

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**ADVISORY OPINION OC-19/05  
OF NOVEMBER 28, 2005  
REQUESTED BY THE BOLIVARIAN REPUBLIC OF VENEZUELA**

**CONTROL OF DUE PROCESS IN THE EXERCISE OF THE POWERS  
OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
(ARTICLES 41 AND 44 TO 51 OF THE AMERICAN CONVENTION ON HUMAN RIGHTS)**

Present:

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice President  
Oliver Jackman, Judge  
Antônio A. Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge and  
Diego García-Sayán, Judge

Also present:

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary.

**THE COURT,**

composed as above,  
delivers the following Advisory Opinion:

**I**

**PRESENTATION OF THE REQUEST AND PROCEEDINGS BEFORE THE COURT**

1. On November 23, 2003, the Bolivarian Republic of Venezuela (hereinafter "Venezuela" or "the Government"), in accordance with article 64(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), submitted a request to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") for an advisory opinion (hereinafter "the request", "the inquiry" or "the advisory opinion") concerning "[...] whether there is a body within [the Inter-American system for the protection of human rights] that has the necessary competence to exercise the control of due process of law in the proceedings of the Commission [...], to which the States Parties to the Convention can resort [...], for the defense of due process. If such a body exists, the [Government] would like to know its identity and its powers [...]."

2. Venezuela described the considerations that gave rise to the request and indicated that "it is based on the current situation of defenselessness of the States Parties [to] the [...] Convention, in the face of any decision of the Commission that violates their domestic laws, harms their rights, and jeopardizes the correct application of the Convention and other applicable international legal instruments."

3. On December 3, 2003, the Court, in plenary session, asked the State to amend the request in light of Article 60 of the Rules of Procedure of the Court<sup>1</sup> (hereinafter "the Rules of Procedure"). To this end, it should: "(a) state with precision the specific questions on which the opinion of the Court is being sought; (b) [identify] the provisions to be interpreted; (c) [provide information on] the considerations that gave rise to the request [and] (d) [indicate] the name [and] address of the Agent or the Delegates".

4. On December 10, 2003, the State forwarded the amendments to its request with the following questions:

1. Is there a body within the inter-American human rights system with the necessary competence to monitor due process in the proceedings of the Commission [...] to which the States Parties to the Convention can appeal [...] for the defense of due process?
2. If such a body exists, [Venezuela] would like to know its identity and [its] powers?

5. In the same communication, the State asked the Court to answer two questions in light of the "Convention [...] and the other instruments [...] that form part of the inter-American human rights system. The State based this request on the apparent "state of defenselessness against any decision of the Commission [...] that might run counter to the international legal system that the Commission should respect." Finally, the State informed the Court of the name and address of its Agent.

6. On December 19, 2003, the President of the Court (hereinafter "the President") issued an order in which he decided to submit the request for an advisory opinion to the Court in plenary at its first regular meeting in 2004 considering that the Court would have new members at that time.

7. On May 24, 2004, the Secretariat of the Court (hereinafter "the Secretariat") informed the Member States of the Organization of American States (hereinafter "the OAS" or "the Organization"), the OAS Secretary General and the President of the Permanent Council, the Commission and persons, institutions and organizations of the request for an advisory opinion made by Venezuela and gave them until November 8, 2004, to submit written observations or other documents on the said request.

8. On November 5, 2004, and March 1, 2005, the Secretariat, on the instructions of the President, informed the OAS Member States, Secretary General and President of the Permanent Council as well as the Commission, the persons, institutions and organizations interested in submitting written observations, that the President had granted an extension, first until March 5, 2005, and,

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<sup>1</sup> According to the Rules of Procedure in force, approved by the Inter-American Court of Human Rights during its forty-ninth regular session in an order of November 24, 2000, which entered into force on June 1, 2001, and according to the partial amendment approved by the Court during its sixty-first regular session in an order of November 25, 2003, in force as of January 1, 2004. The original reference made by the requesting State corresponds to Article 59 of the Rules of Procedure approved by the Inter-American Court of Human Rights during its forty-ninth regular session in the order of November 24, 2000, which entered into force on June 1, 2001.

subsequently, until April 4, 2005, for the submission of observations on the request.

9. On May 4 and 9, 2005, the Secretariat transmitted the observations received to the State, the Commission, the persons, institutions and organizations that had sent them.

10. It is worth mentioning that, despite the extensions granted, none of the States submitted an observation.

11. The following organizations and persons submitted briefs: directors and students of the Law Clinics of the Jurisprudence College, of the *Universidad San Francisco, Quito*; Professor Luis Peraza Parga of the Universidad Panamericana, Mexico, the Universidad de La Sabana, Bogotá, and the Universidad de San Pedro de Sula; Professors Bernard Duhaime and Alejandro Lorite Escorihuela of the School of Political Science and Law of the Université de Québec; the Law Clinic of the *Centro de Investigación y Docencia Económicas, Mexico City*; the Human Right Clinic of the Universidad Iberoamericana, Mexico City; the Network of Human Rights Law Professors and the Human Rights Program of that university; the Center for Justice and International Law (*CEJIL*); Alfonso Jimenez Reyes, Mexico; Patricio Kingston, Argentina; Carlos Roberto Loria Quirós, legal adviser, Costa Rica, and Modesto Emilio Guerrero, Argentina.

12. On July 13 and 18, 2005, the Secretary informed the State, the Commission, the persons, institutions and organizations that had submitted written observations that, after examining the briefs submitted to the Court concerning the advisory opinion, the President, in consultation with the judges of the Court and in compliance with Article 63(4) of the Rules of Procedure, had decided not to hold a public hearing taking into account that none of the States had submitted observations. Nevertheless, they were asked to submit any additional written observations or documents they deemed pertinent, by August 16, 2005, at the latest. Two *amici curiae*, Professor Luis Peraza Parga of the Universidad Panamericana, Mexico, Universidad de La Sabana, Bogotá, and Universidad Privada de San Pedro de Sula, and Patricio Kingston, Argentina, forwarded additional observations.

13. On April 4, 2005, the Inter-American Commission submitted a brief with observations, which the Court summarizes below:

The Commission considers that "the question formulated is not obscure; however, if the Court decides to address it, the Court should require certain clarifications"; consequently, it considered that, in the exercise of its advisory competence, the Court should seek clarification of the following three aspects of the question:

(a) The proceedings of the Commission to which the request refers

The Commission exercises three types of function with the basic purpose of the promotion, observance and protection of human rights: (i) administrative; (ii) advisory and promotional, and (iii) *quasi*-jurisdictional, as set forth in Articles 44 to 51 of the Convention.

For the purposes of this request, the administrative and advisory functions must be excluded since they do not involve the States' right to defense, and within the procedural framework of the inter-American system, this right is expressed in the existence of adversarial proceedings. From the foregoing, it is clear that the request relates to the Commission's *quasi*-jurisdictional functions.

(b) The universe of norms subject to interpretation  
“The legal regime to which the organs of the inter-American system must adhere “is based on the declaration of the fundamental human rights in the OAS Charter and the American Declaration of the Rights and Duties of Man [(hereinafter “American Declaration”)], articulated by the American States in the belief that “a legal structure is a necessary condition for safety and peace based on justice and the moral order.” Following this declaration, and as a result of progressive efforts during the twentieth century, a *sui generis* system has been created whose substantive dimension has been completed by: the American Convention on Human Rights; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.  
However, the Charter and the Convention are the only instruments that establish rules of due process for the proceedings of the system’s organs. The other instruments refer to the Convention with regard to everything that concerns proceedings. The Statutes and Rules of Procedure also establish the rules of due process. The Commission understands that it has exclusive powers to interpret its own Rules of Procedure.

(c) The regime of due process within which the request is framed  
The OAS Charter establishes the powers and competence of the Commission. Furthermore, with regard to the States Parties to the American Convention, the legal system to which the *quasi*-jurisdictional proceedings of the Commission must conform is defined in the petition procedure regulated by Articles 44 to 51 of this instrument. Regarding the OAS Member States that are not parties to the Convention, the due process regime refers the administration of requests and communications to Articles I, II, III, IV, XVIII, XXV and XXVI of the American Declaration, based on the provisions of Article 24 of the Statute of the Commission which, in turn, refers to its Rules of Procedure.

Consequently, the Commission considers that the request “must be understood to ask the Court whether, from the interpretation of the Charter, the American Convention and the Statute, it can be derived that there is a body that has the competence to exercise control of the adherence of its *quasi*-jurisdictional proceedings to the due process regime embodied in Articles 112, 41 and 44 to 51 and 24, respectively, of the said international instruments.”

This request for an advisory opinion is limited to the Commission’s actions in relation to the proceedings on individual petitions. In this regard, the obligation of the Commission and the Court to monitor their own observance of the due process regime established by the Convention has been emphasized by the Court and, from what the latter has stated, “it is clear that it is the organs of the inter-American system that ensure that their acts conform to the rules of the system, based on their necessary authority and credibility to exercise their mandate properly.” The Commission considers that this is the answer to the question formulated by the State.  
The Commission indicated that the request refers to the alleged defenselessness of the States in the face of its proceedings, and disagrees

with this statement since it considers that the inter-American system includes guarantees for due process, authority and independence that the American States themselves decided to establish. The Commission "acts in the belief that the purpose of the guarantee of due process in the functioning of the protection mechanisms is to ensure the greatest and best protection of the individual." These guarantees are based on:

a) The dialogue between the organs of the systems

One of the first signs of the dialogue for the development of the protection mechanism is the interaction between the Commission and the Court.

In addition, the methods and practices of the Commission and the Court are subject to monitoring by the American States. In the case of the Commission, the fundamental tool for such interaction is its Annual Report, which was established by the reforms adopted in Resolution XXII of the Second Inter-American Conference. The influence of the States on the general and abstract actions of the Commission depends on their willingness to get involved in the system and in the dialogue between the Commission and the States through the Organization's General Assembly and Permanent Council. Regarding the design and functioning of the system "[t]he General Assembly is the natural forum for the exchange of opinions between the States and the Commission."

b) Functional independence of the Commission and the Court.

The Member States have granted the Commission and the Court independence, because the best protection of human rights requires that these organs fulfill their obligations without any interference. In the case of the Commission, as one of the main bodies within an international organization, that independence means that "it can perform its inherent functions without any interference by the Governments of the Member States of the Organization, its other organs and any third parties."

c) Guarantees in the petition proceedings

There is no provision in either the OAS Charter or the American Convention that subjects the *quasi*-jurisdictional actions of the Commission to the scrutiny of other organs of the Organization. Nevertheless, the inter-American protection system is endowed with a series of guarantees that ensure the principle of the supremacy of the Convention. Some of these guarantees, such as the principles of good faith and *pro homine*, guide the Commission's proceedings. There are also some specific guarantees related to the individual petition proceedings, namely: conditions for the admissibility of petitions, and the principles of adversarial proceedings, procedural balance, and legal certainty. The proceedings before the Commission contain guarantees for adversarial proceedings similar to those that exist in litigation proceedings before the Court. The Commission's proceedings are subject to the application of these principles and "[o]ne of the functions of the Commission itself is to monitor the adherence of its *quasi*-jurisdictional proceedings to these principles."

The Commission also noted that "there is [...] a concurrent exercise of competences by the Court, to which the States may resort should they disagree with the Commission's findings." In this regard, it indicated that "when a case is filed before the Court, both the Commission and the Court interpret the Convention according to the same facts. In this regard, the Court has full power to assess the facts and interpret them in light of the Convention, irrespective of the Commission's interpretation of the same matter. And, in this context, it can make a different interpretation with regard to procedural aspects".

“In the case of petitions that contain complaints or reports of violation of the Convention [...] by a State Party that has accepted the Court’s jurisdiction, the Convention [establishes] a specific system of protection that involves [the Court as] the jurisdictional organ for the matter.” If a State “disagrees with the Commission’s findings and considers [...] that is not fair to comply with its recommendations, the Convention offers it the opportunity to submit the matter to the jurisdiction of the Court.” Another opportunity for control exists when the Commission submits the case to the Court. In this situation, and as regards the Commission’s proceedings, the respondent State may contest them by means of preliminary objections.

According to the Commission, the Court’s exercise of its advisory jurisdiction is another mechanism “that ensures a dialogue within the system with regard to procedural requirements. [...] The [previous] advisory opinions, and also these proceedings reveal how the Court’s advisory jurisdiction constitutes a point of reference for the proceedings of the organs of the system through a ruling made in abstract.”

The Commission submitted the following conclusions:

***Regarding the formulation of the request,***

That the Court request the following clarifications:

- a) That the request refers to the *quasi*-jurisdictional functions of the Commission and excludes all its advisory, promotional and administrative functions;
- b) That the instruments to be interpreted are the Charter of the Organization, the American Convention, and the Statute of the Commission, and
- c) That the specific provisions to be interpreted are Articles 112 of the Charter, Articles 41 and 44 to 51 of the Convention and Article 24 of the Statute, in light of the context.

***Regarding the regime under which the quasi-jurisdictional functions are performed,***

That this regime is based on three pillars, consisting of[:]

- a) The dialogue between the organs of the System and between these organs and the Member States of the Organization;
- b) The guarantee of the functional independence of the Commission and the Court.
- c) The procedural guarantees of the petition proceedings[.]

***Regarding control of this regime’s adherence to due process,***

- a) That the American States have not created an organ to control the due process of law of its *quasi*-jurisdictional actions;
- b) That the organs that control the adherence to due process of law of the inter-American system are the Commission and the Court themselves, in exercise of their inherent and concurrent powers concerning individual petitions, and
- c) That the Court’s advisory function constitutes an additional mechanism for dialogue with regard to the

regime of due process in individual petition proceedings.  
(The phrases in bold correspond to the original document).

14. The observations submitted in the *amici curiae* presented by various persons, institutions and organizations are summarized below:

Regarding the admissibility of the opinion, Professors Bernard Duhaime and Alejandro Lorite Escorihuela, from the School of Law and Political Science School of the Université de Québec<sup>2</sup> stated that the questions posed by the State do not comply with the admissibility requirements established in Article 64 of the American Convention and Articles 60 and 61 of the Court's Rules of Procedure<sup>3</sup> on admissibility and they are ambiguous. Nevertheless, they indicated that the Court should respond to the request, re-interpreting the questions; they also stated that the question refers to "the possibility [for] an organ of the Inter-American system, [based on] the competences granted to it by the corresponding treaties, to interpret the norms that define the Commission's sphere of action, apply them to the Commission's 'proceedings' and issue and opinion on the matter." Alfonso Jiménez Reyes, Mexico, also stated that Venezuela's request was ambiguous but evidently referred to the interpretation of Articles 44 to 51 and 61 to 69 of the American Convention; hence the Court should declare the State's request admissible. The Human Rights Clinic of the Law Department of the Universidad Iberoamericana, Mexico, the Network of Human Rights Law Professors and the Human Rights Program of that University consider that the Court should abstain from issuing an opinion, because the State's request does not comply with the requirements established in the Convention and in the Court's Rules of Procedure. Nevertheless, they offered some observations, in case the Court decided to refer to the merits of the request.

Furthermore, Professors Bernard Duhaime and Alejandro Lorite Escorihuela pointed out that "the Commission, as an organ, is not subject to the institutional control of any organ of the Organization"; the Law Clinic of the *Cento de Investigación y Docencia Economicas*, Mexico City, considered that the Commission "does not have higher-ranking bodies that can be granted powers to appeal its decisions"; the Human Rights Clinic of the Law Department of the Universidad Iberoamericana, Mexico City, the Network of Human Rights Law Professors and the Human Rights Program of that university indicated that "there is no organ within the inter-American system [...] vested with the necessary powers to exercise the control of due process of the Commission's proceedings as a whole." According to the directors and students of the Law Clinic of the Jurisprudence College of the Universidad San Francisco of Quito, "there is no specialized organ responsible for ensuring the due process of the Commission's proceedings"; however, the Commission is subject to three control mechanisms:

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<sup>2</sup> The original *amicus curiae* brief was submitted in French. For the purpose of this Advisory Opinion, a Spanish translation of the document was used.

<sup>3</sup> The original reference cited by professors Bernard Duhaime and Alejandro Lorite Escorihuela, of the School of Law and Political Science of the Université de Québec, corresponds to Articles 59 and 60 of the Rules of Procedure approved by the Inter-American Court of Human Rights during its forty-ninth regular session in an order dated November 24, 2000, which entered into force on June 1, 2001.

- a) Political: through its obligation to submit an annual report to the OAS General Assembly and through the election process for the Commissioners, though their removal from office owing to serious acts is carried out using a combined system that involves both the Commission and the said Assembly;
- b) Internal: as regards the disqualification process for Commissioners established in Articles 17 and 62 of the Commission's Rules of Procedure, and
- c) Jurisdictional: by the Court.

The Law Clinic of the *Centro de Investigación y Docencia Económicas*, Mexico City, and Alfonso Jiménez Reyes considered that the Court is the only body that can review the legality of the proceedings according to the Convention, because it is the only jurisdictional organ of the inter-American system. According to the Law Clinic, the procedure is established in Articles 44 to 62 of the Convention. For its part, the Center for Justice and International Law stated that the Court can exercise control over the Commission's observance of the legal framework that regulates its functions as regards matters of form or in relation to the processing of individual cases in the exercise of the contentious jurisdiction. The Court may exercise this control of due process of law by means of its contentious and advisory functions.

Luis Peraza Parga pointed out that "Venezuela [had brought to the attention] of the Court the need for an intermediate organ for appealing the Commission's decisions, because they leave defenseless those States that are possibly guilty, but have not been convicted of any human right violation until this is declared by the Court, the instance for appealing the Commission's decisions [...]." However, he considered that the Commission has fulfilled its role, according to the norms on which its activities are based that correspond to the characteristics of the work it performs, which he considered valuable.

Bernard Duhaime and Alejandro Lorite Escorihuela consider that the Commission should be understood as an organ with broad autonomy in relation to the political organs of the Organization of American States and the members of the Organization so as to be able to fulfill its functions. They indicated that "*a priori* the Court does not have general institutional powers of control over an organ whose existence is based on the Charter." They considered that, although the Court is able to exercise "control of due process of law" with regard to the Commission's activities, this power derives from the respective and combined functions of the Commission and the Court, under the Convention. The Law Clinic of the *Cento de Investigación y Docencia Económicas*, Mexico City, indicated that it was not feasible to create another independent entity responsible for revising the legality of the Commission's actions in matters that have not be submitted to the jurisdiction of the Court. It also stated that the General Assembly acts as an administrative regulatory body for the Commission, as can be inferred from paragraphs (f) and (h) of Article 19 of the Commission's Statute. Consequently, exceptionally and only in the said situation, the General Assembly can adopt decisions that impact the activities of the Commission.

Patricio Kingston noted that the organ for the control of the due process of the Commission's proceedings can only be the General Assembly, which is the Organization's highest authority. In the opinion of Carlos Roberto Loría Quirós, since there are no legal provisions that prevent it,



the States can appeal directly to the OAS General Assembly, which has the powers to control the respect for due process of the Inter-American Commission's proceedings on matters that have not been submitted to Inter-American Court for a decision. Lastly, Modesto Emilio Guerrero indicated that the Inter-American Commission has not developed "internal mechanisms to guarantee Member States the possibility of defending the legality of their rights through control by a body that scrutinizes the Commission's decisions and reports."

## II COMPETENCE

15. This request was submitted to the Court by Venezuela in accordance with the rule on legal standing contained in Article 64(1) of the American Convention, which stipulates that:

The Member States of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American States. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

[...]

16. The Government of Venezuela submitted the following questions to the Court:

3. Is there a body within the inter-American human rights system with the necessary competence to monitor due process in the proceedings of the Commission [...] to which the States Parties to the Convention can appeal [...] for the defense of due process?
4. If such a body exists, [Venezuela] would like to know its identity and [its] powers?

17. To determine the admissibility of the request, the Court must take into account considerations that go beyond merely formal matters and which relate to characteristics it has acknowledged for the exercise of its advisory function.<sup>4</sup> It must transcend the rigid formal requirements that would prevent it from considering questions that are of juridical interest for the protection and promotion of human rights.<sup>5</sup>

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<sup>4</sup> Cf. *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18 of September 17, 2003, Series A No. 18, para. 50; *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, para. 19; *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99 of October 1, 1999, Series A No. 16, para. 31; *Reports of the Inter-American Commission on Human Rights* (Art. 51 American Convention on Human Rights), Advisory Opinion OC-15/97 of November 14, 1997, Series A No. 15, para. 31, and "*Other treaties*" *Subject to the Advisory Jurisdiction of the Court* (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982, Series A No. 1, para. 13.

<sup>5</sup> Cf. *Reports of the Inter-American Commission on Human Rights* (Art. 51 American Convention on Human Rights), *supra* note 3, para. 39; *Certain Attributes of the Inter-American Commission on Human Rights* (Arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993, Series A No. 13, para. 41, and "*Other treaties*" *Subject to the Advisory Jurisdiction of the Court* (Art. 64 American Convention on Human Rights), *supra* note 3, para. 24.

<sup>6</sup> *Juridical Condition and Human Rights of Undocumented Migrants*, *supra* note 3, para. 24; *Juridical Condition and Human Rights of the Child*, *supra* note 3, para. 34 and *The Right to Information*

18. When affirming its competence in this matter, the Court recalls the broad scope of its advisory function, unique in contemporary international law.<sup>6</sup> This function constitutes "a service that the Court is able to provide to all the members of the inter-American system, in order to contribute to fulfilling its international [human rights] commitments."<sup>7</sup> This function helps the States and the organs apply human rights treaties, without subjecting them to the formal requirements and the sanctions inherent in the contentious process.<sup>8</sup>

19. Essentially, this request asks about the existence of an organ with competence to control the due process of law of the Commission's proceedings in the sphere of the inter-American system for the protection of human rights.

20. The Court is competent to rule on the request inasmuch as it relates to an organ within the inter-American system for the protection of human rights, such as the Inter-American Commission, and to the extent that its ruling will serve to illustrate the scope of the powers that the American Convention grants to the Commission for the promotion and defense of human rights. Among its powers, the Court is empowered to interpret and apply the American Convention and other instruments of the inter-American system for the protection of human rights. The Court will respond to this request within the framework of this competence.

### III

#### CONTROL OF DUE PROCESS IN THE EXERCISE OF THE POWERS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

21. In this regard, it is interesting to bear in mind that human rights treaties are designed to ensure the enjoyment of the rights and freedoms of the individual, rather than to establish the rules for relationships among States.<sup>9</sup> Thus, human rights' treaties are not limited to defining the exchanges between the latter, but serve the purpose of protecting the fundamental rights of the individual in the face of his own State or another contracting State.<sup>10</sup> They are inspired by the highest

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*on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, supra note 3, para. 64.*

<sup>7</sup> *Juridical Condition and Rights of Undocumented Migrants, supra note 3, para. Juridical Condition and Human Rights of the Child, supra note 3, para.34 and the Right to Information on Consular Assistance in the Framework of the Guarantees of the due Process of Law, supra note 3, para.64.*

<sup>8</sup> *Juridical Condition and Rights of Undocumented Migrants, supra note 3, para. 64; Juridical Condition and Rights of the Child, supra note 3, para.34 and The Right to Information on Consular Assistance in the framework of the Guarantees of Due Process of Law, supra note 3, para. 64.*

<sup>9</sup> *Cf. "Other treaties" subject to the Advisory Jurisdiction of the Court, supra note 3, para. 24.*

<sup>10</sup> *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 27*

<sup>11</sup> *Cf. Case of Baena-Ricardo and et al. Competence. Judgment of November 28, 2003. Series C No. 104, para. 96.*

<sup>12</sup> *Cf. Charter of the Organization of American States. As amended by the Protocol of Amendment to the Charter of the Organization of American States "Protocol of Buenos Aires", signed on February 27,*

common values, focused on the protection of the individual; they are applied in keeping with the idea of collective guarantee; embody obligations of an essentially objective nature, and have specific monitoring mechanisms.<sup>11</sup>

22. The inter-American system's treaties, conventions and declarations on human rights issues are the main source of the State obligations in this regard and, in turn, determine the parameters of due process of law to which the Commission must subject itself.

23. Any power to examine the Commission's activities is governed and limited by the object and purpose of the inter-American system: promotion of the observance and defense of human rights.<sup>12</sup>

24. As indicated, this request relates to the proceedings of the Inter-American Commission. According to Article 106 of the Charter, the Commission is an organ of the OAS; on the other hand, it is also an organ of the American Convention, and its powers are established in Article 41 of this instrument.<sup>13</sup> As an organ of the Convention, the Commission is linked to the Court, because both have the authority to examine individual and State communications in accordance with Articles 44, 45, 51, 61 and *ff.*, of the Convention, though in different ways.

25. The Court considers it is worth mentioning that the inter-American system for the protection of human rights was built up on the basis of the full autonomy and independence of its organs for the exercise of the functions entrusted to them; and that it is only in the area mentioned in the preceding paragraph that the Court has the power to review whether the Commission has complied with the provisions of the American Convention and the different inter-American human rights instruments.

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26. When processing individual petitions, the Commission must respect the guidelines established in the OAS Charter (Article 106), the American Convention (Articles 41(f), 44 to 51), the Statute (Articles 23 and 24) and the Commission's Rules of Procedure that determine the framework for the legality of its proceedings.

27. The processing of individual petitions is regulated by guarantees that ensure each party the exercise of the right of defense in the proceedings. These guarantees are: (a) those related to the requirements for the admissibility of petitions (Articles 44 to 46 of the Convention), and (b) those related to the principles of adversarial proceedings (Article 48 of the Convention),<sup>14</sup> and

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967, at the Third Special Inter-American Conference, by the Protocol of Amendment to the Charter of the Organization of American States "Protocol of Cartagena de Indias", approved on December 5, 1985, at the Fourteenth Special Session of the General Assembly, by the Protocol of Amendment to the Charter of the Organization of American States "Protocol of Washington", approved on December 14, 1992, at the Sixteenth Special Session of the General Assembly, and by the Protocol of Amendment to the Charter of the Organization of American States "Protocol of Managua", adopted on June 10, 1993, Article 106 at the Nineteenth Special Session of the General Assembly and *Certain Attributes of the Inter-American Commission on Human Rights*, *supra* note 4, para. 23.

<sup>13</sup> Cf. *Certain Attributes of the Inter-American Commission on Human Rights* (Articles 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights), *supra* note 4, para. 23.

<sup>14</sup> Also see Articles 30, 37, 38, 42 and 43 of the Rules of Procedure of the Inter-American Commission on Human Rights as approved by the Commission at its 109th special session

procedural equality. It is also necessary to mention at this point the principle of legal certainty (Article 39 of the Commission's Rules of Procedure).

28. For individual communications to be processed, there must be a complaint concerning the probable violation of the American Convention by a State. On this basis, the Commission must rule on the existence of the violation. The Inter-American Court is responsible for the final decision on the case, by means of a judgment. The State may allege whatever it considers relevant for the defense of its rights and strict compliance with due process of law in the processing and settlement of the dispute, in accordance with the provisions of the Convention and the other legal instruments that constitute the *corpus juris* of the inter-American system for the protection of human rights; in particular, the Court's Statute and its Rules of Procedure. In this way, the Court exercises the controlling function explicitly granted to it by those instruments.

29. Article 41 of the American Convention entrusts the Commission with other functions aimed at the promotion and protection of human rights. They include making recommendations to the Governments of the Member States for the adoption of progressive measures in favor of human rights; preparing studies and reports as it considers advisable for the performance of its duties; carrying out on site visits, and responding to inquiries from the Organization.

30. Regarding other ways of reviewing the performance of the Commission, it is worth mentioning that, in the exercise of its mandate according to the provisions of the Convention, the Commission must submit an Annual Report to the General Assembly of the Organization. This report contains information on the Commission's sessions, visits and reports on the countries and on specific issues, petitions and individual cases submitted to the Commission, precautionary measures, petitions admitted, friendly settlements, compliance with recommendations, cases submitted to the Court, requests for provisional measures and intervention in contentious cases, among other matters. In the context of their relationship with the OAS, the States are empowered to submit to this Organization's competent organs, particularly the General Assembly, all the observations they deem pertinent concerning the actions of the Commission with regard to human rights' matters, in the dual role entrusted to it, as mentioned (*supra para.* 24).

#### **IV OPINION**

31. Based on the foregoing, in interpretation of Articles 41 and 44 to 51 of the American Convention on Human Rights concerning the proceedings of the Inter-American Commission on Human Rights,

**THE COURT,**

**DECIDES:**

unanimously,

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held from December 4 to 8, 2000, amended at its 116th regular session, held from October 7 to 25, 2002, and at its 118th regular session, held from October 16 to 24, 2003.

that it is competent to issue this Advisory Opinion

**AND IS OF THE OPINION:**

unanimously,

1. That the Inter-American Commission on Human Rights, as an organ of the inter-American system for the protection of human rights, has full autonomy and independence to exercise its mandate in accordance with the American Convention on Human Rights.

2. That the Inter-American Commission of Human Rights acts within the legal framework established by the American Convention on Human Rights when it exercises the functions entrusted to it in the proceedings for the processing of individual petitions set forth in Articles 44 to 51 of the Convention as well as in the exercise of its other powers relating to the promotion and protection of human rights embodied in Article 41 of this instrument.

3. That the Inter-American Court of Human Rights, in the exercise of its functions, controls due process of law in the proceedings before the Inter-American Commission of Human Rights in relation to the processing of matters that have been submitted to the Court's consideration, in accordance with the competence granted to it by the American Convention and other inter-American instruments for the protection of human rights.

Sergio García Ramírez  
President

Alirio Abreu Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Pablo Saavedra Alessandri  
Secretary

So ordered,

Sergio García Ramírez  
President

Pablo Saavedra Alessandri  
Secretary