

# The role of the Inter-American Court of Human Rights in protecting economic rights

André Nunes  
Fernanda Antunes Lopes  
Marcelo Eustáquio Gonçalves Cesário

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## **ABSTRACT:**

*The purpose of this paper is to discuss the role of the Inter-American Court of Human Rights in the protection of economic rights, modernly understood as human rights. It discusses the possibility of international judicial protection of these rights within the scope of the countries that are signatories to the American Convention on Human Rights - the Pact of San José da Costa Rica - through its respective international jurisdiction body, the Inter-American Court of Human Rights. The court has proved itself to be the competent judicial body to judge violations of economic rights within the inter-American microsystem, acting as a mechanism for judicial control over some of the undesirable effects of the phenomenon of globalization on the economy and the legal system.*

**KEYWORDS:** Economic rights; globalization; Inter-American Court of Human Rights.

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## I. INTRODUCTION

The creation of the so-called "international courts or tribunals", especially from the second half of the 20th century onwards, was an alternative found by the United Nations (UN), in that historical period, for the effective protection of human rights in a context that went beyond the domestic sphere, restricted until then to the traditional notion of state sovereignty, contributing to the movement to "internationalize" them, after the serious atrocities committed during World War II (PIOVESAN, 1996). Although various theories seek to explain why countries ended up adopting an international human rights regime, MORAVCSIK (2003) believes that the fact is that the concern to recognize and make effective the protection of human rights found in "international jurisdictions" a plausible instrument for its operationalization.

At the same time as this movement to internationalize human rights took place, the world also witnessed another parallel movement of internationalization that affected and continues to affect markets, the economy and various other aspects of society, which emerged especially in the 1970s and, in Brazil, more strongly from the 1990s onwards, known as "globalization", with obvious impacts on the law (FARIA, 2004).

Considering the impact of the phenomenon of globalization on the economy and the legal system, as well as considering that the contemporary and universal concept of human rights also encompasses economic rights, we discuss the possibility of international judicial protection of these rights within the scope of the signatory countries of the American Convention on Human Rights - Pact of San José da Costa Rica through its respective international jurisdiction body - the Inter-American Court of Human Rights.

To this end, the aim is to demonstrate the scope of international protection of human rights beyond the traditional recognition of rights to freedom, to include economic rights, and to understand the role of the Inter-American Court of Human Rights as a legitimate body of international jurisdiction, able to exercise judicial control over the issue.

The aim of this article is to discuss the role of the Inter-American Court of Human Rights in the protection of economic rights, modernly understood as human rights. The focus of our argument is based on the contemporary and universal conception of human rights and the historical and deontological conception proposed by Norberto Bobbio.

In order to achieve our objective, the article is organized into five parts, the first of which is this brief introduction. The second section describes the phenomenon of economic globalization. The third part presents relevant concepts about the universal conception of human rights. In section four, we explore issues relating to the Inter-American Court of Human Rights. Finally, the fifth section presents the final considerations.

## II. THE PHENOMENON OF ECONOMIC GLOBALIZATION

Globalization, a "complex and multifaceted" phenomenon, in the words of FARIA (2004), is a concrete reality that cannot be ignored and to which most developing countries are bowing in their eagerness to conquer markets and consolidate their economies.

On the other hand, at the same time as it makes incredible market and economic integration possible, causing goods, services and wealth to circulate at an unprecedented speed, breaking with the traditional parameters of time and space, globalization also brings effects that states and the legal system need to deal with, such as:

The dissolution of the economic importance of geographical borders, the weakening of governments' ability to tax and regulate, the relativization of the most traditional legal concepts - such as sovereignty, legality, hierarchy of laws - among countless others (FARIA, 2004, p.10).

Precisely for this reason, globalization has important impacts on the legal system and, in the case of economic globalization, on economic rights.

In this vein, ROBINSON (1999) stresses the importance of preserving economic rights in the countries and communities participating in and/or integrating the phenomenon, also on an international scale, following the internationalization movement.

"To take the example of children again, one economist has noted that "*Trade and exchange rate policies may have a larger impact on children's development than the relative size of the budget allocated to health and education. An incompetent Central Bank can be more harmful to children than an incompetent Ministry of Education.*" (ROBINSON, 1999, p. 8)

For STIGLITZ (2002), globalization in itself is neither good nor bad, but it is something that needs to be shaped so that it serves everyone's interests. This statement highlights the collective responsibility to ensure that global economic interdependence benefits all nations and individuals equally, reinforcing the importance of economic rights from an international perspective.

In short, the protection and promotion of economic rights at the international level are fundamental to building a fairer and more prosperous world. These rights not only strengthen the basis for economic development, but also ensure that globalization is a positive force that benefits humanity as a whole.

According to PIOVESAN (2004), in this context of globalization, the incorporation of the human rights agenda by non-state actors is fundamental, including international financial agencies, regional economic blocs and the private sector.

International financial agencies must take into account the human dimension of their activities and the major impact of economic, fiscal, monetary and exchange rate macro-policies on local economies. Despite being linked to the United Nations system as specialized agencies, the International Monetary Fund and the World Bank, for example, do not have a human rights policy. (PIOVESAN, 2004)

With regard to regional economic blocs, paradoxes can be observed between the process of economic globalization and actions aimed at strengthening democracy and human rights, as a way of giving ethical and moral support to the new international order, without the agenda actually being included in the economic globalization process.

Finally, with regard to the private sector, it is equally important to point out its social responsibility, especially with regard to multinational companies, which are undeniably the major beneficiaries of the globalization process.

## III. THE UNIVERSAL CONCEPTION OF HUMAN RIGHTS

The contemporary universal conception of human rights, adopted and defended by (PIOVESAN, 1996, p.41), understands human rights "*as an indivisible, interdependent and interrelated unit, in which the values of equality and freedom are combined and completed*".

Complementing this concept, Luño apud (PIOVESAN, 1996) believes that human rights are no longer divided into "generations", but represent:

(...) the whole set of faculties and institutions which, in each historical moment, make concrete the demands of human dignity, freedom and equality, which must be positively recognized by legal systems, at national and international level. (LUÑO, apud PIOVESAN, 1996, p.29).

Bobbio's (1992) historical and deontological conceptions of human rights should not be forgotten. According to the Italian jurist, the Universal Declaration of Human Rights, of December 10, 1948, is the greatest and only historical proof that the values surrounding human rights have been founded, and this proof consists precisely in the general consensus on a given system of values. Thus, there is no longer any need to worry about the foundation of human rights, but about their effective protection.

At the same time as he sees the Universal Declaration of Human Rights as a true historical milestone in the universalization and grounding of human rights, (BOBBIO, 1992) recognizes the difficulty of effectively protecting these so-called "universal" rights in an international sphere precisely because of the absence of a monopolizing force such as the Judiciary in national states, and here it could certainly be argued that international

Courts and Tribunals would be able to fill this gap. From another point of view, (BOBBIO, 1992) reaffirms his historical conception of human rights, claiming that even the Universal Declaration - the greatest icon of "*general consensus*" around generally accepted values - was only so at a given historical moment, reflecting nothing more than the aspirations, needs and interests of that period, within certain economic and social conditions. And he goes on to say that, of course, the changes that have taken place in these latter conditions will inevitably lead to the emergence of new needs and interests, and consequently new demands, just as is currently the case with economic rights in the face of the globalized economy.

### **INTERNATIONAL PROTECTION OF ECONOMIC RIGHTS**

Based on this concept, economic rights are now able to be included in an international human rights regime and its entire framework of protection, especially in the face of the impacts caused by economic globalization. This has led to the need to redefine the role of the state, reiterating its responsibility to implement these rights, which are no longer just a moral obligation but a legal imposition, since the International Covenant on Economic, Social and Cultural Rights. With regard to the need to implement these fundamental rights, Eide and Rosas (1995) understand that:

Taking economic, social and cultural rights seriously implies, at the same time, a commitment to social integration, solidarity and equality, including the issue of income distribution. Social, economic and cultural rights include the protection of vulnerable groups as a central concern. [...] Fundamental needs should not be conditional on the charity of state programs and policies, but should be defined as rights. (EIDE & ROSAS (1995, p. 17-18).

EIDE (1995) also warns that where income and opportunities are distributed equitably, there is less need for public policies that generate expenditure for the state, as individuals are in a better position to look after their own interests.

(...) ways can and must be found for the state to ensure respect for and protection of economic, social and cultural rights, in order to preserve the conditions for a relatively free market economy. Government action must promote social equality, tackle social inequalities, offset the imbalances created by markets and ensure sustainable human development. The relationship between governments and markets must be complementary. (EIDE, 1995, p. 383).

On the other hand, when there is great inequality in income distribution, the exercise of economic rights, as well as social and cultural rights, requires greater state action, based on affirmative and/or redistributive measures, such as a progressive taxation model, which, paradoxically, end up being better accepted in more egalitarian societies.

And here comes an important discussion about the efficiency of such policies and the ideal degree of state intervention in the economy. Fonseca (1994) summarizes the issue in the following terms:

The problem is that both a weak and ineffective state and an excessively strong and voracious state undermine the private sector's confidence in the legal minimum of the market. The former because it is incapable of guaranteeing justice and protecting agents from the predatory advances of others; and the latter because it itself ends up becoming the great threat of predatory invasion, reaping the results of the private sector's productive activities for itself through taxes and contributions. Worse than one or the other, only a perverse combination of both: the state that combines inoperativeness in the administration of justice with irresponsible voracity on the business side. Unfortunately, this monstrous hybrid - a kind of anemic leviathan - is a stubborn plague that several economies in Latin America and Africa can't seem to get rid of. (FONSECA, 1994, p. 14)

Similarly, economic rights consider the interaction between individuals and society, arguing that the state and institutions must ensure that everyone has access to fair economic conditions and equal opportunities. In this way, it is possible to explore the complexity of individual and social relationships in the economic context, challenging prejudices and encouraging reflection on how to balance individual and collective interests in a society.

State intervention in the economy is a complex issue that has been the subject of debate throughout history. According to SICSÚ (2020), referencing John Maynard Keynes, one of the most influential economists of the 20th century, the government must do on its own what is not done, or not done properly, by individuals, either because of its complexity or size. This thought highlights Keynes' view that state intervention is necessary to correct market failures and guarantee economic stability.

On the other hand, Friedrich Hayek, a proponent of the classical liberal school of thought, expressed concerns about excessive state intervention. He stated that the greatest mistake we can make is to do evil in the name of good. This phrase highlights Hayek's concern about the risks of excessive government intervention, which could result in economic distortions and restrictions on individual freedom.

State intervention can take many forms, from regulations to fiscal and monetary policies. Milton Friedman, winner of the Nobel Prize for Economics, argued that one of the great fallacies is to think that things are done by the state when they are done by regulations. They are done by entrepreneurs who are being forced to

act in different ways. This statement highlights the importance of carefully evaluating the methods used by the state to intervene in the economy, seeking efficiency and minimizing distortions (FERREIRA, 2009).

In short, state intervention in the economy is a complex issue that requires a delicate balance. While some defend intervention as necessary to correct market imperfections, others warn of the potential risks associated with an excessively intrusive state. Finding the right balance is crucial to promoting a healthy and sustainable economic environment.

#### **IV. THE INTER-AMERICAN COURT OF HUMAN RIGHT**

Economic rights at the international level play a crucial role in promoting global development and well-being. As stated by Sen (1999), winner of the Nobel Prize in Economics, freedom is central to both human flourishing and economic development. This quote highlights the interconnection between individual freedom and economic progress, emphasizing that the full realization of economic rights is essential for building prosperous societies.

In addition, nations recognize the importance of economic rights through international instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly, is a significant example. This covenant highlights the importance of international cooperation to ensure the right of every individual to an adequate standard of living, including food, housing and health care.

The Inter-American Human Rights System (IAHRS), made up of the Inter-American Court of Human Rights (IACHR) and the Inter-American Commission on Human Rights (IACoMHR) emerged in the post-World War II scenario, in reaction to the conflicts and exterminations experienced during that period, and in a context of the evolution of international law, in a complementary way within the Universal System of Protection that began with the UN Declaration of 1948.

The IACHR has contributed to the spread of the idea that the state is not the only subject of international law, and that the individual is also a subject of rights on an international scale. This dynamic has led to a revision of the concept of state sovereignty, allowing, at a certain point, international intervention in the domestic sphere in the name of protecting human rights.

The normative instrument that gave the Inter-American Commission a comprehensive institutional structure, the American Convention on Human Rights, came into force in 1978, when its jurisdictional body, the Inter-American Court of Human Rights, was also established, based in San José de Costa Rica.

On September 25, 1992, Brazil ratified the American Convention on Human Rights (Pact of San José de Costa Rica), but only on December 10, 1998, did it recognize the contentious jurisdiction of the Inter-American Court of Human Rights.

LEAL and MASSAÚ (2021) point out that the human rights protection regime in force on the inter-American scene has a wide-ranging structure, even pioneering in some respects, such as the fact that the American Convention on Human Rights was the first international human rights treaty to make direct reference to the protection of Economic, Social and Cultural Rights.

In this regard, it is important to note that the Court, in addition to its contentious jurisdiction, also has advisory jurisdiction.

As for contentious jurisdiction, this Court can hear, prosecute and judge disputes concerning the application of the provisions of the American Convention on Human Rights. Thus, allegations of violation by one of its member states of the rights protected by the normative instrument can be examined by the Court, whose decisions are binding, and non-compliance is subject to the application of the penalties provided for in the Convention.

With regard to advisory jurisdiction, the member states of the Organization of American States can consult on the interpretation of the American Convention on Human Rights itself, or of other treaties that concern the subject of its jurisdiction. In addition, upon request, the Court can give an opinion on the compatibility between a country's domestic laws and other international human rights treaties.

Recently, relevant concern about the international economy has arisen due to the situation marked by the coronavirus pandemic (COVID-19), causing the Inter-American Court to take a close look at the policies adopted by member states, given the evident conflict between the fundamental rights to life and the economy.

The social distancing measures adopted worldwide have had devastating effects on the local and global economy, which are still unmeasurable, but which have been necessary in the process of combating contamination. In this context, the Inter-American Court was concerned about policies that prioritized the economy to the detriment of health, but also about the need for international cooperation mechanisms aimed at alleviating the harmful effects of the devastated economy, especially in underdeveloped countries.

In this regard, in an interview with the Paraguayan newspaper *La Nación*, Judge Ricardo César Pérez Manrique of the Inter-American Court of Human Rights said:

We must also emphasize the need to preserve sources of employment today, and take into account the weaknesses of the States. There are many people in all the countries of our region who do not have a formal job,

but go out day by day to get what they need to survive. In view of this, the States, through general policies, must guarantee that the essential basic needs are satisfied, in order to sustain the human principle of a dignified life. Faced with the alleged dichotomy between economy or health, one cannot be sustained without the other, one depends absolutely on the other. (MANRIQUE, 2020)

Also on the subject, Amorim (2009) points out that:

States are "responsible for maintaining progress in the realization of human rights even in adverse political and economic conditions, such as the current economic crisis, and cannot be indifferent to humanitarian crises involving serious and systematic violations of international norms on the subject (AMORIN, 2009, p.75)

Indeed, the IACHR plays a fundamental role in safeguarding economic rights. By interpreting the American Convention on Human Rights, it establishes guidelines that have a direct influence on international economic issues and, by ruling on cases involving violations of these rights, the Court contributes to the consolidation of principles aimed at guaranteeing decent living conditions, fair work and adequate welfare standards.

## V. FINAL CONSIDERATIONS

Considering the contemporary and universal conception of human rights adopted by PIOVESAN (1996), as well as the historical and deontological conception of human rights proposed by BOBBIO (1992), the inclusion of economic rights in the list of so-called fundamental rights is incontrovertible.

In this context, analyzing the importance of international protection of economic rights stands out as an imperative in the search for fairer and more equitable societies. The interconnection between human rights and economic issues shows that effective protection cannot do without a global approach. Ultimately, the defense of these rights not only strengthens the foundations of social justice, but also paves the way for sustainable and inclusive development on a global scale.

Of particular importance is the role played by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is crucial in protecting and promoting fundamental rights at a global level. By recognizing the interdependence and indivisibility of human rights, the ICESCR establishes comprehensive standards that transcend national borders, affirming everyone's right to work, education, health and an adequate standard of living, as well as encouraging states to adopt progressive measures for the full realization of these rights, as a vital international commitment to building fairer societies.

The Inter-American Court of Human Rights, as an autonomous body of the Organization of American States (OAS), is a court capable of acting as a judicial body competent to judge violations of economic rights within the inter-American microsystem, contributing to the construction and implementation of Economic, Social and Cultural Rights in the signatory countries of the American Convention on Human Rights - Pact of San José de Costa Rica - and ensuring that the public policies of the states are aligned with the principles of equity, social justice and economic inclusion.

The limitations inherent in this research make room for future in-depth research in some respects. Firstly, the time span of this analysis could be extended to capture changes over time and offer a more dynamic view of the phenomenon studied. In addition, a more detailed investigation into regional or cultural variations could provide valuable insights into the generalizability of the results. These points suggest potential directions for subsequent studies, contributing to the expansion of knowledge.

Nonetheless, this article has achieved the objectives initially set out, since it has discussed the role of the Inter-American Court of Human Rights in protecting economic rights, which are modernly understood as fundamental rights, and which, given the phenomenon of globalization, must be protected on an international scale

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