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The Categories of Violation of the Right to life by Security Forces in the Inter-American Court of Human Rights and the European Court of Human Rights

Abstract:

The regional courts of human rights have been condemning the violations to these rights for a long time. The right to life is the right that must be protected to guarantee the other human rights. Nevertheless, the right to life is violated by security forces of the states that are supposed to protect this one. For this the European Court of Human Rights and the Inter-American Court of Human Rights issue judgments to condemn the violation of this right by these forces. The Inter-American Court of Human Rights and the European Court of Human Rights has established several judgments about the right to life in relation with different violations of this one. This work will seek to answer the interrogative of which are the different categories of violations of the right to life by security forces of the State in the European Court of Human Rights and the Inter-American Court of Human Rights. The categories were established through examples of judgments and case-law of the Inter-American Court of Human Rights and the European Court of Human Rights. This work enumerates five categories that is not exhaustive because there can be more classifications, sub-categories or several categories may overlap.

Keywords: Human Rights- International Law- European Court of Human Rights- Inter-American Court of Human Rights- Security forces- Violations Right to Life

Abbreviations: IACHR: Inter-American Court of Human Rights- ECtHR European Court of Human Rights

Introduction

The different categories of violation of human rights can be established as:

- 1) The disproportionate use of the force by the agents of security of the State. These situations are related with the right of the State to use the force and its implication in respect to the deprivation of the 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.

It is relevant to determine the conventions that the IACHR and the ECtHR use to decide and rule their judgments. The main convention for the IACHR is the American Convention of Human Rights that establishes the right to life in the article 4. In respect with the ECtHR

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its main juridical instrument is the European Convention on Human Rights and this one protects the right to life in the article 2.

For the purpose of understanding how these courts rule and decide it is relevant to establish the difference between the articles that protect the right to life in the American Convention on Human Rights and in the European Convention on Human Rights. The article 4 of the first mentioned instrument establish the protection of the right to life but then the following five paragraphs are about the applicability of the death penalty.²

Furthermore, the article 2 of the European Convention 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.*”³ These articles have fallen into disuse taking into account that the provisions about death penalty that has been established has lost validity due to the fact that the majority of the European and American states have been prohibiting it over time. There are few countries in both continents that still maintain the death penalty.

It is relevant to mention that the second part of the article 2 of the European Convention on Human Rights establishes: ... “*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.*”⁴ This part of the text is important to determine the differences in the standards applied to resolve certain cases related with the violation 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 take 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 the abortion in countries of Europe and America will not be taken into account for this work as their analysis requires another independent research as the case-law and the literature are so rich in these fields. This article will not take these subjects to analyze the right to life in the different tribunals. 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 forces that are supposed to protect the right to life every time and in every situation.

There are several relevant scholars that have determined the importance of the right to life. For example, Hannah Arendt developed the significant of the dignity of the human person when this author determined the importance of human rights even before that these ones are called as such. This German author focus to several problems related with the human rights but did not develop a theory about these ones.⁵ However, its political theory it is base

²Article 4. Organization of American States (OEA), “*American Convention of Human Rights. Pact of San José de Costa Rica*”, San José of Costa Rica, 7 to 22 of November of 1969.

³Article 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.

⁴Article 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.

⁵Arendt, Hannah. (2015) “*La Condición Humana*”. Ed. Paidós. Barcelona, Spain. 2015.

around the problems that had its roots by the failure of the rights of the people to assure the human dignity⁶

Renata Cenedesi Bom Costa Rodrigues establishes the importance of the dignity as an essential attribute of the human condition independently of the sex, race, religion, nationality, social position or any other specify.⁷ It is relevant to highlight that this author wants to prove that the jurisprudence of IACHR has amplified the concept of right to life what 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 transformation of this right. The idea is to offer an amplified concept of the right to life that includes also aspects of the civil and political rights, as well as the economical, socials and cultural rights.⁸

It is meaningful for this work the text of K. A. Abdul Gafoor. He establishes that every human has the inherent right to life and no one shall be arbitrarily deprived of this one. This includes the prohibition of the torture. Gafoor establishes that the right to life must be interpreted broadly to ensure the protection of the right to live in humane and dignified manner.⁹

Continuing with this author, he states the importance of other rights that are not always recognized or are denied such as the equality in all fields of the disabled people, of women, including the elimination of the gender-based violence, and of other kind minorities. Furthermore, Gafoor establishes the importance of the compliance of human rights related to the people that are arrested by the police.¹⁰ An example of this can be seen with the detention of George Floyd. He was a black man that in 2020 was apprehended by the police in the United States and was killed by a member of this security force in a violently 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 establish the significance of the rights of the women for the courts of human rights. The IACHR established the term “femicidio” that 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 it is considered “life”. Bom Costa Rodrigues establishes that 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 though which the being that possess it works.¹¹ Furthermore, the more accurate conception could be that it is the space that happens since the birth of a person, animal or vegetal until it’s deceased. In a pure naturalistic concept, it is

⁶Isaac, Jeffrey C. *A new guarantee on earth: Hanna Arendt on Human Dignity and the Politics of Human Rights*. P.61-73. EN: The American Political Science Review. Indiana University. Vol.90, N°1. Bloomington. (marzo, 1996).

⁷Bom Costa Rodrigues, Renata Cenedesi (2005). “El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos”. P. 74-112. In: *Revista del Foro Constitucional Iberoamericano*, N. 9, january-march 2005.

⁸ ibid.

⁹Abdul Gafoor, K.A. (2010). “Human Rights: Right to life”. *Rajagiri Journal of Social Development*. Volume 1, Number 2, June 2010.

¹⁰ibid.

¹¹Dictionary of the Spanish Royal Academy. Significance of the word “Vida”. <https://www.rae.es/>

safe to say that the right to life is the right to the own physiological and biological existence.¹² It is possible to determine that for the authors examined above the right to life is intrinsically united to the dignity of every human being.

There are certain peculiarities of the right to life that must be taken into account to understand the crime against this fundamental right such as: 1) is the ontological base 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.¹³

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

There are multiples conventions, treaties or declarations that establish the right to life. The first instrument that developed exclusively the protection of human rights was the Universal Declaration of Human Rights of 1948. Its article 3 determines: “*Everyone has the right to life, liberty and security of person*”.¹⁴ It is important to highlight that this article shows how indivisible are human rights in general and specially these three rights: life, liberty and security that generally are breach together.

Bom Costa Rodrigues determines the recognition to the intrinsic dignity of the human being. This author relates the article 4 of the American Convention of Human Rights with the article 9 of the Universal Declaration on Human Rights that establishes the prohibition of arbitrary arrest, detention or exile.¹⁵ Most of the judgments of violation of the right to life examined in the work of this author are related with arbitrary detention such as the cases of enforced disappearances. Other cases are connected with the arbitrary use of the force or torture. Bom Costa Rodrigues establishes that for all human rights to be effective there has to be a complying of the right to life and 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 that gives mandatory character to the protection of the right to life among others human rights.¹⁶

Bom Costa Rodrigues establishes the evolution of the right to life in the IACHR. This author states that the violation to 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 with other rights.¹⁷ 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 with the basic necessities of the human

¹² Bom Costa Rodrigues, Renata Cenedesi (2005). “El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos”. P. 74-112. In: *Revista del Foro Constitucional Iberoamericano*, N. 9, january-march 2005.

¹³ibid.

¹⁴Article 3. United Nations (1948). “*Universal Declaration of Human Rights*”. 10 December 1948, Paris, France.

¹⁵Article 4. Organization of American States (OEA), “*American Convention of 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 (1948). “*Universal Declaration of Human Rights*”. 10 December 1948, Paris, France.

¹⁶Bom Costa Rodrigues, Renata Cenedesi (2005). “El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos”. P. 74-112. In: *Revista del Foro Constitucional Iberoamericano*, N. 9, january-march 2005.

¹⁷ibid.

being to live with dignity. This happens because the 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 established in this tribunal are against infringements committed by its agents or the countries themselves. There are no judgments that determine as guilty Non-State actors such as guerrilla groups, among others.¹⁸The 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 will serve as a guide for this article because the classification of the different violations to the right to life by security agents are well differentiated, although are not the same categories as those established in this work. Furthermore, the activity of the European Court of Human Rights in relation with these notions will be established.

I. Disproportionate Use of the Force by Agents of Security of the State.

The first category of violation to the right to life presented in this article is the disproportionate use of the force and the prohibition of the self-amnesty. In the case *Neira Alegria and Others v. Peru*¹⁹ it was established the positive obligation of the State to the protection to the right to life. In this judgment it was determined that there was a violation of the right to life provided in the article 4 of the American Convention of Human Rights. Moreover, it was included the infringements of the articles 8 (judicial guarantees, right to a fair trial), 25 (judicial protection) and 27 (suspension of the guarantees).²⁰

It is necessary to examine this judgment because is related with the right of the State to use the force although this implies the deprivation of the life in the maintenance of the order. In spite that in this case there was a riot in a prison and the inmates were very aggressive and had guns, it was established that the government gave orders that had as consequence an unjustified number of deaths that in the concept of the Court constitutes a violation of the obligation of protecting the human life. There was a disproportion of the employee war potential and a dissimilar use of violence by security forces in relation with the given situation that they were facing. It was determined 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 of the force it is safe to establish as reasonable conclusion that people were arbitrarily deprived of their lives. The IACHR determined that in spite of the existence of a right and a duty correspondent to the State of maintaining the legality and the internal order, even with the use of force, this right cannot imply the violation of the obligation to protect the life that is the ultimate goal of all democratic State.²¹

In relation with the dignity in the life and dead, the IACHR has established that although the State has the right and the obligation of guarantying the security and maintain the public

¹⁸Bom Costa Rodrigues, Renata Cenedesi (2005). “El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos”. P. 74-112. In: *Revista del Foro Constitucional Iberoamericano*, N. 9, january-march 2005.

¹⁹Corte IDH. Caso *Neira Alegria y otros Vs. Perú*. Fondo. Sentencia de 19 de enero de 1995. Serie C No. 20.

²⁰Article 4, Article 8.1, Article 25 and Article 27. Organization of American States (OEA), “*American Convention of Human Rights. Pact of San José de Costa Rica*”, San José of Costa Rica, 7 to 22 of November of 1969.

²¹Corte IDH. Caso *Neira Alegria y otros Vs. Perú*. Fondo. Sentencia de 19 de enero de 1995. Serie C No. 20.

order, its power is not unlimited because it has the duty in every moment of applying legal procedures. These ones must be respectful of the fundamental rights to all individual that it is under its jurisdiction.²²

A relevant example of the disproportionate use of force in the European Court of Human Rights is the case *McCann and Others v. United Kingdom*.²³ This was a judgment of 27 September 1995. The facts presented in the Court established that there were three suspects who were believed to be planning an attack. 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 in Gibraltar. This means before they even had the opportunity to enter into 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 as carefully as possible the information that they had in their power before transmitting to the military.²⁴

This is an example of the possibility of avoiding unlawful killing because at the moment of transmitting the information to the military these ones were already in possession of firearms and were shooting to kill. Considering all the above mentioned, the ECtHR established that there were no convincing proofs 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.²⁵ In this judgment the ECtHR considered that there was a violation of the second part of the article 2 of the European Convention on Human Rights when it establishes that the deprivation of life will not be considered inflicted in contravention with this Convention when it results from the use of the force that is no more than that absolutely necessary.²⁶ There was an infringement of the article in this situation because the use of the force was not necessary to prevent the loss of lives and it resulted in an abusive use of coercion by the security forces.

In respect to the disproportionate use of the force it is significant to highlight the input about protecting the right to life during assemblies and protests. For this it is relevant to establish what Beryl Orao has developed about this situation in Africa but that can be applied in similar scenarios all over the world. This author states that although some assembly participants can become violent the response of the law enforcement officials has to be necessary and proportionate to the situation.²⁷ This has a relation with what was established as one of the categories about the violation of the right to life that is the excessive use of the force by security officials.

The concern at a worldwide level of the protection of the right to life in the context of assemblies is the extra-judicial killing of protesters by State or Non-State actors with the acquiescence of the State.²⁸ The protection of the right to life during assemblies has been a

²²ibid.

²³Case *McCann and Others V. United Kingdom*. Application no. 18984/91. Court Grand Chamber, Strasbourg. Judgment 27 September 1995.

²⁴Case *McCann and Others v. United Kingdom*. Application no. 18984/91. Court Grand Chamber, Strasbourg. Judgment 27 September 1995.

²⁵ibid.

²⁶Article 2. Council of Europe and European Tribunal of Human Rights “*European Convention for the Protection of Human Rights and Fundamental Freedoms*”. Strasbourg, France. Signed on November 4, 1950 in Rome, Italy. Entry into force on September 3, 1953.

²⁷Beryl Orao. “*Legal and Jurisprudential developments in the African human rights system*”. In *African Human Rights Law*. Vol 21. N° 2. Pretoria. 2021.

²⁸ ibid.

major concern in the international law. Law enforcement officials can use the force and firearms against the assembly participants. Nevertheless, it is possible that these participants can be violent and represents a threat to the other members present in the assembly or protest. The major problem of this situation is that security agents suppress violently the assemblies and this could lead to the loss of lives.²⁹ If lives are lost during assemblies, there is a duty to investigate the deaths and ensure accountability. The responsibility to protect implies that the states take precautionary measures to avoid police and security forces to resorting to the use of the force.³⁰

II. 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*.³¹ In this judgment the Court condemned the violation of the right to life of two individuals and the enforced disappearance and posterior execution of a third person. The IACHR found the existence of links between members of the public security force of Colombia and paramilitary groups. In addition to this, it was verified the relationship that these groups had maintained at that time with the State security body called the Unidad Nacional Antisecuestro y Extorsión (UNASE) integrated for 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 by acquiescence or tolerance the actions of these paramilitary groups.³² This relation 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.

A relevant example of extrajudicial killing in the European Court of Human Rights is the case *Shavadze v. Georgia*.³³ The facts of the case are the following: On the 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 a number of independent eyewitnesses to his arrest who subsequently reported that more than twenty law-enforcement officers, heavily armed and wearing masks, had taken part in the operation to apprehend the victim.³⁴ Approximately six hours after Mr. Shavadze's arrest, the wife of the victim was informed from a local police officer that her husband was dead.³⁵

The ECtHR established 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.³⁶ The requirements of promptness and reasonable expedition are implicit in this context

²⁹ *ibid.*

³⁰ *ibid.*

³¹ Corte IDH. *Caso Omeara Carrascal y otros Vs. Colombia*. Fondo, Reparaciones y Costas. Sentencia de 21 de noviembre de 2018. Serie C No. 368.

³² *ibid.*

³³ *Case Shavadze v. Georgia*. Application no. [72080/12](#). Strasbourg. Judgment of 19 November of 2020.

³⁴ *Case Shavadze v. Georgia*. Application no. [72080/12](#). Strasbourg. Judgment of 19 November of 2020.

³⁵ *ibid.*

³⁶ *ibid.*

The Court considered that the domestic investigation into the death of the victim was ineffective. The ECtHR examined the question of whether the State could be held responsible for the death. The Court ruled that the primary and most decisive investigative steps taken by the investigators of the Ministry of the Interior did not meet the requirements of independence and impartiality under the Article 2 of the Convention. Moreover, the ECtHR determined that according to the investigation of the killing of the victim there weren't any conclusive findings. The Court concluded 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.³⁷

The ECtHR established 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 for 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.³⁸ The Court considered 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 a violation of the procedural obligation of the article 2 of the European Convention but also an infringement of the substantial aspect of the right to life.³⁹

III. Massacres committed by Security Forces or with the Acquiescence of these ones

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*⁴⁰ is a sentence about a massacre committed in Colombia. The lawsuit referred to a situation that took place on the 18 January 1989 where a paramilitary group with the cooperation of State agents carry out a massacred of 12 persons and hurt the personal integrity of three other individuals. The victims were carrying out an evidentiary diligence in their role of officials of administration of justice in the place called "La Rochela" in Santander, Colombia.

The State of Colombia confessed the facts and partially flattened to the pretensions. The Court established that in relation with the violation of the article 4 of the American Convention of Human Rights, the State was responsible for the death of 12 officials that integrated the Judicial Commission. In respect with the three surviving functionaries, the State also flattened to the declaration that it had breach the article 4 of the American Convention of Human Rights.

The Court considered that it was established that the intention of the perpetrators was execute the members of the Judicial Commission. Likewise, the facts showed that the offenders did everything what they consider necessary to comply with that end. For these reasons, the IACHR considered that the article 4 of the American Convention on Human

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ Corte IDH. Caso de la Masacre de La Rochela Vs. Colombia. Fondo, Reparaciones y Costas. Sentencia de 11 de mayo de 2007. Serie C No. 163.

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 occurred on the 18 January 1989.⁴¹

The IACHR concluded that the State violate the right to life of the 12 deaths victims and the three survivors. Moreover, the State also infringed the right to personal liberty (article 7) and to the personal integrity (article 5).⁴²

IV. 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*⁴³ that was a judgment of 18 September of 2003. The IACHR condemned the named “Razzias” that were common practices that took place in the early nineties. The “modus operandi” of these practices consisted on 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 established that this practice was incompatible with the respect of human rights. The IACHR also determined that the State must prevent that the security forces or third parties acting under their authority violate the rights established in the American Convention. Furthermore, it was declared that the security forces must respect the right to life of every person under its jurisdiction.⁴⁴

Another relevant case is *Brothers Landaeta Mejías and Others v. Venezuela*.⁴⁵ In this judgment the IACHR affirmed that Venezuela had not complied with its obligation to guarantee the right to life through an adequate legislation about the use of the force. The Court attributed the responsibility to the State for the arbitrary deprivation of the life of the brothers Landaeta. Moreover, the IACHR considered that the use of force in a lethal way was not necessary in relation with the circumstances of the situation.⁴⁶

In respect with the first category of violation of the right to life mentioned in this work, the IACHR considered that the deaths of the brothers Landaeta was the result of the disproportionate use of the force by the actions of the law enforcement officials.

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*.⁴⁷ 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, Mr. Marin Stoica was walking to his workplace along a street

⁴¹ibid.

⁴²Article 7 and Article 5. Organization of American States (OEA), “*American Convention of Human Rights. Pact of San José de Costa Rica*”, San José of Costa Rica, 7 to 22 of November of 1969.

⁴³Corte IDH. Caso Bulacio V. Argentina. Fondo, Reparaciones y Costas. Sentencia de 18 de septiembre de 2003. Serie C No. 100.

⁴⁴Corte IDH. Caso Bulacio V. Argentina. Fondo, Reparaciones y Costas. Sentencia de 18 de septiembre de 2003. Serie C No. 100.

⁴⁵Corte IDH. Caso Hermanos Landaeta Mejías y otros Vs. Venezuela. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 27 de agosto de 2014. Serie C No. 281.

⁴⁶ibid.

⁴⁷*Affaire Mocanu v. Roumanie* (Requête no 56489/00) Arrêt (Règlement amiable) Strasbourg. Judgment 24 May 2006.

near the State television headquarters. The victim was brutally 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 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.⁴⁸ In the present case the Court noted that a criminal investigation was opened by the authorities' own motion shortly after the events of June 1990. 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.⁴⁹

The ECtHR considered 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.⁵⁰ 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.⁵¹ Accordingly, the ECtHR ruled that there has been a breach of the procedural aspect of the article 2 of the European Convention on Human Rights.⁵²

In this case the ECtHR established that 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 the deadly force by State authorities. It is also necessary to investigate the arbitrary homicides and the allegations of bad treatments infringed to a person that is in the custody of the security forces. The Court determined that the number of anticipated violations 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.⁵³

The other important case of the ECtHR is *Ramsahai and Others v. The Netherlands*.⁵⁴ The circumstances of the deceased of Mr. Moravia Siddharta Ghasuta Ramsahai showed that he was shot dead by a police officer.

The ECtHR established important notions about the role and responsibility of the security agents that would be used as background in subsequent judgments. The Court determined that the subsequent investigation proceedings had been insufficiently effective and independent. The tribunal established 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

⁴⁸*Affaire Mocanu v. Roumanie* (Requête no 56489/00) Arrêt (Règlement amiable) Strasbourg. Judgment 24 May 2006.

⁴⁹*ibid.*

⁵⁰*ibid.*

⁵¹Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Council of Europe and European Tribunal of Human Rights "*European Convention for the Protection of Human Rights and Fundamental Freedoms*". Strasbourg, France. Signed on November 4, 1950 in Rome, Italy. Entry into force on September 3, 1953.

⁵²*Affaire Mocanu v. Roumanie* (Requête no 56489/00) Arrêt (Règlement amiable) Strasbourg. Judgment 24 May 2006.

⁵³*ibid.*

⁵⁴*Case of Ramsahai and Others v. The Netherlands*. Application no. 52391/99. Court Grand Chamber, Strasbourg. Judgment 15 May 2007.

force. The ECtHR determined 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.⁵⁵

The Court found that for an investigation into alleged unlawful killing by State agents to be effective, the persons responsible for and carrying out the investigation must be independent and impartial. The investigation 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.⁵⁶ This is an important notion to take into account in relation with the second part of the article 2 of the European Convention on Human Rights about unlawful killings.

V. Enforced Disappearances

The enforced disappearances have been interpreted as an infringement to the right to life by the IACHR. This tribunal has determined that constitutes a breach of the obligation of the State of guarantee the right to life in a preventive and efficient way. It is a continuous crime and causes multiple violations of several rights established in the American Convention of Human Rights.⁵⁷ This crime was an extent 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 creating an atmosphere of fear and insecurity in the society.

Between 1987 and 1989 the history of enforced disappearances in the IACHR started by the trial of Ángel Manfredo Velásquez Rodríguez and Saul Godínez Cruz that concluded with the condemnation of the country accused.⁵⁸

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 of 1990. Moreover, in the year 1994 it was adopted the Inter-American Convention on Forced Disappearance of Persons. This Convention establishes something very important that is the impossibility of the States to exempt from liability to any person because due obedience or instructions of superiors that provide, authorize or encourage the enforced disappearance. Also, this instrument establishes the prohibition that the accused are judged by a military tribunal.⁵⁹ There is an extenuating fact for this crime that 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.⁶⁰

Bom Costa Rodrigues establishes the obligation of the State to protect the life by omission and by action. This means that the State has both a positive and a negative obligation to protect the lives of human beings. The author highlights the case mentioned

⁵⁵ibid.

⁵⁶ibid.

⁵⁷Bom Costa Rodrigues, Renata Cenedesi (2005). “El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos”. P. 74-112. In: *Revista del Foro Constitucional Iberoamericano*, N. 9, january-march 2005.

⁵⁸ibid.

⁵⁹Organization of American States. (OEA) “*Inter-American Convention on Forced Disappearance of Persons.*” Adopted on Belem do Pará, Brazil 9 June 1994.

⁶⁰ibid.

above *Velásquez Rodríguez v. Honduras*⁶¹ that is the first important judgment of the IACHR that establishes 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 (established in the 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.⁶²

This case was about the disappearance of Manfredo Velásquez Rodríguez who was deprived of his liberty in a violent way without a judicial warrant by members of the armed forces of the State of Honduras and disappeared without leaving a trace. Honduras was condemned by the violation of the articles of the American Convention of Human Rights named above.⁶³ The State was also condemned for no guarantee the duty of prevents any violation of the rights established in the Convention. It is necessary to highlight that there was presented both obligations of the State: the positive and the negative that include the inviolability of the right to life in any form.

The case *Velásquez Rodríguez* was a paradigmatic point for the IACHR and other tribunals and this judgment was quoted and used as background in numerous subsequent decisions. Renata Cenedesi Bom Costa Rodrigues establishes the importance of this case by stating: “*This judgment represents the first step to the extension to the concept of the right to life for not conceiving this right in a restrictive form, demanding of the states the positive obligation of taking all the necessary providences to protect and preserve the right to life*”.⁶⁴

Another important case of the IACHR is *Panel Blanca (Paniagua Morales and Others) v. Guatemala*⁶⁵ because expands the concept of victim. Before this judgment the victim was considered only the person who has been killed, tortured or disappeared, among other crimes. This decision expands the concept of victim to the relatives of the person target of the crime. The Court condemned the State to pay compensation to the siblings of the person disappeared in relation with moral damage. These were the indirect victims that according to the Court did not need to show that there were an affective relation being enough the consanguinity.⁶⁶

It is necessary to highlight that the situation of enforced disappearances was very different for America and Europe. In America, as it was mention 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. However, in Europe there were no many countries with dictatorships and enforced disappearances that were acknowledge. In spite of this, 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 of Ophelia Claude. She establishes that the two requirements that should be proven are that the

⁶¹Corte IDH. Caso Velásquez Rodríguez Vs. Honduras. Fondo. Sentencia de 29 de julio de 1988. Serie C No.4.

⁶² Article 4, Article 5 and Article 7. Organization of American States (OEA), “*American Convention of Human Rights. Pact of San José de Costa Rica*”, San José of Costa Rica, 7 to 22 of November of 1969.

⁶³Corte IDH. Caso Velásquez Rodríguez Vs. Honduras. Fondo. Sentencia de 29 de julio de 1988. Serie C No. 4.

⁶⁴Bom Costa Rodrigues, Renata Cenedesi (2005). “El Nuevo Concepto del derecho a la vida en la jurisprudencia de la Corte Interamericana de Derechos Humanos”. P. 74-112. In: *Revista del Foro Constitucional Iberoamericano*, N. 9, january-march 2005.

⁶⁵Corte IDH. Caso de la “Panel Blanca” (Paniagua Morales y otros) Vs. Guatemala. Fondo. Sentencia de 8 de marzo de 1998. Serie C No. 37.

⁶⁶Corte IDH. Caso de la “Panel Blanca” (Paniagua Morales y otros) Vs. Guatemala. Fondo. Sentencia de 8 de marzo de 1998. Serie C No. 37.

person is presumed disappeared and the burden of the proof shifts to the State to prove otherwise.⁶⁷

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 the Article 4 of the American Convention on Human Rights that established 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 determines three different State obligations. The first is that the State has the duty 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 is that the State has the duty to investigate suspicious deaths.⁶⁸ 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 with the right to life in the different Courts. While the ECtHR normally condemn 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 established in 1998, ten years after than the above mentioned Velázquez Rodríguez. This judgment was Kurt v. Turkey.⁶⁹ The Court considered that there were no sufficient evidences 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 established that four years had passed without information about the missing person and for this it was possible to assume that the victim had died by the hands of the captors. The ECtHR determined that the State has a positive obligation to conduct an effective investigation in relation with the circumstances that surrounded an alleged illegal homicide by agents of security of the State.⁷⁰

The case Timurtas v. Turkey⁷¹ was a paradigmatic judgment for the European Court of Human Rights. This is a key case that oriented the activity of the ECtHR in respect of enforced disappearances since the year 2000. The Court established 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.*”⁷² Since this decision, when the ECtHR presumes the disappeared person death there is a violation of the substantive right to life. In this judgment the tribunal established that the period of time that elapsed since the person in question was detained constitute a pertinent factor that should be taken into account specially if the time passed without having news about the destiny or whereabouts of the victim. This situation makes more likely that the person has died. Turkey denied arresting the victim and did not provide help for the case. The Court concluded that the investigation related to this case had not been effective.⁷³

⁶⁷Claude, Ophelia. “A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European.” In: *Intercultural Human Rights Law Review*. Vol. 5. P. 407-461

⁶⁸*ibid.*

⁶⁹Kurt v. Turkey. (15/1997/799/1002) Strasbourg. Judgment 25 May 1998.

⁷⁰*ibid.*

⁷¹Timurtas v. Turkey. Application N° 23531/94. Strasbourg Judgment 13 June 2000.

⁷²*ibid.*

⁷³*ibid.*

Ophelia Claude establishes a relevant approach about the treatment of the right to life in enforced disappearances of the ECtHR in relation with the violation 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 the cases related to the breach of the right to life.⁷⁴ The procedural right to life that is the State's duty to investigate a suspicious death was developed by the first time in the ECtHR in the case *McCann and Others v. UK* of 1996.⁷⁵ In this judgment the European Court of Human Rights followed the example of the IACHR and linked a lack of effective investigation with a violation of the 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 establishes 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 respects rights) of the American Convention on Human Rights to impose an obligation to investigate.⁷⁶

Claude determines that the ECtHR should continue following the steps of the IACHR in relation with enforced disappearances taking into account that the Inter-American Court has a longer experience in ruling about this category of crimes. The author establishes 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 to the right to life.⁷⁷

Continuing with the judgments related to the right to life in relation with enforced disappearances, Luis López Guerra establishes that the European Court of Human Rights has followed the activity in relation with the violation of this right from the Inter-American Court of Human Rights. The cases presented before the ECtHR about enforced disappearances can be divided in four different areas: 1) The Turkish Kurdish conflict; 2) Greek Cypriot clashes; 3) Clashes in the Caucasus between Russian forces and other nationalities; 4) Armed conflicts of the dissolution of Yugoslavia.⁷⁸

Finally, it is relevant to establish 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*.⁷⁹ In this judgment the IACHR determined that the State of Colombia was internationally responsible for enforced disappearances, violations to the right to life and breach of the duty of guaranteeing this right in the events that took place in the take and re-take of the Palace of Justice of Bogotá. Moreover, Colombia was condemned for the lack of

⁷⁴Claude, Ophelia. "A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European." In: *Intercultural Human Rights Law Review*. Vol. 5. P. 407-461

⁷⁵*McCann and Others v. the United Kingdom*, 324 Eur. Ct. H.R. (ser. A) 161(1996).

⁷⁶Claude, Ophelia. "A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European." In: *Intercultural Human Rights Law Review*. Vol. 5. P. 407-461

⁷⁷Claude, Ophelia. "A comparative approach to enforced disappearances in the Inter-American Court of Human Rights and the European." In: *Intercultural Human Rights Law Review*. Vol. 5. P. 407-461

⁷⁸López Guerra, Luis. (2020) "*Desapariciones Forzadas en la Jurisprudencia del Tribunal Europeo de Derechos Humanos*". P.431-452. Instituto de Estudios Constitucionales del Estado de Querétaro. Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM.

⁷⁹Corte IDH. Caso *Rodríguez Vera y otros (Desaparecidos del Palacio de Justicia) Vs. Colombia*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 14 de noviembre de 2014. Serie C No. 287.

enlightenment of the facts that occurred the night of the facts. It was established that the State had breached its duty of prevention in front of the risk that the people that was present in the Palace of Justice faced. The military operation, known as “Re-Take of the Palace”, was described as disproportionate and excessive. In the context of this situation hundreds of persons resulted dead or injured. Furthermore, the IACHR determined that under the orders of military officials, the authorities seriously disturbed the crime scene and committed multiple irregularities in the removal of corpses.⁸⁰

VI. Conclusion

The contribution of this work was to present different categories in which the diverse violations to the right to life by security forces of the State can be divided. The classification into different categories helps to establish in an orderly and functional way different concepts, standards and conclusions about the violation 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 and even sub-categories. Moreover, several categories can overlap. The aim of the work was to determine the five main categories and give examples of judgments related to these ones of the Inter-American Court of Human Rights and the European Court of Human Rights.

During this work it was possible to determine 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 determined relevant aspects about the comparison of international courts of human rights and important concepts about the right to life.

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⁸⁰Corte IDH. Caso Rodríguez Vera y otros (Desaparecidos del Palacio de Justicia) Vs. Colombia. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 14 de noviembre de 2014. Serie C No. 287.

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