"The Violation of the Right to Life by Security Forces of the States in the Practice of the Inter-American Court of Human Rights and the European Court of Human Rights"

Doctoral (PhD) thesis

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Content

1. Subject, Purpose and Structure of the Thesis

The right to life and intrinsic human dignity are inviolable, indivisible, and inalienable. However, they have been violated differently and with massive reach over time. States must respect the right to life to protect other human rights. The right to life can be violated in many ways, but paying special attention to this right's violation by the state's security forces is necessary. It is relevant to establish that this research will analyse the deprivation of the right to life perpetrated by the state's security forces. This work will not examine other significant parts of the right to life, such as the death penalty[1], euthanasia[2], or abortion[3] in countries in Europe and America, as their analysis requires independent research, as case law and literature are rich in these fields.

This work aims to determine the standards of the European Court of Human Rights and the Inter-American Court of Human Rights in their judgments related to the violation of the right to life by security forces. It also aims to determine whether there are differences and/or similarities in the standards applied by two key tribunals in Europe and America. This research will focus on the judgments issued by the ECtHR and the IACtHR related to the violation of the right to life perpetrated by the security forces of the states.

The institutional and abusive violence exercised by the state´s security forces against their citizens constitutes a concern that is more visible and generalised in our current society and all over the world.

Without questioning the sufficiency of domestic instruments in each country, it is essential to remember that the international level of human rights contributes to the jurisprudence that is not always present in the internal justice systems of states.

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[1] Barry, Kevin M. "The Death Penalty and the Fundamental Right to Life". In: *BCL Rev. Vol. 6.* P.P.1545-1604. 2019.

McCloskey, T.H.M.J.B. "The Death Penalty and the Right to Life." In: *Commonwealth Law Bulletin, Vol 38, Nº3.* P.P.485-508. 2012.

[2] Math, Suresh Bada; Chaturvedi Santosh K. "Euthanasia: Right to Life vs Right to Die." In: *The Indian Journal of Medical Research. Vol 136, Nº6.* P.P.899-902. December 2012.

Ganthaler, Heinrich. "Euthanasia and the Right to Life". In: *Acta Universitatis Lodsiensis. Folia Philosophica. Ethica-Aesthetica-Practica. Nº 21.* P.P. 45-57. 2008.

[3] Carrier, L.S. "Abortion and the Right to Life". In: *Social Theory and Practice. Vol. 3, Nº 4.* P.P.381-401. Florida State University Department of Philosophy. 1975.

McMahan, Jeff. "The Right to Choose an Abortion". In: *Philosophy and Public Affairs. Vol. 22, Nº 33.* P.P.331-348. Published by Wiley. 1993.

This work will have five chapters. The first chapter will define the essential notions of this work and outline the characteristics of the courts that are the object of this study. The second chapter will cover the theoretical basis of this work, divided into five subchapters. The third chapter will cover the various categories of violations of the right to life by security forces and analyse the judgments in each category from both courts. In this Chapter, the standards of each court regarding this crime will be determined. The fourth chapter will examine the standards of different cases regarding the state's security forces' violation of the right to life. In this chapter, the standards established in Chapter 3 will be compared to determine their differences and similarities. Finally, the fifth chapter will conclude with a section on the influence between the courts, a fake case, a summary of its key findings, and a conclusion about the notions presented in the work.

What makes this work significant is the development and findings of the differences and similarities between the standards of the IACtHR and the ECtHR, as established in Chapters 3, 4, and 5 of this work. Moreover, it is determined to analyse whether there is a dialogue or different criteria between these two regional tribunals of critical relevance. This work presents the relevant conditions for both the academic and legal fields, in accordance with worldwide standards.

2. Methodology of the Thesis

Standards for this research will be understood as the patterns used by the IACtHR and the ECtHR when deciding on a case and dictating a judgment that condemns or absolves the accused. These can be determined according to the fundamentals established in the decisions of both tribunals and the decision-making process. The standards determined why the court in question made the decision it did. These patterns established in the court's judgments form the fundamental basis for its decisions and are based on the interpretation of human rights conventions. The courts define these standards when establishing the substantive and procedural aspects of the right to life, its violations, and the responsibility of the state parties.

According to the Merriam-Webster dictionary, a standard is established by authority, custom, or general consent as a model or example. The same dictionary defines a pattern as a form or model proposed for imitation. These definitions can establish a vital base for determining the standards to which the courts apply in their decisions.[4]

[4] https://www.merriam-webster.com/dictionary/standard

https://www.merriam-webster.com/dictionary/pattern

This work needs to define the concept of standards to facilitate an understanding of the comparison between the judgments of the IACtHR and the ECtHR. I analyse the standards of the cases examined during these years to create a scientifically solid base for the study of my chosen subject.

This investigation is doctoral legal research. It is an inductive work because conclusions will be generalised by studying the research object. The qualitative method is applied. Primary and secondary sources are used to collect the necessary data. Comparative law is also applied. Six different methods are included in this last category.[5] Furthermore, the case study method is essential for examining the judgments.

The methodological technique of documental investigation is used to conduct the research. The objectives are reached through the investigation, reading, and critique analysis of the judgments related to the right to life concerning the deaths caused by the security forces of the state that the IACtHR and the ECtHR have established. The methodological technique selected enables, through the observation and analysis of documentation, a retrospective examination, understanding, and interpretation of the current reality.[6] These judgments enable the construction of a determined reality, and the purpose of this research is to validate the interpretations and justifications presented in the analysis. Starting from what is examined in the judgments, the standards used by both courts are determined. Furthermore, it will establish an essential background for academics and jurists who must attend cases related to security forces violating the right to life.

The European Court of Human Rights and the Inter-American Court of Human Rights are compared. The primary documents comprise texts of doctrine related to these two tribunals, the right to life, and the case law of contentious cases before them.

The first chapter presents the objectives and the methodology of this work. For this chapter, documentary analysis was used. As the second chapter is a recollection of information about the theoretical basis of this work, the best method to apply is documentary analysis to examine doctrine and case law related to this subject. The third chapter analyses the case law of these courts about the violation of the right to life by

[5] 1. The Functional Method, 2. The Structural Method, 3. The Analytical Method, 4. The Law-in-Context Method, 5. The Historical Method, and 6. The Common Core Method will be applied together.

[6] Yuni, José Alberto and Urbano, Claudio Ariel. *"Técnicas para investigar: Recursos metodológicos para la preparación de proyectos de investigación."* Ed. Brujas, First Edition. Córdoba, Argentina. 2014. P. 40.

security forces and classifies these judgments into five categories. For this, it was helpful to use a case study and comparative law to understand how the courts decide on these cases. These judgments are divided into categories of violation of the right to life by the security forces of the state, as established in the theoretical basis of Chapter II, to make a more profound and dynamic comparison. Comparative law was employed in the third, fourth, and fifth chapters, and combining the six aforementioned methods is a key aspect of this research approach. Additionally, comparative law is well-suited for identifying and comparing differences and similarities. The fourth and fifth chapters compare the courts' standards, applying the comparative law method. Furthermore, the qualitative method is used in the five chapters.

The ECtHR and IACtHR judgments are used as primary sources. I understand the language of both courts' decisions, so I can effectively utilise these primary sources. Additionally, I incorporated many texts I had collected over the past few years as secondary sources in my research.

The text *"How to do Comparative Law"* by John C. Reitz[7] improved my work by helping me create a more dynamic, coherent, and organised exposition of the information. I used Mark Van Hoecke's *"Methodology of Comparative Research"* to describe the six comparative law methods.[8] This research combines the methods mentioned earlier, considering the advantages and disadvantages of each technique.

Reitz offers nine principles of comparative law:

1. Consider the relationship between the study of comparative law and the study of foreign law.
2. Basic techniques for comparing law in different legal systems and the unique value of that type of study.
3. 4. 5. Basic technique of comparing law in different legal systems and the exceptional value of that type of study.
6. 7. 8. Specific guidelines to carry out a comparison involving legal subjects.

[7] Reitz, John C. "How to do Comparative Law". In: *The American Journal of Comparative Law. Vol. 46.* P.P.617-635. 1998. P. 625.

[8] Van Hoecke, Mark. "Methodology of Comparative Research". In: *Law and Method. European Academy of Legal Theory Series.* P.P.1-35. Great Britain. 2011. P. 26.

9. Concerns the attitude that he believes to be indispensable guidance to strengthen the quality of comparative law studies and increase interest in the field.[9]

Furthermore, Reitz establishes other basic principles of the comparative method, which are:

1. Comparative law involves drawing explicit comparisons, and most non-comparative foreign law writing could be strengthened by explicitly comparing.
2. The comparative method focuses on the similarities and differences among the compared legal systems. Still, when assessing the significance of differences, the comparatist must consider the possibility of functional equivalence.
3. The process of comparison is particularly suited to lead to conclusions: (a) distinctive characteristics of each legal system and (b) commonalities concerning how the law deals with the particular subject under study.
4. One of the benefits of comparative analysis is its tendency to push the analysis to broader levels of abstraction through its investigation into functional equivalence.
5. The comparative method can lead to an even more interesting analysis by inviting the comparatist to give reasons for the similarities and differences among legal systems or to analyse their significance for the cultures under study.
6. In establishing what the law is in each jurisdiction under study, comparative Law should (a) be concerned with describing the everyday conceptual world of the lawyers, (c) take into consideration the gap between the law on the books and law in action, as well as (d) essential gaps in available knowledge about either the law on the books or the law in action.
7. Comparative and foreign law scholarship requires strong linguistic skills in the anthropological field study to collect firsthand information about foreign legal systems. Still, it is also reasonable for the comparative scholar without the necessary linguistic skill or in-country experience to rely on secondary literature in languages the comparatist can read, subject to the usual caution about using secondary literature.
8. Comparative law scholarship should be organised to emphasise explicit comparison.
9. Comparative studies should be undertaken in a spirit of respect for the other.[10]

[9] Reitz, John C. "How to do Comparative Law". In: *The American Journal of Comparative Law. Vol. 46*. P.P.617-635. 1998. P. 625.

[10] Ibid.

It is relevant to outline my line of thought in creating the thesis structure. The idea is to establish the first theoretical part (Chapters I and II), which defines the background, challenges, essential notions, and concepts of human rights, with a particular focus on the right to life. The second part is practical (Chapter III), which examines key cases of the right to life being violated by security forces in the IACtHR and the ECtHR. This part defines which cases are analysed and determines their facts and standards. Finally, the third part (Chapters IV and V) is both theoretical and practical, as it compares the standards, divided into substantive and procedural aspects. This includes an example of a hypothetical case I invented, as well as an interesting academic exercise in which I examined how the courts would decide based on the analysis and comparison of the standards. Ultimately, this part summarises the key findings and insights gained from the research. It determines the influence between the courts, whether the theoretical and practical parts are connected or divergent, with the practical part aligning with the theoretical or the theoretical part providing more valuable ideas. Finally, it is significant to state whether there is a dialogue or different criteria in the cases between the IACtHR and the ECtHR.

3. Research Questions

The Research Questions are:

1. Which standards are established by the Inter-American Court of Human Rights and the European Court of Human Rights in the judgments of violation of the right to life by security forces?
2. What are the similarities and differences between these standards?

4. Research Problem and Objectives

This study's research problem is to examine the ECtHR and IACtHR standards of judgment regarding violations of the right to life caused by the state parties' security forces. It is an explorative and descriptive problem. Furthermore, it is longitudinal, as the standards established in the judgments of the ECtHR and IACtHR are over a determined period. The judgments analysed from the practice of the ECtHR and the IACtHR are from 1988 to 2025. These dates are chosen because the IACtHR has been delivering judgments since 1988.[11] Although the ECtHR began issuing judgments in 1960, starting

[11] IACtHR. Case Velásquez Rodríguez v. Honduras. Merits, Reparations and Costs. Judgment 29 July 1988. Series C No. 4.

from the same date in both tribunals is necessary because this approach provides a more balanced comparison. Only contentious cases will be considered for this work.

Regarding the objective of this research, this examination aims to identify and analyse similarities and differences between the standards on which the decisions issued by the IACtHR and the ECtHR are based, specifically concerning the violation of the right to life caused by state security forces. This could determine how these international tribunals impose sanctions and impute the responsibility for violating the right to life to the arbitrariness of the state party's armed, police, and security forces. This work aims to state these similarities and/or differences to understand and analyse how these tribunals rule on this fundamental aspect of the right to life. Several works have been written about each category of violation of the right to life, as well as the characteristics of each tribunal.[12] Moreover, some works compare these courts in different aspects.[13] However, my aim is unique because this research seeks to identify the similarities and differences between the standards regarding the state's security forces' violation of the right to life, as interpreted by the IACtHR and the ECtHR. This is a particularly sensitive subject because it involves a specific right—the right to life—and a unique perpetrator, the security forces. Although the security forces are the ones who commit the homicide, it is the state that is responsible for the actions of these forces. These can commit the homicide by action or omission, or intentionally or not. However, the states are the parties to the courts and have accepted the Convention on Human Rights. Every organ of the state responds to it, and the state is responsible for its actions or omissions regarding human

[12] López Guerra, Luis. "Desapariciones Forzadas en la jurisprudencia del Tribunal Europeo de Derechos Humanos". In*: Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM*. Ed. Instituto de Estudios Constitucionales del Estado de Querétaro. P.P.431-452. México, 2020.

Claude, Ophelia. "A Comparative Approach to Forced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights." In*: Intercultural Human Rights Law Review. Vol. 5*. P.P.407-461. 2010.

Piovesan, Flávia and Julia Cortez da Cunha Cruz. "Desaparición Forzada de Personas in the Inter-American System of Human Rights". In: *Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM.* P.P.20-42. 2020

[13] Parra Vera, Oscar. "Algunos aspectos procesales y sustantivos de los diálogos recientes entre la Corte Interamericana de Derechos Humanos y el Tribunal Europeo de Derechos Humanos." In: *La América de los Derechos,* Santolaya. Pablo y Wences, Isabel (Coord.) Centre of Political and Constitutional Studies. P.565- 606. Madrid, Spain. 2016.

rights violations, such as those by security forces. Moreover, this work focuses on the specific regional human rights courts in Europe and America.

The specific objectives of this work are:

-Identify the standards applied to each specific case 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 judgments.

-Compare the standards applied in the ECtHR and the IACtHR practice.

-Determine the situation between the tribunals studied, establishing whether there is a dialogue or different criteria applied concerning the standards.

-Precise the judgments of the courts considering the articles of the Conventions relating to the right to life on which they are based and the differences between these. These provisions protect the right to life, as outlined in Article 4 of the American Convention on Human Rights and Article 2 of the European Convention on Human Rights.

5. Categories of Violation of the Right to Life

(1) Disproportionate use of force by the State's security agents. These cases are related to the right of the State to use force and its implications concerning the deprivation of life in the exercise of maintenance of the order. The security forces of a State must consider the proportionality of the situation they face.

(2) Extrajudicial execution by the security forces of a State. In some situations, these executions have been premeditated.

(3) Massacres committed by the State's security forces or with the acquiescence of these. Some cases show massacres in Aboriginal communities that are more discriminated against, and it is easier to commit acts of abuse of force in these communities.

4) Homicides with police brutality.

(5) Enforced disappearance. It is determined that these are *"continuous case prototypes."* The requisites of this crime include the subsequent lack of information about the whereabouts and destiny of the missing person, which gives rise to a continuous situation even when death could be presumed. For this crime to be committed, the State must be an accomplice.

6. Findings: Similarities and Differences between Standards of the ECtHR and the IACHR

The ECtHR and the IACtHR share the same foundational standards: respect for and protection of the right to life in a democratic state, their role as subsidiary courts, and the use of lethal force as a last resort. Furthermore, they establish the protection of

individuals under the state's custody and the harm they can suffer in a vulnerable situation. Moreover, absolute necessity and proportionality are also essential considerations when state agents use force, which are crucial for both courts and the public.

The standard that appears the most in these cases in the ECtHR is related to the obligation to protect the right to life under Article 2, which is taken in conjunction with Article 1 of the European Convention on Human Rights and its duty to secure the rights and freedoms established in the Convention for everyone in the jurisdiction of state parties. This court establishes that Articles 2 and 3 (Prohibition of Torture) rank among the most fundamental provisions in the ECHR, enshrining the essential values of the democratic societies that comprise the Council of Europe. This aligns with the IACtHR's acknowledgement of the right to life and its importance, as stated in Articles 4 (Right to Life) and 5 (Human Treatment), which stipulates that all other human rights are violated if the right to life is not fulfilled.

In the procedural aspect, both courts find that the state's positive obligation to investigate violations of the right to life arising from Articles 2 and 4 is an obligation of means, but not of results. The IACtHR adds that the obligation of prevention has the same character. Furthermore, the court’s task consists of reviewing whether and to what extent the domestic courts, in reaching their conclusion, may be deemed to have submitted the case to the scrutiny required by Articles 2 of the ECHR and 4 of the American Convention on Human Rights. I believe both tribunals coordinate on this concept regarding their role as subsidiary courts and explain that there is a common misconception about a higher instance of domestic courts that falls outside their function.

The differences between the second part of Article 2 of the European Convention and Article 4 of the American Convention: while both of them are about the protection of the right to life, one of the main discrepancies can be found in how these courts decide in their judgments related with the violation of the right to life by security forces of the state parties in these norms. The ECtHR has three possibilities when force can be used, and as a result, the death of a person is justified, while the IACtHR does not have this in the letter of its Convention. Nevertheless, in several cases, the IACtHR has used the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials of the OHCHR. That includes self-defence and other situations as possibilities for killing a person, which is justified. However, the diverse articles led both courts to reach different decisions in cases involving riots and

insurrections. The IACtHR has condemned the state for the disproportionate use of force by security forces in cases of riots. In contrast, the ECtHR has primarily not condemned the state in cases of insurrections because it did not find a violation of the security forces ' principles of proportionality and absolute necessity.

The Basic Principles and Code of Conduct for Law Enforcement of the OHCHR, quoted by the IACtHR, in their case law, are more concerned with protecting the life of any individual, even if that means killing someone to protect a person. Article 2.2 of the ECtHR shows that it is possible to kill a person, and it is justified if they are lawfully detained or causing a riot or insurrection. In my opinion, this does not mean that the ECtHR cares less about life; as was stated before, its leading standard is the protection of life, but it has the possibility of justifying the death of persons. Furthermore, as mentioned above, both courts are separated from the letters of these instruments in the event that an offender escapes. They have considered in their case law that if the person poses no threat to the life of other individuals, it is preferable to lose the capture but not kill the offender. Additionally, it is crucial to consider the crime this person has committed. Both courts have established this standard, although it is relevant to the person's crime.

The ECtHR acknowledges that investigations may be complex and delayed in circumstances involving violence, armed conflict, or insurgency. In this context, more effective investigative measures may need to be revised. Nevertheless, even in difficult security conditions, all reasonable steps must be taken to ensure an effective, independent investigation under Articles 2 of the ECHR and 4 of the American Convention on Human Rights.

The ECtHR determines that in the case of forced disappearances, the applicant government argues, first and foremost, that the missing persons must be presumed to be still alive unless there is clear evidence to the contrary. In my opinion, this has been one of the biggest obstacles in the investigation of forced disappearances because the state was complicit in the kidnapping and detention of persons. The IACtHR adds its concern about the impossibility of victims' relatives going to the judiciary to ask for help finding their loved ones because the judicial power was also complicit in the forced disappearances. This court demonstrates that the whole apparatus of the state was complicit in this crime.

The ECtHR emphasises the use of force and the treatment of a person in the custody of the security forces. Meanwhile, the IACtHR has a comprehensive set of standards

regarding forced disappearances, considering that this court has more than 80 cases of this crime, whereas the ECtHR has 27. I believe that the latter court still has essential standards for this crime. However, the case law of the IACtHR has been developed over many years and has been quoted by the ECtHR.

The ECtHR considers that there should be some form of effective official investigation when individuals have been killed because of the use of force by agents of the state. An essential standard for this court is that the state must ensure, at its disposal, an adequate response so that the legislative and administrative framework set up to protect the right to life is implemented correctly. Furthermore, it determines that the obligation imposed in Article 2.1. extends to a positive obligation on states to protect the right to life by law. Article 2.2 is not exclusively concerned with intentional killing resulting from the use of force by agents of the state, but also aims to protect the right to life. Any breaches of that right must be repressed and punished. Moreover, this investigation highlights the lack of hierarchical or institutional connection and practical independence, as what is at stake is public confidence in the state's monopoly on the use of force. This court determines that, to maintain public confidence in the adherence to the rule of law, a prompt response by the authorities in investigating the use of lethal force is generally regarded as essential. In my view, this demonstrates the tribunal's concern in maintaining citizens' assurance of the rule of law and the public's confidence in the state. The ECtHR finds that for an investigation to be effective, the persons responsible for carrying it out must be independent and impartial from those implicated in the events of the case in question. This is an essential standard for achieving justice, and the court repeats this in most cases involving violations of the right to life. This court details every step and characteristic of the investigation that the IACtHR does not establish in its standards.

The IACtHR states that reparation of material and immaterial damage should be considered, with the latter not merely as pecuniary compensation, but as moral damage that encompasses the suffering and distress of the victim, if they are alive, and their relatives or loved ones.

The ECtHR also examines the intention of the state agent when using lethal force, the importance of addressing these cases, and the purpose of the members of the security forces. This court determined that it was detached from the agent acting in the moment's heat and thought that using force was necessary. For this, the court established that it should take a subjective approach, as if it were in the place of the state agent.

The IACtHR is more worried about the possibility of impunity because of the laws of amnesty that have been spread all over Latin America after the dictatorships of the seventies and eighties. This court also establishes the necessity of an effective and impartial investigation when the state's security forces have violated the right to life. Still, in my opinion, the ECtHR has further developed this standard.

The ECtHR considers the maximum relevance of an operation's planning, control, and execution, including the use of force, and repeats this principle several times in its standards.

The IACtHR attaches utmost importance to the violations of the rights of the relatives and people close to the victim, who also suffered from the death of the victim.

One of the main differences between the courts is that the ECtHR has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation of Article 2 on that account) and the fact that on several occasions a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint to its substantive aspect. In my view, the ECtHR establishes that the procedural obligation has its distinct scope of application and operates independently from the substantive limb of Article 2. The court acknowledges this essential standard and differs from its American homologue. The IACtHR does not formally distinguish between these two aspects of the right to life in its judgments. The IACtHR also investigates the procedural aspect of the right to life, but it does it together with the substantive aspect, both condemned and absolved (typically condemned). The ECtHR judges the elements differently, which often results in one facet being condemned (normally the procedural) and the other not (usually the substantive). There have been instances where both have been condemned or absolved, but the two aspects are always considered separately.

7. Conclusion

As I focused on the study, it became increasingly apparent to me that the courts share a similar focus on protecting the right to life in a democratic society. Furthermore, despite their differences, they apply humanitarian standards to protect the lives of persons.

I believe that this work is essential for jurists who must decide on the violation of the right to life by security forces, as well as academics studying the application of the European and American Conventions on Human Rights, or the right to life or human rights in general, or those analysing the ECtHR and the IACtHR. Additionally, it is helpful for those people interested in human rights in general. This research presents a

comprehensive examination of the right to life and the standards used to protect it. Furthermore, this study examines how human rights courts have addressed these violations, condemning and punishing the culpable state and, if applicable, finding the state not guilty, specifying the arguments that justify their decisions in this manner.

I believe it is necessary to determine if the work's theoretical and practical aspects are connected. According to the theoretical part, there is a dialogue between the IACtHR and the ECtHR. In the practical part, finding a conciliation between these tribunals concerning the standards analysed is possible. These courts quote each other and are attentive and concerned about what the other tribunal establishes to apply in their decisions, or decide to take a different approach. Furthermore, the theoretical part considers that these courts are independent of the other tribunals in international law because there is no hierarchical order. This horizontality allows these courts to decide according to their conventions on human rights on their own terms.

Moreover, in my view, the theoretical part suggests that the ECHR and the American Convention on Human Rights share several similarities, considering that the latter was modelled after the former, which was adopted sixteen years earlier. However, each court applies and interprets the provisions of its conventions in accordance with the characteristics and specific situations of the continent where it has jurisdiction. There are also some differences, such as those shown by the articles that protect the right to life.

In the theoretical part, the origins of the conventions on human rights, including the right to life, are determined. In practice, the human rights conventions of these tribunals have followed the first notions about human rights and have established a complete collection of these in their instruments.

In summary, I believe the theoretical part follows the practical part. Many authors have stated their thoughts based on the work of these courts. There are many opinions about the courts, such as how the ECtHR has been a pioneer in human rights and how the IACtHR has followed its example. Some authors have highlighted the exceptional work of the latter, emphasising the reparations for victims and their relatives. Still, these do not contradict the practical part because these courts effectively decide, as the authors' views establish, by the specific characteristics of their respective continents.

Furthermore, in my opinion, they share an overall dialogue regarding the similarities or differences between the courts. There are many debates about how they decide, primarily focusing on the differences between Article 2 and Article 4, as well as the procedural and substantive aspects of the decision-making process. However, they have the respect and

protection of the right to life as a basis in a democratic society. Furthermore, they share many similarities, such as the subsidiary character with domestic courts, the use of lethal force as a last resort, the state's role in investigating, trying, and punishing perpetrators of right-to-life violations by security forces, and the necessity of efficient, impartial, and thorough investigations into these crimes. Additionally, in my view, both courts consider an essential standard to define the existence of both positive and negative obligations of the state. Moreover, even the ECtHR has quoted the IACtHR in cases of forced disappearances, considering that the latter court was the first to adjudicate this crime and had extensive experience, as seen in Velásquez Rodríguez v. Honduras—judgment of 29 July 1988. Additionally, the IACtHR cited the ECtHR in cases where the European tribunal was an expert in the use of force, such as the Case of McCann and others v. the United Kingdom, judgment of 27 September 1995. These courts can learn a great deal from each other and, fortunately, are in constant dialogue about their decisions in case-law, which can also support the development of their jurisprudence and standards.

Moreover, in my view, it is necessary to determine whether one of these courts has a more effective method of handling these cases or a more efficient decision-making process. I believe that in cases of forced disappearance, the IACtHR has been more efficient when deciding these cases because the ECtHR has not determined several facts, such as the notable systematic practice of forced disappearances that was taking place in Turkey. This latter tribunal has often failed to condemn this crime, despite the evidence available, and a pattern should have been considered. Additionally, the IACtHR has extensive case law regarding forced disappearances and has developed essential standards that have become paradigmatic and are used as background in other international courts. Nevertheless, the ECtHR has consistently condemned the procedural duty in these crimes, considering that the state failed to investigate these violations. Furthermore, I believe the ECtHR is very detailed in its case law regarding the investigation steps and characteristics. Additionally, this court consistently emphasises the necessity of an effective and impartial inquiry. This tribunal has also established unique standards for planning and controlling operations related to the deployment of security forces.

As I analysed the cases and the literature, I realised that slightly changing their decision-making process could have improved some aspects of the two tribunals' practice. These are some suggestions for these courts.

1- I believe the IACtHR could benefit from how the ECtHR separates the procedural and substantive aspects of the right to life. This would make the judgment more comprehensive.

2- The Basic Principles and the Code of Conduct on the use of force and firearms in Law Enforcement of the OHCHR are fundamental for judging the use of force. However, it would be beneficial to revise Article 4 of the American Convention on Human Rights by removing the five paragraphs that explain the death penalty (which has been abolished by Protocol of San Salvador, A-53 of the American Convention) and incorporating some key characteristics of these international instruments. In this way, Article 4 will be more complete concerning the use of lethal force. Furthermore, the ECtHR could benefit from incorporating these instruments into its judgments, as they establish a unique protection of the right to life when force deployment is necessary.

3- I believe the IACtHR could also add more to their decisions in the field of the importance of the control and planning of the security forces operations that are characteristic of the ECtHR and apply the possibility of a subjective position about the person belonging to the security forces who is facing a difficult situation when deciding about the life of the suspect, their life and the life of their partners. Additionally, the IACtHR could draw on the vast experience of the ECtHR in dealing with the use of force and police actions in its judgments. The ECtHR examines the actions of security forces in relation to human rights in contemporary times, as well as the unpredictability of human behaviour.

4- In my view, in the case of the ECtHR, considering the approach *"pro homine"* of the IACtHR would be a good idea. This tribunal could interpret Article 2 in a different light, being less strict with the permission to use force in an action lawfully taken to quell a riot or insurrection, because, as shown in the cases of the IACtHR, there are sometimes attacks on inmates that demand some defence.

5- Moreover, it would be beneficial for the ECtHR to draw on examples from the IACtHR regarding the regulations of amnesty or indulgence that undermine justice, as they are unable to judge the perpetrators of these crimes.

6- If the ECtHR is presented with a new case, it could benefit from the extensive case law on forced disappearances of the IACtHR, as the latter court has been exhaustive in this area.

7- The IACtHR should adopt compulsory jurisdiction to ensure compliance with its provisions in all American states and promote the advancement of human rights in the Americas.

In summary, I believe there is no best method among the courts. They have made fair judgments about the proof they have considered and the context in which they have decided on these cases. It is essential to highlight that the number of cases these courts receive every year is substantial, making it challenging for one court to rule over all these cases. Under these conditions, they thoroughly and carefully examine each case to ensure a fair judgment. Each decision takes considerable time due to the overwhelming number of cases. The IACtHR and the ECtHR have reasonable and humanitarian standards for their choices. They could borrow more characteristics from one to another to make better judgments. Although they can make mistakes, they are excellent courts that decide over the essential categories of rights in the world: human rights and, overall, the right to life. They should continue punishing the states that allow violations of these latter rights in any possible aspect.

8. Articles related to this subject

- Kaliman, Sabrina Judith. "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". In: *Comparative Law Working Papers.* Volume 6. No. 1. 2022. P. 1-17.

- Kaliman, Sabrina Judith. "Inter-American Court of Human Rights and the European Court of Human Rights: Categories of Violation of the Right to Life by Security Forces". In: Bándi, Gyula; Pogácsás, Anett (szerk.) Law in Times of Crisis - Jog válság idején: Selected doctoral studies - Válogatott doktorandusz tanulmányok. Budapest, Magyarország: Pázmány Press (2023) 534 p. pp. 97-115. 19 p.

- Kaliman, Sabrina Judith. "The Development and Evolution of the Right to Life in The European Court of Human Rights". In: *Comparative Law Working Papers.* Volume 8, No. 1, 2024. P. 1-28.

- Kaliman, Sabrina Judith. "The Development and Evolution of the Right to Life in the Inter-American Court of Human Rights". In*: Belügyi Szemle,* 2024/12. P. 2375-2397. 2024. DOI: 10.38146/BSZ-AJIA. 2024.v72. i12.pp2375-2397

- Kaliman, Sabrina Judith. "Forced Disappearances in the European Court of Human Rights". To be published in: *Belügyi Szemle,* Academic Journal of Internal Affairs, issue 2026/1.