in the treaties relating to the extradition (Art. 28, subsection 3 constitutional); and the vote of at least three-quarters of the elected deputies, in cases related to the national territory and the limits of the Republic, as provided in Article 147 of the Constitution.

Regards to reservations or constitutional prohibitions relating to certain matters or objects of conventions or treaties, Article 145 prescribes that treaties that restrict or affect in any way the constitutional provisions cannot be ratified, unless the ratification is made with the corresponding reservations. The dispositions of the treaty on which the reservations are made are not the law of the Republic.

Likewise, Article 146 of the Constitution prohibits the conclusion or ratification of treaties or the granting of concessions in which the form of government is altered in any way, or the integration of the territory, the sovereignty and independence of the Republic, or the rights and fundamental guarantees of the human person. This prohibition includes international treaties or contracts with governments or national or international companies in which the Salvadoran State is subject to the jurisdiction of a court of a foreign state, which, according to the same constitutional text, it does not prevent that in both the treaties and the contracts, the Salvadoran State in case of controversy, submit the decision to an arbitration or an international tribunal.

## 1.2 Incorporation of the American Convention of Human Rights (ACHR)

El Salvador ratified the American Convention about Human Rights, through Legislative Decree Number 5, dated June 15, 1978, published in the Official Gazette Number 113, June 19, 1978. The instruments of ratification were received by the General Secretary of the OAS (known in English as the Organization of American States) on June 23rd, 1978, with a reservation regarding the recognition of the contentious jurisdiction of the Inter-American Court, and a declaration.<sup>7</sup>

## 1.3 Direct Application of the ACHR

Article 144 of the Constitution of the Republic establishes that the international treaties celebrated by El Salvador with the other States or with international organisms, are laws of the Republic since they enter into force. In other words, they become part of the domestic legal system and therefore must be complied with and applied directly by the courts and competent authorities or may even be invoked by natural or legal persons in specific situations and cases in which they have an interest, particularly when it comes to rules of public policy that do not need to be developed in secondary laws because they deal with matters of political content or fundamental relations of the States.<sup>8</sup> In

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7 This reservation and this declaration says:

*"The present Convention is ratified, its provisions being interpreted to mean that the Inter-American Court of Human Rights shall have jurisdiction to hear any case that can be submitted to it, either by the Inter-American Commission on Human Rights or by any State Party, provided that the State of El Salvador, as a party to the case, recognizes or has recognized such jurisdiction, by any of the means and under the arrangements indicated in the Convention. The American Convention on Human Rights, known as the "Pact of San José, Costa Rica", signed at San José, Costa Rica, on November 22, 1969, composed of a preamble and eighty-two articles, approved by the Executive Branch in the Field of Foreign Affairs by Agreement 405, dated June 14 of the current year, is hereby ratified, with the reservation that such ratification is understood without prejudice to those provisions of the Convention that might conflict with express precepts of the Political Constitution of the Republic".*

8 Nevertheless, many treaties, due to the object or matter they regulate, require for their effective application the issuance of internal legislation, as is the case of international conventions on environmental matters, against drug trafficking, organized crime, and others. Regarding *vid.* Salvadoran Foundation for Economic and Social Development. Department of legal studies. *Ratification and observance of international treaties.* Legal Studies Bulletin number 79, July 2007,

consequence, the American Convention about Human Rights could and must be applied directly by the courts, public authorities and other competent officials.

In practice, the direct application of the ACHR by the superior courts of El Salvador, understood as such the Constitutional Chamber, Administrative Litigation Chamber, Criminal Chamber of the Supreme Court of Justice, and the second instance criminal chambers, is very recent. For this study and according to the information available, the first applications are from 2002,<sup>9</sup> while the validity of this convention is from June 23, 1978. In other words, they had to spend more than twenty years for the main courts of this country decided to use directly the provisions of the ACHR for the basis of their judgments and resolutions.

Even though the application of the American Convention in criminal matters and criminal procedure by the Salvadoran courts is still pending, there are a significant number of judgments and resolutions in which this convention has been applied concerning various criminal and criminal procedural matters and institutions.<sup>10</sup> By way of example, the following five are cited:

1. *Right of the accused to be informed of the reasons for his arrest (Constitutional Chamber / Habeas Corpus / Final Judgments, 53-2010 dated 10/06/2010)*<sup>11</sup>
2. *Right of the defendant to have a defense counsel of his / her choice (Criminal Chamber / Final Judgments, 165 - CAS-2009 dated 11/07/2011; Criminal Chamber's Judgment Ref. 474 -CAS- 2006, of the 10: 20 hours on the day 5/29/2008;*

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San Salvador, p. 5.

- 9 It is not ruled out that these higher courts or criminal courts have directly applied this Convention before 2002, but due to the lack of availability of jurisprudential records ordered in those previous years, this was not the objective of study in this report.
- 10 This direct application can be consulted by the Supreme Court of Justice of El Salvador. Judicial Documentation Center. Jurisprudence. Jurisprudential Lines. <http://www.jurisprudencia.gob.sv/visor2012/lineas.aspx>. As part of the investigation carried out for this report, more than 30 sentences were detected and analyzed in which direct application of the ACHR was made about 17 criminal or criminal procedural subjects or institutions, in final judgments of the Constitutional Chamber, Administrative Chamber and Criminal Chamber, of the Supreme Court of Justice, and the criminal courts of the second instance.
- 11 The sentence substantially says: The right mentioned is also reflected in the American Convention on Human Rights, specifically in article 7 number 4: *"Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him..."*



*Criminal Chamber's Judgment Ref. 70-CAS-2008, at 9:31 hours on the day 6/4/2008; Criminal Chamber's Judgment, Ref. 437 -CAS-2004 of the 10 hours on the day 8/8/2007; Judgment of the Criminal Chamber, Ref. 239-CAS-2004 at 9:30 hours on the day 02/15/2005);*<sup>12</sup>

3. *Principle of legality and non-retroactivity of the criminal law (Final Judgment of the Criminal Chamber, Ref. 193-M-2001 of 9:10 of 14/3/2003, and final judgment of the Criminal Chamber, Ref. 206- C-2001 at 9:10 of date 5/06/2004);*<sup>13</sup>
4. *Due application of the principle Ne Bis In Idem (Criminal Chamber / Definitive Sentences, 235-CAS-2007, dated 04/21/2010; Definitive Sentences, 283-CAS-2005, dated September 27, 2010; sentences of the Criminal Chamber, Ref. 599-CAS-2006, of the 11:25 hours of the date 9/04/2009; sentences of the Criminal Chamber Ref. 63-CAS-2006 of 10 hours of the day 7/23/2008; Judgment of the Criminal Chamber Ref. 4-CAS-2005 of the 11:30 hours of the date 11/30/2005; Sentences of the Criminal Chamber Ref. 298-CAS-2005 of 10:34 am of the 12/9/2005; Chamber of the Third Section of the Center, San Vicente, Ref. 65-03 / 03 of 11:50 hours of the date 5/27/2004);*<sup>14</sup>

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12 In pertinent terms, these sentences coincidentally express: "In addition to the above, the American Convention on Human Rights -Art. 8.2 Lit.d) - and the International Covenant of Civil and Political Rights -Art. 14.3 Lit. d), recognize the right of the accused to be represented in the process by an advocate "of his choice", where it is clear that It refers to a fundamental right, and therefore its exercise is inherent in the inviolability of the defense in the procedure."

13 The judgments in the pertinent and in a similar way express: "Likewise, the American Convention on Human Rights (Pact of San Jose, OAS, 1969), ratified with interpretation by El Salvador through the Legislative Decree number five on June Fifteen one thousand nine hundred and seventy-eight, published in the Official Gazette number one hundred and thirteen, volume two hundred fifty-nine, on June nineteen of the same year, it's recognized in its art. 9 Principle of Legality and Retroactivity: "No one can be convicted for actions or omissions that at the time of committing would not be criminal according to the applicable decree and cannot be imposed more seriously than the application at the time of the commission of the crime. "With posterity to the commission of the crime the law has the imposition of a greater penalty, the offender will benefit from it."

14 The judgments in the pertinent and in a similar way express: "In view of the allegation made by the appellant, it must be noted that Article 11 of the Constitution contains a series of guarantees and principles that must be complied with in an obvious manner, to procure and preserve a fair trial, in this way, which among these, the procedural legality, which means that the judge will imperatively comply with the structural and functional organization during the entire process, to avoid the manipulation of your organization determined before.  
It is also represented as a procedural guarantee, the one that prohibits double judging or what in doctrine is called non-bis in idem, which is also recognized by international regulations, for example, Art. 14.7 of the International Covenant on Civil and Political Rights, and Art. 8.4 of the American Convention on Human Rights (...)"

5. *Principle of exceptionality of the preventive detention (Sentence of the Chamber of the 2nd section of the West, Sonsonate, at 9:02 hours of the day 2/7/2007, Sentence of the Chamber of the 3rd Western Section, Ahuachapán, Ref. 84/06 of 16:00 hours of the day 08/14/2006; Sentence of the Chamber of the 3rd Section of the West, Ahuachapán, Ref. 05/06 at 16:00 hours of the day 1/12/2006; Sentence of the Chamber of the 3rd Western Section, Ahuachapán, Ref.76/06 of the 9:58 hours of the day 07/19/2006; Sentence of the Chamber third Section West, Ahuachapán, Ref. 131/06 of 16:00 hours of day 11/17/2006, Chamber of the 3rd Western Section, Ahuachapán of 16:00 of the day 01/25/2005; the 2nd Section of the West, Sonsonate, Ref. 60-2004 of the 14:15 hours of the day 15/12/2004, Chamber of the 3rd Western Section, Ahuachapán, at 14:00 hours of the day 12/12/2003 ; Chamber of the 3rd Western Section, Ahuachapán at 9:30 hours of the day 04/29/2003; Sentence of 11:30 on 02/21/2002, Chamber of the 2nd Western Section, Sonsonate).*<sup>15</sup>

#### **1.4 Recognition in the domestic law of the State obligation to comply with the decisions of the Inter-American Court of Human Rights (IACHR) and the Inter-American Commission on Human Rights (IACHR)**

El Salvador does not have any legal instrument in it recognizes the obligation to comply with the recommendations of the Inter-American Commission on Human Rights, although when it comes to precautionary measures ordered by the organism mentioned before, as a general rule it has complied with them, as will be seen below.

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<sup>15</sup> The judgments cited, in pertinent and coincidentally, say: "It is appropriate to note that it is the exclusive right of judges to assess in each specific case and according to the particular circumstances thereof, the application of the" principle of the exceptionality of provisional detention "that enshrine Articles 9.3 of the International Covenant on Civil and Political Rights and 7.5 of the American Convention on Human Rights, saying that the preventive detention of persons to be tried should not be the general rule and that the freedom to the defendants may be subject to guarantees that ensure their presence at the trial or at any other time of the proceedings."

Instead, it juridically acknowledges the contentious competency of the Inter- American Court of Human Rights through Legislative Decree No. 319 dated March 30, 1995. This decree was published in the Official Gazette No. 82. Volume 327 of May 5th, 1995. The date on which the recognition of competency became effective was June 6th, 1995, the date on which the correspondent instrument was presented before the General Secretary of the OAS, with a consistent reserve about the acceptance of competency as being only for the foregoing juridical acts or juridical acts which have principles of execution previous to the date in which the instrument of recognition was handed to the OAS and making a reservation of the right of ceasing the competency at any moment that is considered convenient".<sup>16</sup>

## II. Effects of the decisions of the Inter-American organization in criminal matters and criminal procedure

### 2.1 Decisions made by the Inter-American Court of Human Rights in sentences about repairs

Up to this date, El Salvador has been condemned by the Inter- American Court of Human Rights in two cases related to forced disappearances of children during the armed conflict, like in the case of the sisters Serrano Cruz v. El Salvador.

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16 The declaration of competence states:

*"I. The Government of El Salvador recognizes as mandatory under the law and without a special convention, the competence of the Inter-American Court of Human Rights, following the provisions of Article 62 of the American Convention on Human Rights or" Covenant of San José.*

*II. The Government of El Salvador, when recognizing such competence, leaves a record that its acceptance is made for an indefinite period, under the condition of reciprocity and with the reservation that the cases in which is recognized the jurisdiction, which includes only and exclusively facts or legal acts or subsequent facts or legal acts whose principle of execution is subsequent to the date of deposit of this Declaration of Acceptance, reserving the right to stop the competence at the time it deems appropriate*

*III. The Government of El Salvador, recognizes such competence of the Court, in the measure that this recognition is compatible with the dispositions of the Constitution of the Republic of El Salvador."*

Serrano Cruz v. El Salvador<sup>17</sup> and the Case of Contreras *et al.* El Salvador.<sup>18</sup> A third case of events that occurred in the post-war, related to summary execution and violation of the rights to judicial guarantees, judicial protection, and personal integrity is the Case of Contreras *et al.*<sup>19</sup> On December 10th, 2012, the fourth conviction against El Salvador, dated on October 25th of that year, was publicly announced for the successive massacres committed by an elite battalion of the army, for the period from December 11 to 13 1981, in diverse places of the north of the Department of Morazán, known as Case of the Massacres of El Mozote and nearby places v. El Salvador. However, as it is the most recent of these sentences, whose compliance has not yet reached its terms, it will not be analyzed in this paper.

### 2.1.1 Effects on legislation

In the judgment of the Case of the Serrano Cruz Sisters, the IACHR, in terms of effects on the legislation, in paragraph 6, orders: “6. *The State must (...) eliminate all obstacles and mechanisms of fact and right that prevent compliance with these obligations in the present case,<sup>20</sup> so that it uses all the measures available to it, either through the criminal process or through the adoption of other suitable measures (...) in the terms of the paragraphs 166 to 182 of the present Judgment*”.

Therefore, this point must be interpreted in coherence with what is indicated in paragraphs 166 to 182 of the judgment that are pertinent, taking into account that these paragraphs are part of the first measure of reparation dictated by the court, consisting of the *Obligation to investigate the facts denounced, identify and punish those responsible and conduct a serious search of the victims*. Regarding

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17 *Vid.* Inter - American Court on Human Rights. Case of Serrano - Cruz sisters vs. El Salvador Sentence of March 1st 2005. <http://www.corteidh.or.cr/casos.cfm>

18 *Vid.* Inter - American Court on Human Rights. Contreras Case and others vs. El Salvador. Sentence of August 31st, 2011 (Merits, Repairs and Costs). <http://www.corteidh.or.cr/casos.cfm>

19 *Vid.* Inter - American Court on Human Rights. García Prieto Case and others vs. El Salvador. Sentence of November 20th, 2007 (Preliminary Exceptions, Funds, Repairs and Costs). <http://www.corteidh.or.cr/casos.cfm>

20 It refers to the first duty imposed by this judgment, such as effectively investigating the facts reported in that case, within a reasonable period of time.

effects in the legislation, the relevant paragraphs are:

*“172. The Court observes that the State must ensure that the domestic proceedings to investigate what happened to Ernestina and Erlinda and, if appropriate, punish those responsible, has the desired effect. The State must abstain from using figures such as amnesty and prescription or the establishment of measures designed to eliminate responsibility, or measures intended to prevent criminal prosecution or suppress the effects of a conviction.<sup>21</sup> This Court repeats that in relation to compliance with the obligation to investigate and punish: [...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible as they are intended to prevent the investigation, and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution, and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.<sup>22</sup>*

*180 (...) the Court considers it fair and just to order El Salvador, in compliance with its obligation to investigate the reported facts, to identify and punish those responsible and to conduct a genuine search for the victims, **to eliminate all the obstacles and mechanisms de facto and de jure that hinder compliance with these obligations, in this case,**<sup>23</sup> using all possible means, either through the criminal proceedings or by the adoption of other suitable measures.”<sup>24 25</sup>*

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21 *Cfr. Case of the Gómez Paquiyauri Brothers supra* note 3, para. 148; *Case 19 Merchants, supra* note 15, para. 175; and *Case Maritza Urrutia, supra* note 19, para. 126.

22 *Cfr. Case of Carpio Nicolle and others, supra* note 3, para. 130; *Case of the Gómez Paquiyauri Brothers, supra* note 10, para. 233; and *Case 19 Merchants, supra* note 15, para. 262.

23 The startled in bold is supplied by the author.

24 *Cfr. Case of Carpio Nicolle and others, supra* note 3, para. 134; and *Case of Myrna Mack Chang, supra* note 8, para. 77.

25 Inter - American Court on Human Rights. Case of Serrano - Cruz sisters v. El Salvador, cit.

This provision of the Inter-American Court has not yet been complied with, although it is not due to the Attorney General of the Republic arguing that there are legal obstacles such as the Law of Amnesty,<sup>26</sup> the statute of limitations and other criminal, and criminal procedural institutions that prevent it. According to the resolution of supervision of compliance with the judgment of the Inter-American Court, of February 3th, 2010, the State acknowledged that there is no substantial progress in the investigation, although the Prosecutor's Office, in compliance with a requirement of the Court of First Instance of Chalatenango, requested to the President of the Republic twice, the nomination of the officers who participated in a military operation during which the disappearance of the Serrano Cruz sisters was perpetrated. In July 17th, 2009, the President ordered the Minister of Defense to deliver such information, but it has not yet been provided.<sup>27</sup>

Because of the lack of progress in the investigation, the Court has decided to keep open the procedure of supervision of the compliance with the pending points to be obeyed, among them " To investigate effectively the facts denounced in the present case, identify and sanction the responsables, and make a search of the victims, remove all obstacles and mechanisms of fact and law that prevent compliance with those obligations", and resolved: "To request to the State to present to the Inter-American Court of Human Rights, no later than June 30th, 2010, a report that contains all the measures to comply with the reparations ordered by this Court and that is pending of compliance".<sup>28</sup>

Other measures ordered by the Inter - American Court of Human Rights in this case, that could have an impact on the Criminal Legislation, is that the Salvadoran State has to classify as appropriate the crime of forced disappearance of persons and must ratify the Inter-American Convention

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26 General Amnesty Law for the Consolidation of Peace. Legislative Decree 486, of 03-20-93; published in Diario Oficial No. 56, Volume 318, of 03-22-93.

27 *Cfr.* Court Resolution of the Inter-American Court of Human Rights of February 3, 2010. Case of the Serrano Cruz Sisters v. El Salvador. Monitoring Compliance with the Judgment. Paragraph 12. <http://www.corteidh.or.cr/Cases.cfm>

28 *Ibidem*, Declarative point 2 and operative paragraph 2.

on Forced Disappearance of People since when the facts under investigation occurred, this figure was not classified as a crime in the respective criminal law. As of 1999, the aforementioned offense was incorporated into the Salvadoran Penal Code, but the Court observed that the classification is not consistent with international standards regarding the description of the elements of the criminal nature and the penalty corresponding to the severity of the crime.<sup>29</sup>

To date, the Salvadoran State has not carried out any reform or adaptation of the criminal type of forced disappearance of persons as a result of the judgment in this case, nor has it ratified the American Convention on Forced Disappearance of Persons.<sup>30</sup> Therefore, it has not complied with this operative part of the sentence of the Serrano sisters' case. In the judgment of the Contreras case, operative paragraph 10, the court ordered: *"10. The State must adopt the pertinent and appropriate measures for justice operators, as well as Salvadoran society, public, technical and systematized access to the archives containing useful and relevant information for the investigation into cases followed by violations on human*

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29 Cfr. Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters v. El Salvador, mentioned in Paragraph 174. The Criminal Code of El Salvador, in force since 1999 and also in force at the date of the decision of the Inter-American Court (March 1, 2005), defines three criminal types of forced disappearance of persons. The basic type is called **"Forced Disappearance of Persons"** (Art. 364), according to which *"The public official or employee, agent of authority or public authority, who legally or illegally detains a person and does not give reasons about his whereabouts, shall be sanctioned with imprisonment of four to eight years and absolute disqualification of the respective position or employment for the same term"*; the offense of **"Forced Disappearance committed by Individuals"** (Art. 365), which reads: *"He who will perform the conduct described in the previous article, having received orders or instructions from an official or public employee, agent of authority or public authority, shall be sanctioned with imprisonment of three to six years and fine of one hundred eighty to two hundred days fine"*; and the criminal type called **"Disappearance of guilty persons"** (Art. 366), which states: *"He who by fault allows another to commit the crime of forced disappearance of persons, shall be punished with a penalty of two to four years in prison, fine from one hundred to one hundred eighty days fine. If it is an official or public employee, agent of authority or public authority, it will also be imposed, disqualification for the exercise of the respective position or job for the same term."* Unfortunately, the IACHR does not precisely state why those typical descriptions do not conform to international standards. It only states that (SIC) *"that said classification did not conform to international standards on forced disappearance of persons, as regards the description of the elements of the criminal type and the penalty corresponding to the seriousness of the crime. The Court considers that it would be convenient for El Salvador to properly classify said crime and adopt the necessary measures to ratify the Inter-American Convention on Forced Disappearance of Persons."*

30 Cfr. Organization of American States, OAS. Inter-American Convention on Forced Disappearance of Person. Status of Signatures and Ratifications. <http://www.oas.org/juridico/spanish/firmas/a-60.html>, accessed 09-15-12

*rights during the armed conflict, in accordance with the provisions of paragraph 212 of this Judgment.*“

El Salvador issued on December 2nd, 2010, the Law on Access to Public Information,<sup>31</sup> (LAIP, for its Spanish acronym), which has been in force since May 2011; such as indicated in the judgment of this case.<sup>32</sup> However, the approval and promulgation of the mentioned law does not derive directly from compliance with this sentence. In addition, paragraph 212 included in the measures of reparation ordered by the Inter-American Court, this court refers to the fact that it has observed as one of the limitations to advance research, the lack of access to the information contained in files related to operational counterinsurgency, as well as people, units and military who participated in the operations in which the victims disappeared of the present case, including their hierarchies, functions, and responsibilities. In consequence, the LAIP coming into effect is not considered complete in the disposition of the Court.

However, it should be noted that the sentence of the Case of Contreras *et al. v. El Salvador*, it is only from August 31th, 2011, it can be considered that the State is still within the reasonable period that the Court ordered to comply with this operative paragraph. In addition, it must be considered that in this case, the Salvadoran State before the sentence recognized its international responsibility for the forced disappearance, the violation of the rights to judicial protection and other rights, so the Court dismissed the controversy regarding the violation of such human rights<sup>33</sup> and in this way, El Salvador demonstrated,

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31 Legislative Decree 534, published in the Official Gazette 70, Volume 391, of 04-08-11.

32 *Cfr. Inter-American Court of Human Rights. Case of Contreras et al. v. El Salvador...* “(...) 111. *The State reported about the entry into force on April 8, 2011 of the Law on Access to Public Information that “will allow an internal mechanism of access to related information to government activities allegedly linked to the disappearance of children during the internal armed conflict”, and which also provides “the creation of Units for Access to Public Information”, as well as “the creation of an Institute for Access to Public Information”, with legal personality and own patrimony, which will be in charge for ensuring the application of the law. Likewise, it informed that this law contemplates “a control mechanism in the absence of a response to a request of information”.*

33 *Cfr. Inter-American Court of Human Rights. Case Contreras and others. vs. El Salvador.* paragraphs 17 to 28.



in an unprecedented way, that it has the will to fulfill with the sentence of the regional court.

In the final judgment of the Case of García Prieto *et al.*, the Court on the operative point 5, provides that the State “*must conclude the pending investigations regarding the killing of Ramón Mauricio García Prieto and the threats and harassment, within a reasonable period of time, in the terms of paragraphs 192 to 197 of this Judgment*”. Paragraph 196 of this judgment orders: “*It corresponds to the States issue the rules and adjust the necessary practices to comply with the provisions of the decisions of the Inter-American Court if they do not have these dispositions*”.<sup>34</sup>

This operative paragraph has not been complied by the Salvadoran State, as established by the resolution of compliance monitoring of the judgment of the Inter-American Court, dated August 27th, 2010.<sup>35</sup>

## 2.1.2 Effects on Specific Judicial Cases

In the case of the Serrano Cruz sisters, the Inter - American Court on Human Rights, regarding the effects on judicial cases, in item 6, orders: “*6. The State shall, within a reasonable time, carry out an effective investigation into the reported facts in this case, identify and punish those responsible and conduct a genuine search for the victims (...) in the terms of paragraphs 166 to 182 of this Judgment*”.<sup>36</sup>

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34 Cfr. Inter-American Court of Human Rights. Case of García Prieto *et al.* v. El Salvador, cit.

35 Cfr. Order of the Inter-American Court of Human Rights. August 27, 2010. Case García Prieto and others. vs. El Salvador. Monitoring Compliance of the Judgment. This resolution provides the procedure for monitoring compliance with two points pending compliance will be kept open: a) conclude pending investigations regarding to the killing of Ramón Mauricio García Prieto and the threats and harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto; and, b) provide for free the medical, psychiatric or psychological assistance required by the Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto.

36 This operative paragraph, therefore, must be interpreted under the provisions by the Court in the paragraphs between 166 and 182 of this judgment, which, as already explained, are part of the reparation measures issued by the Court.  
In this case, such paragraphs are:  
“175. In light of the foregoing considerations, the Court considers that El Salvador must effectively investigate the facts reported in this case, in order to determine the whereabouts of Ernestina and Erlinda, what happened to them, and in their case, identify, judge and punish all material and intellectual authors of the violations committed to their detriment, for criminal purposes and any others that may result from the investigation of acts (...)”

This resolving point of the Inter-American Court of Human Rights has not been fulfilled, but not necessarily because the Fiscalía General de la República argues the existence of legal obstacles such as the Law of General Amnesty for Peace Consolidation, prescription, and other criminal and criminal procedural institutions that prevent it.<sup>37</sup> According to the resolution monitoring compliance with the Sentence of the Inter-American Court, of February 3, 2010, the State recognized that there is no substantial progress in the investigation.

However, in the resolution mentioned before, it is clarified that the Prosecutor's Office, in compliance with a requirement of the Court of First Instance of Chalatenango, requested the President of the Republic on two occasions the payroll of the officers who participated in a military operation during which the disappearance of the Serrano Cruz sisters was perpetrated. On July 17, 2009, the President ordered the Minister of Defense to deliver such information, but this has not been provided yet.<sup>38</sup>

In the Contreras case, in operative point number 2, The Court ordered: *"2. Within a reasonable time, the State must continue effectively and with the greatest diligence open investigations, as well as open those that are necessary in order to identify, judge and, where appropriate, punish all those responsible for the forced disappearances of Gregoria Hermina Contreras, Serapio Cristian Contreras, Julia Ines Contreras, Ana Julia Mejia Ramirez, Carmelina Mejia Ramirez y José Rubén Rivera Rivera, as well as*

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<sup>176</sup> Likewise, is required that in the investigation of the facts, the State does not repeat the actions and omissions indicated in the considerations of the Court regarding the violation of Articles 8.1 and 25 of the Convention (*supra* para. 52 to 107). It is necessary to take into account the particularities of the facts denounced and the situation of armed conflict in which El Salvador was at the time the events allegedly occurred (...)

37 If the Attorney General's Office does not allege the existence of legal obstacles that prevent it carry out the investigations ordered in the judgments of the Inter-American Court, probably because the main impediment to investigate is the lack of political will to do so; it is also possible that neither the Attorney General's Office, nor the National Civil Police, have developed sufficient scientific research capacities in crimes as complex as those who were subject to the judgments of the inter-American court and, consequently, we are also facing a problem of institutional fragility and administrative weakness.

38 *Cfr.* Administrative Order of the Inter-American Court of Human Rights of February 3, 2010. Case of the Serrano Cruz sisters v. El Salvador. Monitoring Compliance with the Judgment. Paragraph 12. <http://www.corteidh.or.cr/Cases.cfm>

other related wrongful acts, in accordance with the provisions of paragraphs 183,185 and 187 to 188 of this Judgment".<sup>39</sup>

As in the case of the Serrano Cruz Sisters, this operative part must be interpreted coherently by the Court in the paragraphs mentioned that are part of the repairs ordered by the Court.<sup>40</sup>

The Salvadoran State has not yet completed the investigation ordered by the Inter-American Court in this case, but it should be taken into account that the judgment was issued on August 31st, 2011, so the State is still within the reasonable period that the Court ordered for compliance.<sup>41</sup>

In the final judgment of the García Prieto case, operative paragraph 5, the Court ordered: "5. The State must conclude the pending investigations regarding the Homicide of Ramón Mauricio García Prieto and threats and harassment, in a reasonable period, in the terms of paragraphs 192 to 197 of this Judgment".<sup>42</sup>

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39 Cfr. Inter-American Court of Human Rights. Case of Contreras *et al.* v. El Salvador, cit.

40 Paragraph 185 is clear in saying that the investigation of the facts should be conducted by the State "removing all the obstacles *de facto y de jure* that maintain impunity in this case. In particular, the State must:

- a) take into account the systematic pattern of forced disappearances of children in the context of the Salvadoran armed conflict (...)
- b) identify and individualize all material and intellectual authors of disappearances forced victims (...)
- c) ensure that the competent authorities carry out the corresponding investigations *ex officio*, and for that purpose have at their access and use all logistic and scientific resources need for the investigations (...)
- d) because they are serious human rights violations, and in consideration of the nature continued or permanent forced disappearance whose effects do not cease until establish the fate or whereabouts of the victims and their identity is determined (*supra* para.83 and 92), the State must refrain from resorting to figures such as amnesty for the benefit of authors, as well as any other similar provision, the prescription, non-retroactivity of the criminal law, *ne bis in idem* or any similar exemption from liability, or excuse from this obligation, and
- e) ensure that investigations into the facts constituting forced disappearances of the present case remain, at all times, under the jurisdiction's knowledge ordinary.

41 Likewise, in this case, it has to be considered that, before the sentence, the Salvadoran State recognized his responsibility for the forced disappearance, the rights violation of judicial protection, among others; the Court consequently terminated the dispute regarding the violation of such rights and in this way El Salvador demonstrated its will complying with the sentence of the regional court.

42 Cfr. Inter-American Court of Human Rights. Case of García Prieto *et al.* v. El Salvador. Judgment of November 20th, 2007 (Preliminary Objections, Merits, Reparations and Coasts). The most relevant of paragraphs 192 to 197, which are part of the measures of reparation ordered by the Court, as regards the judicial effects derived from the sentence, are:  
"193. (...) The State failed to comply with the duty of collaborating with the judicial authorities

This provision has not been complied with by the Salvadoran State, as established by the resolution of supervision of compliance with the sentence of the Inter-American Court, dated August 27th, 2010.<sup>43</sup>

### 2.1.3 Other effects in criminal or criminal proceedings

#### Case of the Serrano Cruz Sisters:

- a) *The functioning of a national commission to search for young individuals who disappeared as children during the armed conflict and the involvement of civil society;*
- b) *Creation of a search website;*
- c) *Creation of a genetic information system, in accordance with paragraphs 183 to 193 of this Judgment.*<sup>44</sup>

The National Commission for the Search of Missing Children during the Internal Armed Conflict was created in April, 2010.<sup>45</sup> The Inter - American Court, in its resolution of monitoring compliance with the judgment of 02-3-10, was arranged to maintain the supervision of compliance with that measure at that

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in the investigation related to the judicial inspection of the "entry and exit" books of the personnel of the Batallon San Benito of the National Police (supra para. 116). Because of that, The State must complete this investigation.

194 In addition to the above, two investigations are still open, one regarding the Homicide of Ramón Mauricio García Prieto and another regarding threats and harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto (supra para. 94, 116, 137, 157). These investigations should continue as soon as possible, in accordance with internal law.

195 In compliance with the obligation to investigate, the State must use all means available to expedite the investigation and the respective procedures, and in this way avoid the repetition of facts like those in the present case."

43 *Cfr.* Order of the Inter-American Court of Human Rights. August 27, 2010. Case of García Prieto and others. vs. El Salvador. Monitoring Compliance with the Judgment. This resolution provides that it will keep open the procedure for monitoring compliance with two pending points to be fulfilled, among them the one of "*concluding the pending investigations regarding the killing of Ramón Mauricio García Prieto and the threats and harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto.*"

44 *Cfr.* Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters. vs. El Salvador, cit.

45 Executive Decree No. 5, dated 04-9-10, published in the Diario Oficial No. 75, dated 05-26-09. This commission was created to replace the "*Inter-institutional Commission for the Search of Children and Missing Girls as a result of the Armed Conflict in El Salvador*", created on October 5, 2004, by Executive Decree No. 45, which did not meet the requirements demanded by the claimants, by the IACHR and by the Inter-American Court.

time, the State informed that there was a preliminary draft law presented in the Legislative Assembly to create a such commission, but it had not been approved by the Legislative Branch. In view of this, the Executive Branch, through an executive decree, had decided to create a National Search Commission, that meets the standards established by the Court in its Judgment.<sup>46</sup>

Currently, it can be considered that the State has complied with the creation and operation of this National Search Commission, to such an extent that the Constitutional Chamber of the Supreme Court of Justice, in a sentence of Habeas Corpus in favor of another person who was a victim of disappearance forced as a child during the internal armed conflict, prove her existence and compliance communicate said sentence for effective compliance of its functions, concerning the applicable regulations.<sup>47</sup>

Regarding the creation of a search website and a system of genetic information measures has not yet been complied by the State to the satisfaction of the Inter-American Court, and because of that, this regional court decided to maintain supervision of compliance in the resolution of February 3rd, 2010.<sup>48</sup>

**Case of Contreras *et al.*:**

- a) *Articulate coordination mechanisms between the different bodies and state institutions with research capacities, as well as follow-up of the causes that are processed by the acts of forced disappearance of children during the armed conflict, for which it must organize and keep updated a database on the subject, in order to achieve the most consistent and effective research;*

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46 *Cfr.* Resolution of the Inter-American Court of Human Rights of February 3, 2010. Case of the Serrano Cruz Sisters vs. El Salvador. Monitoring judgment compliance.

47 *Cfr.* Supreme Court of Justice of El Salvador. Constitutional Division. Sentence of Habeas Corpus 199-2007, dated 12-01-10. <http://www.jurisprudencia.gob.sv/VisorMLX/Documento/>, consulted on 09-15-12

48 *Cfr.* Resolution of the Inter-American Court of Human Rights of February 3, 2010. Case of the Serrano Cruz Sisters vs. El Salvador. Monitoring judgment compliance.

- b) *Develop action protocols in the field under an interdisciplinary approach and train officials involved in the investigation of serious violations to human rights, to these officials make use of the legal, technical and scientific available element.*
- c) *Promote relevant international cooperation actions with other States, to facilitate the collection and exchange of information, as well as other legal actions requirements, and*
- d) *Ensure that the various organs of the justice system involved in the case have the human, economic, logistic, scientific, or any other human resource necessary to perform their tasks adequately, independently, and impartially and take the necessary measures to ensure that judicial officials, prosecutors, investigators, and other justice operators have an adequate security system and protection, taking into account the circumstances of the cases under his charge and the place where they are working, that allows them to perform their duties with due diligence, as well as the protection of witnesses, victims, and family.”*

All these provisions ordered by the Court in the Case of Contreras *et al.* have not been fulfilled. However, the above considerations must be taken into account regarding that this is an even recent sentence, from August 31st, 2011.

## **2.2 Advisory opinions of the Inter-American Court of Human Rights**

There are no advisory opinions from the Inter-American Court that have been promoted and accepted as binding by the State of El Salvador.

## **2.3 Recommendations of the Inter-American Commission on Human Rights**

### **2.3.1 Effects under the Legislation**

There are no recommendations from the Inter-American Commission on Human Rights, derived from a specific report about El Salvador that has been complied with by that State and has directly caused effects in its legal system.

### **2.3.2 Effects under specific judicial cases**

Between 1996 and 2009, the Inter-American Commission on Human Rights, IACHR, ordered precautionary measures to guarantee the life, and the physical integrity of several people in six cases.<sup>49</sup> In all or most of these cases, the government of El Salvador complied with the granting of the preventive measures ordered, including police protection by agents of the Protection Division to Important Personalities or Victims and Witnesses of *Policia Nacional Civil*, the only police force in this country.

### **2.3.3 Other Effects**

There are no recommendations from the Inter-American Court of Rights Humans have caused other effects in criminal or procedural matters in institutions or the legal system of El Salvador.

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<sup>49</sup> People who have been favored with precautionary measures consisting of protection of their lives and physical integrity, ordered by the IACHR, by year and according to the name of the cases are: 1996, Adrián Esquino Lisco case, in favor of Mr. Adrián Esquino Lisco; 1997, Ramón García Prieto case, measures in favor of Mauricio García Prieto Hirlemann, Gloria Giralt de García Prieto and Carmen de García Prieto; 2001, Ramón García Prieto case, measures in favor of Mauricio García Prieto Hirlemann, Gloria Giralt de García Prieto, Benjamín Cuéllar, Pedro Cruz and David Morales; 2006, Damián Miguel Pedro Taylor Colosal case, measures in favor of him; Case of Adrián Meléndez Quijano and others, measures in favor of Adrián Meléndez Quijano and family and Eurípides Meléndez Quijano and family; 2009, Héctor Antonio García Berríos case and others, measures in favor of Héctor Antonio García Berríos, Alirio Napoleón Hernández Leiva, Miguel Ángel Rivera Moreno, members of the *Asociación Amigos de San Isidro* (ASIC by its Spanish initials); Alexander Beltrán Castillo, Ludwin Iraheta, and Vladimir Abarca, members of *Radio Comunitaria Victoria*; and the priest Luis Alberto Quintanilla.

### III. Legal mechanisms, especially mechanisms to review last judicial sentences in authority of *res judicata*, to make effective the decisions of the Inter-American Court in the internal field

There are no such mechanisms in the legal system of El Salvador. The only thing that exists is a draft bill for the Compliance with the Judgments of the Inter-American Court of Human Rights, prepared by one of the advisers of the legislative section of the party Frente Farabundo Martí para la Liberación Nacional.

### IV. Legal criteria or national jurisprudence used in relation to the compliance with the decisions of Inter-American organs in criminal and not criminal cases

There are no legal criteria or national jurisprudence related to comply with sentences, resolutions, recommendations, or other type of decisions of the organs of the Inter-American system for the protection of human rights in criminal and non-criminal cases.

### V. Constitutional legal or legal obstacles that are opposed to compliance with the decisions of Inter-American organs

For a part of the Salvadoran legal community, there are legal obstacles such as the Law of General Amnesty for Peace Consolidation, prescription, non-retroactivity of criminal law, *res judicata*, *ne bis in idem*, and other similar



exemptions from responsibility;<sup>50</sup> for another part of such community, such obstacles do not exist or should not exist, as the Court establishes in its judgments against El Salvador.

## Conclusions

El Salvador is one of the few Iberoamerican countries that recognizes explicitly in its Constitution, the existence and validity of an international legal order with supra legal hierarchy of norms.

The Salvadoran constitutional text, however, states that the provisions of the treaties cannot be under the Constitution of the Republic, since when they are subscribed and ratified do not become part of the Constitution, therefore, if it is determined that a treaty or one of its provisions contradicts the Constitution, it cannot prevail over the Magna Carta.

With that declaration and a reservation regarding the contentious competence of the Inter-American Court, El Salvador deposited the instrument of ratification of the American Convention at the General Secretariat of OAS on June 23rd, 1978, and a similar demonstration was also made when it recognized the contentious competence of the Inter-American Court of Human Rights, occasion in which it also expressed the reserve of recognizing such competence solely and exclusively for acts or subsequent legal acts whose execution principles are after June 6th, 1995.

The direct application of provisions of the American Convention by the tribunals of the Republic of El Salvador is a relatively recent fact; the first cases was registered as of the year 2002 in some of the Second Instance Chamber of Criminal Matters. Before that year, the great majority of superior courts, understanding of such three chambers of the Supreme Justice: Constitutional,

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50 That opinion of a part of the Salvadoran legal community is in the abstract because until that date there is not a single concrete case in which it has been argued that an investigation Court ordered by the Inter-American Court is inadmissible for violating the principle of *ne bis in idem*.

Administrative Litigation, and Criminal, as well as to the second instance chamber of criminal matters, ignored, in their judgments, the provisions of the ACHR. It is likely that the courts or tribunals of first instance have been taken ahead of the direct application of this Convention, but this issue escaped within the scope of this study.

Regarding compliance with the judgments of the Inter-American Court of Human Rights issued against El Salvador and that have had an effect on the legal system, in specific judicial cases or other effects in a criminal matter and criminal procedure, to date there are only three contentious cases that have concluded with sentences against this country.

A common feature in these three judgments, as the main resolution point that is also part of the reparation measures, is the Inter-American Court of Human Rights' ruling ordering the Salvadoran State to continue or restart the respective criminal proceedings, as they also share the nearly absolute impunity for the serious human rights violations reported. For this purpose, the regional tribunal instructs the State to take the necessary measures to overcome factual and legal limitations or obstacles that hinder the effective conduct of the investigations, including the adaptation of its domestic criminal legislation.

Unfortunately, the three cases also share the common feature of the Salvadoran State's failure to comply, to this date, with both resolution points that are interconnected. That is, conducting effective judicial investigations, for which, if necessary, it must remove internal legal obstacles. In none of the three cases have substantial advances been made in the investigations that fall under the responsibility of the Fiscalía General de la República in the administrative proceedings. Therefore, up to this moment, none of the three judgments has had any impact in the judicial sphere, let alone in the applicable criminal and procedural legislation.

Regarding other types of effects on the criminal and criminal procedure, derived from compliance with the sentences, the only thing that stands out is the creation and operation by executive decree of the National Search Commission

of Disappeared Girls and Boys during the Internal Armed Conflict from April, 2010, replacing a previous commission created in 2004, but it did not comply with the standards required by the Inter-American Court.

Also, the creation on May 5th, 2010, through Executive Decree No. 57, of the “National Commission for Reparation to Victims of Violations of Human Rights, occurred in the Context of Internal Armed Conflict”, in order to propose to the President of the Republic, through a duly substantiated report, the establishment of a presidential reparation program for victims of serious human rights violations, in which re-found young people will be included, although this is not a measure ordered by the Inter-American Court.

Regarding advisory opinions of the Court, El Salvador has not promoted or recognized as mandatory any opinion of this regional court, therefore there are no legal, judicial, or legal effects of another type in the criminal and criminal procedure derived from the advisory competence of the Inter-American Court.

Regarding the recommendations or measures ordered by the Inter-American Commission on Human Rights, El Salvador in several cases has given the due to compliance with the ordered precautionary measures, among them the protection measures in charge of Policia Nacional Civil, through the Division of Proteccion de Personalidades Importantes (in its Spanish acronym PPI), and the Division of Victims and Witnesses Protection. Beyond these types of measures, decisions or measures of the IACHR have had no effect on the legal system or other type of effects in the institutions of the criminal system and criminal procedure.

In El Salvador, there are no legal mechanisms, especially for review past judicial sentences in the authority of *res judicata* to make compliance with judgments or other binding decisions of the Inter-American Court.

There are also no legal or national jurisprudence criteria used in relation to compliance with the decisions of the Inter-American organs in criminal and non-criminal cases.

Regarding legal or legal-constitutional obstacles contrary to compliance with the decisions of the Inter-American organs, a part of the Salvadoran legal community considers that there are legal obstacles such as the Law of General Amnesty for Peace Consolidation (named in Spanish as Ley de Amnistía General para la Consolidación de la Paz), prescription, non-retroactivity of criminal law, *res judicata*, *ne bis in idem* and other similar exemptions from responsibility; for another part of such community, such obstacles do not exist or should not exist, such as the Inter-American Court establishes in its judgments against El Salvador.