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BRAZILIAN CITIZENSHIP BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS

***Fabrício Wloch**

Dottorando di Ricerca in Scienze Giuridiche of the Università Degli Studi di Perugia, Italy (certificazione di Doctor Europaeus, International Doctorate), Master in Legal Science from Univali, Brazil

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ABSTRACT

This scientific paper investigates the form of citizenship before the Inter-American Court of Human Rights. The importance of the research is to demonstrate another way of dealing with their rights when not supported by the Brazilian national law. In the first part we characterized the development momentum of human rights, a difference between the fundamental rights, as well as its incorporation into the Brazilian legal system. The second was treated of international and regional systems of human rights and accountability of the Brazilian State at the Inter-American Court of Human Rights. With respect to methodology, the work has been done on inductive logic. The research was based on literature and documents.

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INTRODUCTION

There is a growing interest in discussing the legal nature of international treaties, especially on human rights. Globalization is a reality, cultures are approaching and rights are internationalized. International treaties provide an effective basis for defending and promoting personal rights. However, no basis can work without using the correct instrument to transform that reality. It is mandatory for countries violating human rights to be held accountable in case of violation of the treaty. In this context, the Inter-American Court of Human Right's (IACHR) role is to become an organ that establishes the international responsibility of States in the violation of Human Rights, including the Brazilian State. So the problem faced is to expand the range of available mechanisms to address human rights violations in Brazil. As a hypothesis, it is assumed that the IACHR is another open channel for Brazilian citizens to exercise their citizenship and to hold those who violate their human rights responsible for doing that.

****Corresponding author:*** **Fabrício Wloch,**
Dottorando di Ricerca in Scienze Giuridiche of the Università Degli Studi di Perugia, Italy (certificazione di Doctor Europaeus, International Doctorate), Master in Legal Science from Univali, Brazil.

The purpose of this article is to exercise citizenship before the IACHR (Pasold 2015, p. 77). The general objective is to discuss another alternative for those who see their rights violated, in addition to the internal mechanisms of the Brazilian State. The specific goal is to verify the hypotheses and forms of activation of the IACHR. About regards to Methodology (*opus citatum*, p. 85), this work focused on the area of Constitutionalism, Transnationality and Law Production, it has been developed under the inductive and Cartesian methods and operationalized with the referent, category, Operational concept, throughout bibliographical and documentary research.

Dynamics of human rights development

The struggle for Human Rights is present throughout the history of humanity. It gained strength after World War I (1914-1918), with the creation of the League of Nations, which sought to promote cooperation, peace and international security among its signatories. Also during this period the International Labor Organization (IOF) came into being (1919) with the objective of promoting social justice and defining issues related to employment, human resources and health at work.

After World War II (1939-1945), there was a need to create a more effective protection for man, when the Universal Declaration of Human Rights adopted and proclaimed by Resolution n. 217A (III) of the United Nations General Assembly of December 10, 1948. Since then, several international treaties on human rights have been signed by several countries, including Brazil, which imposes a relaxation of their sovereignty to incorporate them into the legal system.
The new Human Rights require a planetary responsibility to be concretely realized (Luño 2006, p. 26). Thus, only the voluntary and altruistic cooperation of human beings will fully satisfy the global needs that all long for. This extension of rights causes the creation of guardianship instruments to enable their implementation. This is how it is increasingly permitting any interested party to exercise their citizenship and can demand compliance with the rights through the judiciary, both domestically and now also externally, when the public powers do not fulfill their functions. It is important to highlight here the difference between fundamental rights and Human Rights. Although there is a progressive internal positivization of Human Rights, such concepts can not be understood as synonyms. Human Rights are those guarantees inherent in the existence of the person, hosted as true for all States and positive in the various instruments of Public International Law. The fundamental rights are constituted by rules and principles, constitutionally affirmed, whose role is not limited to those of Human Rights, which aim to guarantee the dignified existence of the person in the territory of the State (*opus citatum*, pp. 219/220).

Incorporation of Human Rights into the Brazilian legal system

The traditional international treaties, to be incorporated into the Brazilian legal system, must have the signature of the Chief Executive, ratified by the Legislative and again confirmed by the Executive with the issuance of the Presidential Decree. Only then is the state obliged to comply with the treaty (art. 5º, §1º, Brazil Constitution). The international treaties on Human Rights must be approved, in each House of the National Congress, in two rounds, for three fifths of the votes of the members, at which point they become equivalent to the constitutional amendments. This is described by Mazzuoli (2000, pp. 153/154) as a unique differentiated system.

International and regional human rights systems

Inspired by the values of the Universal Declaration of Human Rights, the international or global system presents minimum normative parameters of protection. The regional system must go further, incorporating new rights and paying attention to the peculiarities of each culture and region (Piovesan 2006, p. 54).
International protection mechanisms can only be activated after the exhaustion of domestic remedies in each State (Coelho 2008, p. 47) or in the face of an unjustified delay or absence of due process of law (Piovesan 2006, p. 94).

Citizenship and the Inter-American Court of Human Rights

The American Convention on Human Rights, signed in 1969, is the most important instrument of human rights protection in the United States, and aims at recognizing civil and political rights and assuring States parties of negative and positive obligations (*opus citatum*, p. 94).

In this date the Inter-American Specialized Conference on Human Rights was held in San José, Costa Rica in which the delegates of the member States of the Organization of the American States adopted the American Convention on Human Rights, which entered into force on July 18, 1978, when a member State deposited the eleventh ratified document. Twenty five American nations have ratified or adhered to the Convention, including; Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay and Venezuela. Trinidad and Tobago denounced the American Convention on Human Rights, by a communication addressed to the General Secretary of the OAS on May 26, 1998. Venezuela denounced the American Convention on Human Rights, by communication to the General Secretary of the OAS, on September 10, 2012.

Two sectors were established to ensure implementation in the member states: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights (*ibid.*).
The Inter-American Commission aims to promote compliance and protection of these rights in the Americas. It is composed of seven members, who make recommendations to States and necessary measures, prepare reports and studies, and examine violations of the Convention (Amauri Júnior 2008, p. 99). The Court has an advisory and contentious nature. The first is related to the interpretation of the American Convention and the provisions presented in other human rights treaties; and the second relates to the settlement of disputes arising from the interpretation of the Convention (Piovesan 2006, p. 99). The exercise of citizenship especially includes the plan for litigation. It receives and processes individual cases of human rights violations. The IACHR issues judgments on the interpretation or application of the Convention in cases brought before the Court. The IACHR acts on the basis of reports of violations of human rights, caused by Member States with the intention of deciding on matters related to the Convention itself (Varella 2009, p. 446).

Responsibility of the Brazilian State

A State is held accountable when it violates an international obligation. The contracting State of a human rights treaty assumes various obligations to individuals under its jurisdiction (Santos 2009, p. 36). In order to overcome the existing conflict between contradictory conduct of a State, it is based on an international responsibility at the birth of new legal relationships. The International Law Commission adopts the understanding that rape rises to more than one new legal relationship, which may be reparatory, coercive and punitive (Ramos 2004, 81/82). The international rule of Human Rights is subsidiary to the legal system of States. In the event that the protection of human rights has not been observed within the State, the international protection systems may be activated (Coelho 2008, p. 45). In the event of the inadequacy of these remedies, the State must respond doubly: first, the violation of its own rights, secondly because it fails to provide the individual with mechanisms to use domestic remedies capable of redressing the damage caused (Ramos 2004, p. 216). Compensation for harm is considered to be the major consequence of violations of the rights of victims. Therefore, when an unlawful act is attributable, the State has the international responsibility to repair the damage and to stop the

consequences of that violation (Santos 2009, p. 199). Roberto Lima Santos (*ibidem*) states that the damages caused by the violations present a double dimension: first, it has an individual dimension where the damages affect the victim and his / her relatives; then it presents a collective dimension in which society is afflicted by its own harm. The contemporary theory of state responsibility has rejected the use of sanctions as an instrument of punishment, but emphasizes its educational role in coercing the offending state to repair the damage done, and in the preventive role of discouraging it from repeating infractions (Coelho 2008, p. 105). Taking into account the needs of the victims, several forms of reparation have been developed, among the main ones are *restitio in integrum*, satisfaction and indemnification.

The *restitio in integrum* is considered by international doctrine and jurisprudence as the best form of reparation, whose main objective is to return in full to the status quo ante in case the violation had not occurred (Ramos 2004, p. 254). When total reparation is impossible, the IACHR determines measures to compensate for the infractions that have occurred, establishing the payment of indemnities as compensation for the damages caused (Santos 2009, p. 211). Satisfaction is a kind of reparation to repair the unlawful conduct that did not result in damages with pecuniary damages. The satisfaction can be fulfilled by an apology or even by the judgment of merit recognizing the responsibility of the State. Or, by means of symbolic acts of recognition of unlawful conduct, the recovery of the memory of the victims, the restoration of their dignity (*opus citatum*, p. 216). That is important to be notice that in relation to the remains of the disappeared, the IACHR has stated that the non-delivery of the offal originating from the victims of forced disappearances to families is a source of humiliation and suffering to their families (*ibid*.). It should be noted that failure to comply with the judgment within a reasonable period not only provokes the possibility of pursuing the judiciary by the victim, but also may imply a new process of international accountability (Coelho 2008, p. 176).

FINAL CONSIDERATIONS

With these considerations it has been seen that Human Rights are historical achievements achieved to protect the human being from the excesses of the State. The law evolves, it is a science in movement and expansion. Treaty is the generic term given to agreements between sovereign States. The international treaties on Human Rights are incorporated by approval, in each House of the National Congress, in two rounds, by three fifths of the votes, when then they will be equivalent to the constitutional amendments. The IACHR acts on the basis of reports of violations of human rights caused by member states with the intention of deciding on matters related to the Convention itself. The inter-American system of protection has efficient mechanisms for determining the State's responsibility for human rights. It functions in the absence or delay of accountability and justice within each State party. Inter-American jurisdiction does not seek to compete with internal institutions, but rather to complement them by offering additional assurance when states fail to secure such rights.

The problem of the search for an extension of mechanisms to face human rights violations in Brazil is resumed. The hypothesis is confirmed that the IACHR is another alternative for citizens to exercise their citizenship and to hold accountability for those who violate their rights in case of inefficiency of national law. Among the IACHR's impositions is the reparation of the damage caused to the victims or to their next of kin. The acts of violation of human rights are no longer seen as an isolated problem, and are now looked upon based on the political, economic, social and cultural model adopted by each region of the world. There is no pretense here of exhausting the subject. This serious work has sought to keep within limits to contribute modestly to the scientificity of an introductory and revision work. Renouncing the hope of being able to give a complete idea of the content of the theme, this article is limited to pointing out the fundamentals and highlighting the logical coherence of its main notions. It is with this structure that we intend to conclude this brief academic and scientific work for good spiritual nourishment with practical solutions for the improvement of humanity. The meritorious judgment of the reader will be of fundamental importance if, in addition to the divergences of opinion, honestly improve the interpretation and diffusion of knowledge. The theoretical framework does not remove the characteristic of encouraging critical thinking about the international judicial process for better governance, transparency and accountability in IACHR.

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