



PÁZMÁNY

Pázmány Péter Katolikus Egyetem  
Jog- és Államtudományi Kar

## Doktorandusz tanulmányok 7.

‘LAW IN TIMES OF CRISIS’

*Selected doctoral studies*

Edited by:

Gyula BÁNDI – Anett POGÁCSÁS

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‘JOG VÁLSÁG IDEJÉN’

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Szerkesztette:

BÁNDI Gyula – POGÁCSÁS Anett

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A PÁZMÁNY PÉTER KATOLIKUS EGYETEM  
JOG- ÉS ÁLLAMTUDOMÁNYI KARÁNAK  
KÖNYVEI

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# INTER-AMERICAN COURT OF HUMAN RIGHTS AND THE EUROPEAN COURT OF HUMAN RIGHTS: CATEGORIES OF VIOLATION OF THE RIGHT TO LIFE BY SECURITY FORCES

Sabrina Judith KALIMAN\*

## 1. Introduction

The different categories of violation of the right to life by security forces of the State can be established as:

- 1) The disproportionate use of force by the agents of security of the State. These situations are related to the right of the State to use force and its implication with respect to the deprivation of life in the exercise of maintenance of the order.
- 2) Extrajudicial execution by the security forces of a State. In some situations, these executions have been premeditated.
- 3) Massacres committed by security forces of the State or with the acquiescence of these ones.
- 4) The security forces committed homicides with police brutality.
- 5) Enforced disappearances.

The research question is: Which are the categories of violation of the right to life by security forces of the States in the European Convention on Human Rights and the Inter-American Court of Human Rights?

It is relevant to introduce the conventions that served as the basis for the judgments of the Inter-American Court of Human Rights (IACHR) and the European Court of Human Rights (ECtHR). The main convention for the IACHR is the American Convention on Human Rights which establishes the

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right to life in Article 4. In relation to the ECtHR, its main juridical instrument is the European Convention on Human Rights and this one protects the right to life in Article 2.

For the purpose to understand how these Courts rule and decide it is relevant to substantiate the differences between the articles that protect the right to life. In the American Convention on Human Rights, Article 4 certifies the protection of the right to life but then the following five paragraphs are about the applicability of the death penalty.

Furthermore, Article 2 of the European Convention on Human Rights states: *“No one shall be deprived of his life intentionally save in the execution of a sentence of a Court following his conviction of a crime for which this penalty is provided by law.”*<sup>1</sup> These articles have fallen into disuse considering that the provisions on the death penalty that have been drafted have lost their validity because most of the European and American States have been prohibiting it over time. Few countries on both continents still maintain the death penalty.<sup>2</sup>

It is relevant to mention that the second part of Article 2 of the European Convention on Human Rights states: *“[...] Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defense of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection.”*<sup>3</sup> This part of the text is important for determining the differences in the standards applied to resolve certain cases related to the transgression of the right to life by the security forces in Europe and America. The American Convention does not have a similar part.

It is significant to establish that this work will analyze the subject of the deprivation of the right to life perpetrated by security forces of the State. Other significant parts of the right to life as the death penalty, euthanasia, or abortion in countries of Europe and America are not taken into account for this work as their analysis requires independent research as the case law and the literature are so rich in these fields. Moreover, the importance of this work is the fact that a person is alive and this human right is unlawfully taken away by the security

<sup>1</sup> Article 4. Organization of American States (OEA), American Convention on Human Rights. Pact of San José de Costa Rica, San José of Costa Rica, 7 to 22 of November of 1969.

<sup>2</sup> Article 2. Council of Europe and European Tribunal of Human Rights European. Convention for the Protection of Human Rights and Fundamental Freedoms, Strasburg, France. Signed on November 4, 1950, in Rome, Italy. Entry into force on September 3, 1953.

<sup>3</sup> Council of Europe op. cit. Article 2

forces that are supposed to protect the right to life every time and in every situation.

## 2. Doctrine about the Right to Life

Several relevant scholars have demonstrated the importance of the right to life. For example, Hannah Arendt develops the significance of the dignity of the human person when this author considers the importance of human rights even before that these prerogatives are called as such. This German author focuses on several problems related to human rights but did not develop a theory about these ones.<sup>4</sup> However, her political theory is based on the problems that had their roots in the failure of the rights of the people to assure human dignity.<sup>5</sup>

Renata Cenedesi Bom Costa Rodrigues demonstrates the importance of dignity as an essential attribute of the human condition independently of sex, race, religion, nationality, social position, or any other specification. It is relevant to highlight that this author wants to prove that the jurisprudence of IACHR has amplified the concept of the right to life. Furthermore, this represents 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 the transformation of this right. The idea is to offer an amplified concept of the right to life that includes aspects of civil and political rights, as well as economic, social, and cultural rights.<sup>6</sup>

It is relevant for this work the text of K. A. Abdul Gafoor. This author supports that every human has the inherent right to life and no one shall be arbitrarily deprived of it. This includes the prohibition of torture. He establish that the right to life must be interpreted broadly to ensure the protection of the right to live in a humane and dignified manner.<sup>7</sup>

Continuing with his theory, the author states the importance of other rights that are not always recognized or are denied such as equality in all fields of

<sup>4</sup> Hannah ARENDT: *La Condición Humana*. Barcelona, Paidós, 2015.

<sup>5</sup> Jeffrey C. ISAAC: A new guarantee on earth: Hanna Arendt on Human Dignity and the Politics of Human Rights. *The American Political Science Review*, Vol. 90, 1996. 61–73.

<sup>6</sup> Renata Cenedesi BOM COSTA RODRIGUEZ: El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos. *Revista del Foro Constitucional Iberoamericano*, 9, 2005. 74–112.

<sup>7</sup> K.A. Abdul GAFOOR: Human Rights: Right to life. *Rajagiri Journal of Social Development*, Volume 1, Number 2, June 2010. 45–60.

disabled people, of women, including the elimination of gender-based violence, and other kinds of minorities. Furthermore, the author proves the importance of compliance with human rights related to the people that are arrested by the police.<sup>8</sup> An example of this phenomenon can be seen in the detention of George Floyd. He was a black man who was apprehended by the police in the United States in 2020 and was killed by a member of this security force in a violent manner. Also, it is important to highlight the violation of human rights for the persons in prison deprived of their liberty.

Moreover, is relevant to document the significance of the rights of women for the Courts of human rights. The IACHR established the term “Femicidio” which refers to the killing of a woman by a man because of her gender. These historically discriminated groups are more likely to be illegally killed because they have systematically and socially suffered worse living conditions.

To analyze the crimes against the right to life it is important to define what is considered “life”. According to the dictionary of the Royal Spanish Academy “Vida” (life in Spanish) comes from the Latin Vita. This means force or activity substantial intern through which the being that possesses it works.<sup>9</sup> Furthermore, the more accurate conception could be that it is the space that happens from the birth of a person, animal, or vegetal until it’s 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. It is possible to sustain that for the authors examined above the right to life is intrinsically united with the dignity of every human being.

Certain peculiarities of the right to life must be taken into account to understand the crime against this fundamental right such as: 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 the disappearance of the titular of this right; 3) The own definition of life generates conflicts between ethical, moral and religious concepts, what give rise to debates <sup>10</sup>

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

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<sup>8</sup> GAFOOR op.cit. 45-60.

<sup>9</sup> Dictionary of the Royal Spanish Academy: Word “Vida” (life).

<sup>10</sup> BOM COSTA RODRIGUEZ op. cit.

There are multiple conventions, treaties, or declarations that include the right to life. The first instrument that developed exclusively the protection of human rights was the Universal Declaration of Human Rights of 1948. The Article 3 states: “*Everyone has the right to life, liberty and security of the person*”.<sup>11</sup> It is important to highlight that this article shows how indivisible human rights are in general and especially these three rights: life, liberty, and security that generally are breached together.

Bom Costa Rodrigues considers the recognition of the intrinsic dignity of the human being. This author relates Article 4 of the American Convention on Human Rights with Article 9 of the Universal Declaration on Human Rights that certifies the prohibition of arbitrary arrest, detention, or exile.<sup>12</sup> Most of the judgments of violation of the right to life examined in the work of this author are related to arbitrary detention such as the cases of enforced disappearances. Other cases are connected with the arbitrary use of force or torture. This author substantiates that for all human rights to be effective there has to be compliance with the right to life and it is a positive obligation of all States to assure this. A significant fact is that the Universal Declaration of Human Rights was not binding and for that, it was established the International Covenant on Civil and Politics Rights in 1966 which gives mandatory character to the protection of the right to life among other human rights.

The same author documents the evolution of the right to life in the IACHR. She states that the transgression of the right to life is a harsh reality and the IACHR has one of the most important roles in its evolution. The cases of this Court related to the right to life have been analyzed in relation to other rights.<sup>13</sup> For the IACHR the protection of the right to life is a prerequisite to the protection of the other rights. The evolution of the concept of the juridical protection of the right to life is related to the basic necessities of the human being to live with dignity. This happens because human rights are indivisible and it is impossible to analyze one without taking the others into account. Because the structure, jurisdiction, and regulation of the IACHR are between States, the cases that violate the right to life including in this tribunal are against infringements

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<sup>11</sup> Article 3. United Nations. Universal Declaration of Human Rights. 10 December 1948, Paris, France. 1948.

<sup>12</sup> Article 4. Organization of American States (OEA), American Convention on Human Rights. Pact of San José de Costa Rica, San José of Costa Rica, 7 to 22 of November of 1969. Article 9. United Nations. Universal Declaration of Human Rights. 10 December 1948, Paris, France. 1948.

<sup>13</sup> BOM COSTA RODRIGUEZ *op. cit.*

committed by its agents or the countries themselves. There are no judgments that determine guilty Non-State actors such as guerrilla groups, among others. The same situation can be observed in the European Court of Human Rights.

The text about the evolution of the right to life in the IACHR of Renata Cenedesi Bom Costa Rodrigues serves as a guide for this article because the classification of the different transgressions of the right to life by security agents are well differentiated, although are not the same categories as those consider in this work. Furthermore, the activity of the European Court of Human Rights in relation to these notions is documented in this article.

### **3. Disproportionate Use of the Force by Agents of Security of the State**

The first category of violation of the right to life presented in this article is the disproportionate use of force and the prohibition of self-amnesty. In the case *Neira Alegría and Others V. Peru*<sup>14</sup> it was sustained that it is the positive obligation of the State of the protection of the right to life. In this judgment, it was concluded that there was an infringement of the right to life provided in Article 4 of the American Convention on Human Rights. Moreover, it included the transgressions of articles 8 (judicial guarantees, right to a fair trial), 25 (judicial protection), and 27 (suspension of the guarantees).<sup>15</sup>

It is necessary to examine this judgment because it 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 proved that the government gave orders that resulted in an unjustified number of deaths that the Court constitutes a transgression of the obligation of protecting human life. There was a disproportion of the employee war potential and a dissimilar use of violence by security forces in relation to the given situation that they were facing. It was decided by the Court that there was a violation of Article 4.1 of the Convention because there was no information after eight years about the whereabouts of three missing persons. Regarding the disproportionate use

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<sup>14</sup> Court Idh. Case *Neira Alegría and Others V. Perú*. Fondo. Judgment of 19 de January 1995. Serie C No. 20.

<sup>15</sup> Article 4, Article 8.1, Article 25 and Article 27. Organization of American States (OEA), American Convention on Human Rights. Pact of San José de Costa Rica, San José of Costa Rica, 7 to 22 of November of 1969.

of force, it is safe to say a reasonable conclusion that people were arbitrarily deprived of their lives. The IACHR concluded 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 infringement of the obligation to protect the life that is the ultimate goal of all democratic States.

In relation to dignity in life and death, the IACHR has ruled that although the State has the right and the obligation of guaranteeing security and maintaining public order, its power cannot be unlimited because it has the duty in every moment of applying legal procedures. These must be respectful of the fundamental rights of all individuals that it is under its jurisdiction.

A relevant example of the disproportionate use of force in the European Court of Human Rights is the case of *McCann and Others V. United Kingdom*. This was a judgment of 27 September 1995. The facts presented in the Court determined that three suspects were believed to be planning an attack of terrorism. The three offenders were identified with their real names and their fake passports. The Court found that the suspects could have been detained before their entrance into Gibraltar. This means before they even had the opportunity to enter the place where the attack was going to occur. In this context to comply the obligation of respecting the right to life of the suspects, the authorities should have evaluated the information that they had in their power in the context to comply the obligation of respecting the right to life of the suspects, the authorities should have evaluated the information that they had in their power before transmitting it to the military.<sup>16</sup>

This is an example of the possibility of avoiding unlawful killing because, at the moment of transmitting the information to the military, these were already in possession of firearms and were shooting to kill. Considering all the mentioned above, the ECtHR decided that there was no convincing proof that the death of these three persons has been the result of a recourse of the force considered absolutely necessary to guarantee the defense of the people against illegal violence. In this judgment, the ECtHR ruled that there was a transgression of the second part of Article 2 of the European Convention on Human Rights which states that the deprivation of life will not be deliberated inflicted in contravention with this Convention when it results from the use of

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<sup>16</sup> Case *McCann and Others V. United Kingdom*. Application no. 18984/91. Court Grand Chamber, Strasbourg. Judgment of 27 September 1995.



the force that is no more than absolutely necessary.<sup>17</sup> There was an infringement of the article in this situation because the use of force was not necessary to prevent the loss of lives and it resulted in an abusive use of coercion by the security forces.<sup>18</sup>

#### **4. Extrajudicial Execution by the Security Forces of the State**

An important case about extrajudicial execution of the IACHR is *Omeara Carrascal and Others V. Colombia*. In this judgment, the Court condemned the transgression of the right to life of two individuals and the enforced disappearance and posterior execution of a third person.<sup>19</sup> The IACHR found the existence of links between members of the public security forces of Colombia and paramilitary groups. In addition to this, it was verified that the relationship 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. This link was manifested due to direct actions of support, collaboration, and coordination. Moreover, there were omissions of members of the public force that favored acquiescence or tolerance of the actions of these paramilitary groups. The relationship between security forces and paramilitary groups facilitated the extrajudicial execution of people and provoke the unlawful killing of citizens with the acquiescence of the State.<sup>20</sup>

A relevant example of extrajudicial killing in the practice of the European Court of Human Rights is the judgment of *Shavadze V. Georgia*. On 16 August 2008, Mr. Shavadze was arrested on a street in Batumi by a unit of security forces attached to the Department of Constitutional Security of the Ministry of the Interior. There were several independent eyewitnesses to his arrest who subsequently reported that more than twenty law-enforcement officers, heavily

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<sup>17</sup> Article 2. Council of Europe and European Tribunal of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, Strasburg, France. Signed on November 4, 1950 in Rome, Italy. Entry into force on September 3, 1953.

<sup>18</sup> Case *McCann and Others V. United Kingdom*. Application no. 18984/91. Court Grand Chamber, Strasbourg. Judgment of 27 September 1995.

<sup>19</sup> Court Idh. Case *Omeara Carrascal and Others V. Colombia*. Fondo, Reparaciones y Costas. Judgment of 21 November 2018. Serie C No. 368.

<sup>20</sup> Court Idh. op. cit. Case *Omeara Carrascal* 2018.

armed and wearing masks, had taken part in the operation to apprehend the victim. Approximately six hours after Mr. Shavadze's arrest, the wife of the victim was informed by a local police officer that her husband was dead.<sup>21</sup>

The ECtHR resolved that the authorities must take reasonable steps available to them to secure the evidence concerning an incident, including, eyewitness testimonies, forensic evidence, and where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. The requirements of promptness and reasonable expedition are implicit in this context. The ECtHR demonstrate that the domestic investigation into the death of the victim was ineffective.<sup>22</sup>

The Court examined the question of whether the State could be held responsible for the death. The Tribunal ruled that the primary and most decisive investigative steps taken by the people responsible for the Ministry of the Interior did not meet the requirements of independence and impartiality under Article 2 of the Convention. Moreover, the ECtHR showed that according to the investigation of the killing of the victim, there weren't any conclusive findings. The Court understood that the criminal investigation into the death of the victim had been ineffective and was in breach of the respondent State's procedural obligations under Article 2 of the Convention.

The ECtHR decided that while the official version presented by the Government was that the law enforcement officers resorted to the use of force in an attempt to prevent Mr. Shavadze's unlawful escape from police custody, this version had not been supported by any evidence. The Government did not provide the Court with the results of the post-mortem examination of the body of the victim despite its crucial relevance in explaining his injuries and establishing the cause of his death. For this, the ECtHR was not able to accept the official version of the reasons behind the use of lethal force. The Court found that the Government had not taken responsibility for the circumstances that led to taking the victim's life. The ECtHR ruled that there had been not only an infringement of the procedural obligation of Article 2 of the European Convention but also an infringement of the substantial aspect of the right to life.<sup>23</sup>

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<sup>21</sup> Case Shavadze V. Georgia. Application no. 72080/12. Strasbourg. Judgment of 19 November of 2020.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

## **5. Massacres committed by Security Forces or with the Acquiescence of these**

To illustrate this category of violation of the right to life it is relevant to present a judgment of the IACHR. Case *Massacre La Rochela V. Colombia* is a sentence about a massacre committed in Colombia. The lawsuit referred to a situation that took place on 18 January 1989 where a paramilitary group with the cooperation of State agents carried out a massacre of 12 persons and hurt the personal integrity of three other individuals. The victims were carrying out evidentiary diligence in their role as officials of the administration of justice in the place called “La Rochela” in Santander, Colombia.<sup>24</sup>

The State of Colombia confessed the facts and partially flattened the pretensions. The Court considered that in relation to the transgression of Article 4 of the American Convention on Human Rights, the State was responsible for the death of 12 officials that integrated the Judicial Commission. In relation to the three surviving functionaries, the State also flattened to the declaration that it had breached Article 4 of the American Convention on Human Rights.<sup>25</sup>

The Court demonstrated that the perpetrators intended to execute the members of the Judicial Commission. Likewise, the facts showed that the offenders did everything that they considered necessary to comply with that end. For these reasons, the IACHR substantiated that Article 4 of the American Convention on Human Rights consecrates the right to life and this was also applied to the three survivors of the massacre. The Court accepted the international responsibility of the State for the facts that occurred on 18 January 1989. This was a particular case because the State recognized its responsibility for the infringement of the right to life that which is not something that usually happens in other judgments.<sup>26</sup>

The IACHR concluded that the State violated the right to life of the 12 dead victims and the three survivors. Moreover, the State also infringed on the right to personal liberty (article 7) and to personal integrity (article 5).<sup>27</sup>

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<sup>24</sup> Court Idh. Case *Massacre of La Rochela V. Colombia*. Fondo, Reparaciones y Costas. Judgment of 11 May 2007. Serie C No. 163.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

## 6. Homicides committed with Police Brutality

There are several judgments of the IACHR about homicides committed with police brutality. A paradigmatic case is *Bulacio V. Argentina* which is a judgment of 18 September 2003. The IACHR condemned the named “Razzias” which were common practices that took place in the early nineties. The “modus operandi” of these practices consisted of illegal arrests for identity verification and in line with contravention edicts of the police. Walter Bulacio was a young boy who was returning home after a recital and was detained by the police. The security forces tortured the boy who died the next morning at a hospital as a result of the beating caused by the police. The Court noted that this practice was incompatible with the respect for human rights. Also, the IACHR decided that the State must prevent the security forces or third parties acting under their authority violate the rights sustain in the American Convention. Furthermore, it was declared that the security forces must respect the right to life of every person under its jurisdiction.<sup>28</sup>

Another relevant case is *Brothers Landaeta Mejías and Others 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. The Court attributed the responsibility to the State for the arbitrary deprivation of the life of the brothers Landaeta. Moreover, the IACHR understood that the use of force in a lethal way was not necessary in relation to the circumstances of the situation.<sup>29</sup>

With respect to the first category of violation of the right to life mentioned in this work, the IACHR considered that the deaths of the brothers Landaeta were the result of the disproportionate use of force by the actions of law enforcement officials.<sup>30</sup>

There are two relevant examples, among many others, of homicides caused by police brutality in the European Court of Human Rights. The first one is the *Affaire Mocanu and Others V. Romania*. The applicant association brought together individuals who were injured during the violent suppression of the anti-totalitarian demonstrations which took place in Romania in December 1989 and the relatives of persons who died during those events. One of the applicants,

<sup>28</sup> Court Idh. Case *Bulacio V. Argentina*. Judgment of 18 September 2003. Serie C No. 100.

<sup>29</sup> Court Idh. Case *Brothers Landaeta Mejías and Others V. Venezuela*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Judgment of 27 August 2014. Serie C No. 281.

<sup>30</sup> Court Idh. op. cit. Case *Brothers Landaeta Mejías and Others V. Venezuela* 2014.

Mr. Marin Stoica was walking to his workplace along a street near the State television headquarters. The victim was arrested by a group of armed individuals and taken by force into the television building. In the course of the same night the applicant was heavily beaten, struck on the head with blunt objects, and threatened with firearms until he lost consciousness. He woke up at around 4.30 a.m. in the Floreasca Hospital in Bucharest. In the present case, the Court noted that a criminal investigation was opened by the authorities' motion shortly after the events. That investigation concerned the death by gunfire of Mr. Mocanu and other people, and also the ill-treatment inflicted on other individuals in the same circumstances. The ECtHR understood that the authorities responsible for the investigation, in this case, did not take all the measures reasonably capable of leading to the identification and punishment of those responsible. The Government did not present any fact or argument capable of persuading the Court to conclude otherwise in the present case. In the light of the foregoing, the Court decided that Mrs. Mocanu, wife of the victim, did not have the benefit of an effective investigation as required by Article 2 of the Convention and that Mr. Stoica was also deprived of an effective investigation for the purposes of Article 3 of the European Convention on Human Rights. Accordingly, the ECtHR concluded that there was been a breach of the procedural aspect of Article 2 of the European Convention on Human Rights.<sup>31</sup>

In this case, the ECtHR considered: for the general prohibition of arbitrary homicides directed mainly at public agents to be effective in practice, a process is necessary to control the legality of the use of deadly force by State authorities. It is also vital to investigate the arbitrary homicides and the allegations of bad treatment infringed on a person that is in the custody of the security forces. The Court decided that the number of anticipated infringements in similar cases is the subject of particular concern and raises serious doubts about the objectivity of the investigation by the military prosecutors who are called upon to carry it out.<sup>32</sup>

The other important case of the ECtHR is *Ramsahai and Others V. The Netherlands*. The circumstances of the deceased of Mr. Moravia Siddharta Ghasuta Ramsahai showed that he was shot dead by a police officer.<sup>33</sup>

<sup>31</sup> *Affaire Mocanu V. Roumanie* (Requête no 56489/00) Arrêt (Règlement amiable) Strasbourg. Judgment of 24 May 2006.

<sup>32</sup> European Court of Human Rights op. cit. *Affaire Mocanu V. Roumanie* 2006.

<sup>33</sup> Case of *Ramsahai and Others V. The Netherlands*. Application no. 52391/99. Court Grand Chamber, Strasbourg. Judgment of 15 May 2007.

The ECtHR evidenced important notions about the role and responsibility of the security agents that would be used as a base in subsequent judgments. The Court decided that the subsequent investigation proceedings had been insufficiently effective and independent. The tribunal substantiated that the obligation to protect the right to life under Article 2 of the Convention requires, by implication, that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The ECtHR concluded that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.<sup>34</sup>

The Court found that for an investigation into the alleged unlawful killing by State agents to be effective, the persons responsible for carrying out the investigation must be independent and impartial. The inquiries must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible.<sup>35</sup> This is an important notion to take into account in relation to the second part of Article 2 of the European Convention on Human Rights about unlawful killings.

## 7. Enforced Disappearances

The enforced disappearances have been interpreted as an infringement on the right to life by the IACHR. This tribunal has determined: it constitutes a breach of the obligation of the State to guarantee the right to life in a preventive and efficient way. It is a continuous crime and causes multiple transgressions of several rights established in the American Convention on Human Rights.<sup>36</sup> This crime was an extended practice in the Latin-American countries in the decades of 1970 and 1980, when this part of the continent was under dictatorship regimes. The idea was to create an atmosphere of fear and insecurity in the society. Between 1987 and 1989 the history of enforced disappearances in the IACHR started with the trial of Ángel Manfredo Velásquez Rodríguez that concluded with the condemnation of the country accused.

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> BOM COSTA RODRIGUES *op. cit.*

After this judgment, there was an extension of the juridical protection of the right to life in the decisions of the IACHR in the decade 1990. Moreover, in the year 1994, it was adopted the Inter-American Convention on Forced Disappearance of Persons. This Convention determines a very important principle: the impossibility of the States to exempt from liability any person because of due obedience or instructions of superiors that provide, authorize or encourage the enforced disappearance. Also, this instrument certifies the prohibition that the accused are judged by a military tribunal. There is an extenuating fact for this crime which is the factor that the victim is found alive or that people that have participated in the crime provide information about the whereabouts of the missing person.<sup>37</sup>

Bom Costa Rodrigues certifies the obligation of the State to protect 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. The author highlights related to the case mentioned above, *Velázquez Rodríguez V. Honduras* which is the first important judgment of the IACHR about an enforced disappearance. This lawsuit was sent by the Inter-American Commission of Human Rights in 1986. It was stated that it violated the right to life (article 4), the right to the integrity of the person (article 5), and the right to liberty (article 7) of the American Convention on Human Rights.<sup>38</sup>

This case was about the disappearance of Manfredo Velásquez Rodríguez who was violently deprived of his liberty without a judicial warrant by members of the armed forces of the State of Honduras and disappeared without leaving a trace. Honduras was condemned for the infringement of the articles of the American Convention on Human Rights named above. The State was also condemned for not guaranteeing the duty of preventing any transgression of the rights stated in the Convention. It is necessary to highlight that there were present both obligations of the State: the positive and the negative. These include the inviolability of the right to life in any form.

The case *Velázquez 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* substantiates the importance of this case by stating: “*This judgment represents*

<sup>37</sup> Organization of American States. (OEA) Inter-American Convention on Forced Disappearance of Persons. Adopted on Belem do Pará, Brazil 9 June 1994.

<sup>38</sup> Article 4, Article 5 and Article 7. Organization of American States (OEA), American Convention on Human Rights. Pact of San José de Costa Rica”, San José of Costa Rica, 7 to 22 of November of 1969.

*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”.*<sup>39</sup>

Another important case of the IACHR is Panel Blanca V. Guatemala because expanded the concept of victim. Before this judgment, the victim was considered only the person who has been killed, tortured, or disappeared, among other crimes.<sup>40</sup> This decision amplified the concept of the victim to the relatives of the personal target of the crime. The Court condemned the State to pay compensation to the siblings of the person who disappeared in relation to moral damage. These were the indirect victims that according to the Court did not need to show that there was an affective relation being enough the consanguinity.<sup>41</sup>

It is necessary to highlight that the situation of enforced disappearances was very different for America and Europe. In America, as it was mentioned above, there were dictatorships in the decade of 1970 in most of the countries of the south and central part of this continent. This caused that there were a great number of enforced disappearances. The ECtHR has ruled since 1998 about several cases of enforced disappearances mostly in Turkey and Russia.

A relevant work about the comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights is the one by Ophelia Claude. She shows that the two requirements that should be proven are that the person is presumed disappeared and the burden of the proof shifts to the State to prove otherwise.<sup>42</sup>

Claude states that since the beginning of the jurisprudence on enforced disappearances the IACHR embraced that the nature of the offense entailed ipso facto a violation of Article 4 of the American Convention on Human Rights that sustains the protection of the right to life. Different is the conception of the right to life in enforced disappearances in the European Court of Human Rights. This tribunal considers three different State obligations. The first is that the State has to refrain from unlawful killings. The second is that the State bears the positive obligation to take steps to prevent avoidable loss of life. The third obligation

<sup>39</sup> BOM COSTA RODRIGUEZ op. cit.

<sup>40</sup> Court Idh. Case of “Panel Blanca” (Paniagua Morales y otros) V. Guatemala. Fondo. Judgment of 8 March 1998. Serie C No. 37.

<sup>41</sup> Ibid.

<sup>42</sup> Ophelia CLAUDE: A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European. *Intercultural Human Rights Law Review*, Vol. 5, 2010, 407–461.



is that the State must investigate suspicious deaths.<sup>43</sup> The first two obligations are related to the substantial aspect of the right to life while the last obligation concerns the procedural aspect of this right. This is an important difference between the ways to proceed in relation to the right to life in the different Courts. While the ECtHR normally condemns the procedural obligation of the right to life, the IACHR is more prone to sentence the substantial aspect of this right.

The first case about enforced disappearances of the ECtHR was ruled in 1998, ten years after the above-mentioned Velázquez Rodríguez of the IACHR. This judgment was Kurt V. Turkey.<sup>44</sup> The Court understood that there was no sufficient evidence to examine the claim against the right to life. Despite this, it was a relevant judgment for this tribunal because the Organization Amnesty International took part in the defense of the rights of the victim and gave visibility to the case worldwide. The Court evidenced that four years had passed without information about the missing person and for this, it was possible to assume that the victim had died at the hands of the captors. The ECtHR concluded that the State has a positive obligation to conduct an effective investigation concerning the circumstances surrounding an alleged illegal homicide by agents of security of the State.<sup>45</sup>

The case Timurtas V. Turkey<sup>46</sup> was a paradigmatic judgment for the European Court of Human Rights. This was a key case that oriented the activity of the ECtHR in respect of enforced disappearances since the year 2000. The Court contemplated in this judgment that when the State had not provided a plausible explanation for the disappearance and there is *“sufficient circumstantial evidence, the Court will make the finding that the individual died in State custody.”*<sup>47</sup> Since this decision, when the ECtHR presumes the disappeared person's death, there is an infringement of the substantive right to life. In this judgment, the tribunal noted that the period that elapsed since the person in question was detained constitutes a pertinent factor that should be taken into account, especially if time passed without having news about the destiny or whereabouts of the victim. This situation makes it more likely that the person has died. Turkey denied arresting the victim and did not provide help for the

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<sup>43</sup> Ibid.

<sup>44</sup> Kurt V. Turkey. (15/1997/799/1002) Strasbourg. Judgment of 25 May 1998.

<sup>45</sup> European Court of Human Rights op.cit. Kurt V. Turkey 1998

<sup>46</sup> Timurtas V. Turkey. Application N° 23531/94. Strasbourg. Judgment of 13 June 2000.

<sup>47</sup> Ibid.

case. The Court concluded that the investigation related to this case had not been effective.<sup>48</sup>

Ophelia Claude shows a relevant approach to the treatment of the right to life in enforced disappearances of the ECtHR in relation to the transgression of the procedural aspect of this right. As it was mentioned before, this aspect of the violation of the right to life is normally sanctioned by the European Court in cases related to the breach of the right to life.<sup>49</sup> The procedural right to life, which is the State's duty to investigate a suspicious death, was developed by the ECtHR for the first time in the case of *McCann and Others v. UK* of 1996.<sup>50</sup> In this judgment, the European Court of Human Rights followed the example of the IACHR and linked a lack of effective investigation with an infringement of Article 2. This model of breach of the procedural obligation of the right to life was repeated multiple times by the judgments of the ECtHR.

Claude evidences a notion that defines how the two Courts solve and decide in the cases related to the right to life. The author states that the European Court's approach is very unique as it uses Article 2 to address the procedural aspect of the right to life. Meanwhile, the IACHR applies the treaty's general obligation contained in Article 1.1 (obligation to respect rights) of the American Convention on Human Rights to impose an obligation to investigate.<sup>51</sup>

Claude considers that the ECtHR should continue following the steps of the IACHR in relation to enforced disappearances taking into account that the Inter-American Court has a long experience in ruling about this category of crimes. The author sustains that after years of experience, the IACHR has managed to develop a valuable jurisprudence that has greatly contributed to the gravity of the phenomenon of enforced disappearances and the significance of the judgments related to this crime with the legacy and bases of the right to life.<sup>52</sup>

Continuing with the judgments related to the right to life in relation to enforced disappearances, Luis López Guerra attests that the European Court of Human Rights has followed the activity in relation to the infringements of this right from the Inter-American Court of Human Rights. The cases presented before the ECtHR about enforced disappearances can be divided into four different areas: 1) The Turkish-Kurdish conflict; 2) Greek Cypriot clashes; 3) Clashes in

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<sup>48</sup> Ibid.

<sup>49</sup> CLAUDE op. cit.

<sup>50</sup> *McCann and Others v. the United Kingdom*, 324 Eur. Ct. H.R. (ser. A) 161(1996).

<sup>51</sup> CLAUDE op. cit.

<sup>52</sup> CLAUDE op. cit.

the Caucasus between Russian forces and other nationalities; 4) Armed conflicts of the dissolution of Yugoslavia.<sup>53</sup>

Finally, it is relevant to document one of the many cases in which the different categories of violation of the right to life are overlapped, for example, the case *Rodríguez Vera and Others V. Colombia*<sup>54</sup>. This category can be named as a mix of the five categories mentioned above. In this judgment, the IACHR decided that the State of Colombia was internationally responsible for enforced disappearances, transgressions of the right to life, and breach of the duty of guaranteeing this right in the events that took place in the situation known as “Take and Re-Take of the Palace of Justice of Bogotá”. Moreover, Colombia was condemned for the lack of enlightenment of the facts that occurred the night in question. It was decided that the State had breached its duty of prevention in front of the risk that the people that were present in the Palace of Justice faced. The military operation, known as “Re-Take of the Palace”, was described as disproportionate and excessive. This situation resulted in hundreds of persons dead or injured. Furthermore, the IACHR ruled that under the orders of military officials, the authorities seriously disturbed the crime scene and committed multiple irregularities in the removal of corpses.<sup>55</sup>

## 8. Conclusion

The contribution of this work was to present different categories in which the diverse violations of the right to life by security forces of the State can be divided. The classification into distinctive categories helps to establish an orderly and functional way of different concepts, standards, and conclusions about the transgression of the right to life by security forces of the States. The enumeration of these five categories is not exhaustive because there can be more classifications. Moreover, several categories can overlap. The work aimed to determine the five main categories and give examples of judgments related to these of the Inter-American Court of Human Rights and the European Court of Human Rights.

<sup>53</sup> Luis LÓPEZ GUERRA: *Desapariciones Forzadas en la Jurisprudencia del Tribunal Europeo de Derechos Humanos*. Instituto de Estudios Constitucionales del Estado de Querétaro. Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM, 2020. 431–452.

<sup>54</sup> Court Idh. Case *Rodríguez Vera and Others (Desaparecidos del Palacio de Justicia) V. Colombia*. Judgment of 14 November 2014. Serie C No. 287.

<sup>55</sup> *Ibid.*

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During this work, it was possible to prove differences and similarities regarding the judgments related to the right to life in the Inter-American Court of Human Rights and in the European Court of Human Rights. This article documents relevant aspects of the comparison of international courts of human rights and important concepts about the right to life.