Conventionality Control in the Inter-American Court of Human Rights

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ABSTRACT: Amid a scenario of heterogeneous legal and social realities, there are multiple contradictions and divergences regarding the interpretation and harmonization of human rights as internationally established in state normative systems. In this context, this study aims to analyze the development of the theory of conventionality control within the Inter-American framework, emphasizing the perspective of the Inter-American Court of Human Rights (IACtHR) to contribute to studies and debates on the effectiveness of international human rights norms in the Americas. For this purpose, qualitative legal research was conducted through bibliographic and documentary analysis, with particular attention to the jurisprudence of the IACtHR, in order to describe the theoretical and practical aspects of conventionality control. It was concluded that conventionality control is relevant and has the potential for the effective and correct application and protection of human rights, both internationally and domestically.
Keywords: Conventionality control; Inter-American Court of Human Rights; Human Rights.

1. Introduction

From the perspective that human rights represent a minimum set of indispensable rights for a dignified human life, they are understood to have a universal nature, being constructed through the legal formulation of international human rights treaties and the evolutionary interpretations of existing rights by international courts.

In this logic, Borges and Piovesan (2019) argue that, within the context of the Inter-American regional system, there is an inevitable dialogue between national and international jurisdictions, requiring State Parties to observe the conventionality block in harmony with their internal constitutional provisions, so that the corpus iuris of the Inter-American system is projected onto national constitutions.

However, the process of relativizing state sovereignty and strengthening human rights has not eliminated the contradictions and divergences on the subject. Thus, conflicts remain regarding the various interpretations of the scope and meaning of each right, generating a reaction to the internationalist interpretation of human rights (Ramos, 2022).

Despite the existence of traditional solutions to navigate these conflicts, such as the principle of the most favorable interpretation for the individual and the pro homine principle, Ramos (2022) asserts that disagreements persist regarding both norms and the local and international interpretations of human rights. Therefore, the adoption of conventionality control is necessary as "the contemporary stage for assessing the differences between internationalist and nationalist interpretations of rights" (Ramos, 2022, p. 173).

In the same vein, Mazzuoli (2018) advocates that conventionality control must be implemented as a tool capable of ensuring the necessary effectiveness in applying international human rights norms within States, thus fostering a dialogue between the various existing legal orders. Conflicts may arise between national and international frameworks (Santos et al., 2024), especially when considering a multicultural perspective on rights (Outeiro, 2024).

Ultimately, the goal is to protect rights, always considering the most vulnerable in social relations (Outeiro & Nascimento, 2020; Outeiro, Oliveira & Nascimento, 2016), whether at the domestic or international level.

In this sense, conventionality control has emerged as a crucial element in the interpretation and application of human rights both at the international and state levels.

2. General Aspects Of Conventionality Control

Valerio Mazzuoli, when discussing conventionality control, emphasizes that:

> "To speak of conventionality control means speaking of the material vertical compatibility of domestic law norms with international human rights conventions in force in the State. It also means, in particular, referring to the judicial technique (both international and domestic) of vertically harmonizing laws with such international precepts" (Mazzuoli, 2018, p. 23).

Guerra (2023) argues that it is a legal mechanism that enables dual control of the verticality of a country's internal norms concerning both the Constitution and international treaties, thereby expanding the effectiveness of international legislation and resolving conflicts between domestic and international law.

Furthermore, complementing this theory, Ramos (2019) maintains that conventionality control involves analyzing the compatibility of both the actions and omissions of a State in relation to treaties, customs, general principles of law, unilateral acts, and binding international resolutions.

In this context, the technique of conventionality control is exercised through the imposition of an international norm over a domestic one, as well as by analyzing the effectiveness of the more beneficial paradigm norm and the interpretation the IACtHR gives to this norm (Mazzuoli, 2018).

The expression "control of conventionality" emerged in the early 1970s, within the scope of the French Constitutional Council, in Decision No. 74-54 DC, of January 15, 1975, which discussed whether this Court had jurisdiction to examine the conformity of the recently approved, at the time, law on voluntary termination of pregnancy with the European Convention on Human Rights (ECHR) (1950). Judging the case, the Council recognized the insufficiency of constitutionality control for the resolution and decided that it was not competent to control the preventive conventionality of domestic laws, only being legitimized, according to art. 61 of the French Constitution, to analyze the aspect of the constitutionality of domestic laws (Mazzuoli, 2018). Despite being the jurisdiction of origin for the exercise of compatibility of domestic laws with international human rights treaties, the European system does not impose on all judges the obligation to carry out control in relation to international standards, and the High Courts of the States may, under the terms of Protocol No. 16 of amendment to the ECHR, only formulate consultations with the European Court of Human Rights on specific cases involving human rights matters (Marón; Rocha, 2017).

Therefore, it should be noted that the mechanism of control of conventionality, despite having domestic and European origins, was widely developed and used in the inter-American system, through the activity of the Inter-American Court (Mazzuoli, 2018).

In this sense, Borges and Piovesan (2019) argue that, due to the adoption of constitutions with open constitutional clauses, the strengthening of the fight for rights and justice, as well as the construction of the autonomy of the International System for the Protection of Human Rights (ISPDH), the interrelationship between human rights and constitutional rights is unique and visible in the context of the Americas, revealing the recent effort of the Inter-American Court to promote the realization of human rights, through the inter-American corpus iuris.

The theory of conventionality control, in the SIPDH, finds normative foundation mainly in articles 1.1, 2 and 29 of the American Convention on Human Rights (ACHR). By virtue of article 1.1, all States have the obligation to respect and guarantee the human rights of those under their jurisdiction, without any discrimination; while art. 2 determines that, in the event that human rights are not guaranteed by means of legislative or other provisions, States are committed to adopting the necessary measures, in accordance with their constitutional norms

and the provisions of the ACHR; while art. 29 stipulates the prohibition of any form of interpretation that may eliminate or harm the rights and freedoms guaranteed by it, and it is necessary for the authorities to understand them in the most comprehensive and beneficial way possible.

Therefore, as a result of the conventionality block, States have the obligation to observe, in good faith, the norms - and the interpretation of these norms, of human rights, both those of the inter-American scope and the universal system, with the possibility that, in the event of non-compliance, the State may be held internationally liable to the injured party (Mazzuoli, 2018).

As a result, conventionality control produces several effects, both at the international and domestic levels. From a general perspective, the judgments of the Inter-American Court of Human Rights have binding effects on all signatory States of the ACHR, directly and obligatorily for the condemned countries and indirectly for the other States Parties. And, from an internal perspective, the consequence of declaring a norm unconventional implies its invalidity and inapplicability (Mazzuoli, 2018).

In this logic, Ramos (2023) argues that the control of conventionality has two effects, negative or positive. In the negative effect, there is the destructive or healing control of conventionality, in which the invalidation of national norms and decisions that disagree with international norms is carried out; while in the positive effect, the appropriate interpretation of national norms is carried out so that they are in compliance with international norms, in a constructive control of conventionality.

For Eduardo Ferrer Mac-Gregor (2016), considering the aforementioned aspects, the idea of conventionality control is developed with the purpose of achieving three main objectives: preventing the application of standards incompatible with human rights, strengthening the subsidiary nature of the SIPDH and serving as a bridge for dialogue between national courts and the Inter-American Court of Human Rights.

Mazzuoli (2018), in addition to substantive law standards, also covers the effects of conventionality control for procedural standards, giving this the name conventional due process. Through this, the conformity of the international or domestic procedure to the commands of the human rights treaties in force in the State is carried out. Accordingly, conventional due process must be respected by international protection bodies in a sound and conventionalized international process; as well as it must be observed by State bodies within the scope of judicial and administrative processes, so that the duty to be guided, in procedural

terms, by domestic procedural legislation and international human rights treaties to which the State is a party is imposed (Mazzuoli, 2018).

And, in this way, when used appropriately, conventionality control can contribute significantly to the coherent, harmonious and orderly application of the State's domestic law and international sources (Bazán, 2017).

For Ramos (2022), as well as for Bazán (2017), Mazzuoli (2021) and Mac-Gregor (2016), conventionality control can be carried out in two areas: a) at the international level, of a concentrated nature, by international bodies for the protection of human rights, which, in the case of the Americas, are the Inter-American Court of Human Rights in jurisdictional activity, and the Inter-American Commission on Human Rights (IACHR) in non-jurisdictional activity; and b) at the domestic level, of a diffuse nature, which can be carried out by local judges in jurisdictional activity and by other public authorities in non-jurisdictional activity.

Given these considerations, the analysis now turns to conventionality control within the Inter-American regional framework.

3. Control Of Conventionality at the Inter-American Regional Level

In the SIPDH, the control of conventionality is carried out through the actions of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court. While the IACHR acts in a quasi-judicial manner, the Inter-American Court, which is highlighted in this study, exercises jurisdiction through the judgment of specific cases whose judgments create precedents that should influence the political and legislative aspects of the countries of the Americas.

In this sense, Mazzuoli (2018) argues that the obligation to control the compatibility of laws with international human rights treaties in the inter-American system, since it refers to the entry into force of the ACHR in 1978, is the responsibility of an international human rights court, despite the expression “control of conventionality” having been coined years after the beginning of the activities of the Inter-American Court.

As a result, the control of conventionality has been put into practice since the beginning of the contentious activities of the Inter-American Court of Human Rights, implicitly, both from the perspective of the compatibility of domestic law with the ACHR and from the perspective of holding the State accountable for failure to comply with the duty to adopt the provisions of domestic law that ensure the human rights recognized by the ACHR (Bazán, 2017).

Thus, the first outlines of the control of conventionality in the inter-American system were constructed by the jurisprudence of the Inter-American Court of Human Rights in cases such as: the Velásquez Rodríguez v. Honduras case, decided in 1988, in which the Court controlled domestic standards in relation to arts. 1.1, 4, 5 and 7 of the ACHR and took the position that any form of power that violates human rights is unlawful; the El Amparo v. Venezuela case, decided in 1996; and the Genie Lacayo vs. Nicaragua case, decided in 1997, in which the Inter-American Court declared its jurisdiction to control the compatibility of laws with concrete effects in the face of the ACHR (Moreira, 2017).

There is also evidence of the first contours of the control of conventionality in the case "La Última Tentación de Cristo" (Olmedo Bustos y otros) vs. Chile, decided in 2001, where the Inter-American Court declared the incompatibility of a constitutional norm with the American Convention, ruling, for the first time, the unconventionality of a norm originating from a Constitution (Inter-American Court, 2001); and in the case Trujillo Oroza vs. Bolivia, decided in 2002, the Inter-American Court recognized the state's omission in relation to the lack of classification of the crime of forced disappearance of persons, expanding the analysis beyond acts of commission (Inter-American Court, 2002).

Thus, it is clear that the Inter-American Court has always analyzed the normative compatibility of state law with the norms of international human rights law, even without expressly mentioning the term "control of conventionality" (Moreira, 2017).

Despite this, the expression "control of conventionality" was cited for the first time within the inter-American system by Judge Sergio García Ramírez in the Myrna Mack Chang v. Guatemala case, sentenced in 2003, in which the international responsibility of the State for the murder of Myrna Mack Chang by military agents during an internal armed conflict marked by selective extrajudicial executions, as well as the lack of investigation and punishment of those responsible, was discussed. In the decision of the Inter-American Court, it was established that the State is fully liable before the Court, and that the obligation to act in accordance with a control of conventionality cannot be segmented to just one or some of the State bodies (Inter-American Court, 2003).

The Inter-American Court continued to use the theory of conventionality control as the basis for its decisions in cases such as the Tibi vs. Ecuador case, from 2004, where the thesis was upheld that the role of the Inter-American Court is similar to that played by constitutional courts, in the sense that the international human rights court decides on the conventionality of domestic acts (Inter-American Court, 2004); the López Álvarez vs. Honduras case, from 2006,

in which Judge García Ramírez defends the expression "conventionality control" as the definition of the examination of conventionality between state law and the American Convention (Inter-American Court, 2006a); and the Vargas Areco vs. Paraguay case, from 2006, in which the task of the conventionality judge was highlighted as competent to exercise conventionality control, without this necessarily implying the Court's role as a fourth instance (Inter-American Court, 2006b). Thus, until that moment, the jurisdictional control of conventionality, that is, that carried out by judges, was carried out only by the Inter-American Court of Human Rights, with the possibility of national control of conventionality only in the case of conviction of the State in international human rights proceedings.

However, in the Almonacid Arellano y otros v. Chile case, also with a ruling in 2006, the Inter-American Court of Human Rights understood that the Judiciary of the States themselves must exercise control of conventionality primarily and, in addition to observing international treaties, must also consider the interpretation that the Inter-American Court gives to this treaty, given its role as the ultimate interpreter of the ACHR, thus extending the obligation to carry out control of conventionality beyond the activity of the SIPDH (Inter-American Court of Human Rights, 2006c).

The Inter-American Court of Human Rights understood that although the Judiciary of the States is obliged to apply the provisions of domestic law, it is also subject to the ACHR and, therefore, must exercise, primarily, the control of conventionality of domestic norms both in relation to the Convention and to the interpretation of the Inter-American Court (Inter-American Court of Human Rights, 2006c).

In this sense, Mazzuoli (2018, p. 36) emphasizes that this judgment

> [...] formally inaugurated the doctrine of internal control of conventionality within the American Continent. It was also the decision from which it was verified that it was the Court's intention that the diffuse control of conventionality be recognized as a matter of international public order.

The Inter-American Court, from that moment on, expanded its jurisprudence in the sense that the control of conventionality must be exercised primarily by the Judiciary of the States so that international norms are interpreted in accordance with the understanding of the Inter-American Court and with international standards relating to the matter discussed (Mazzuoli, 2018).

And, since the consolidation of conventionality control in the case law of the Inter-American Court of Human Rights, several decisions have been issued, in an asymmetric manner, that have developed, expanded and defined the fundamental precepts of the analysis of vertical compatibility between domestic standards and the conventionality block (Moreira,

2017), which will be briefly analyzed below in order to understand the evolution of the contours of conventionality control within the scope of the Inter-American Court of Human Rights.

It is important to point out that only the cases judged by the Inter-American Court on the subject of conventionality control, both international and national, were analyzed, whose judgments were issued between 2006 and 2022, all published on the Court's official website.

In the Trabajadores Cesados del Congreso (Aguado Alfaro y otros) v. Peru case, sentenced in 2006, where the issue of judicial guarantees and protection was discussed in relation to the State's responsibility for the dismissal of 257 workers from the Congress of the Republic during the 1992 coup d'état, authorized by Decree, and for the lack of due process to question the situation, the Inter-American Court of Human Rights emphasized the duty of the domestic Judiciary to monitor, ex officio, the conventionality of its laws in relation to the human rights treaties in force in the State and condemned the Republic of Peru for violating Articles 1, 2 and 8 of the ACHR (Inter-American Court of Human Rights, 2006d).

In 2007, the Inter-American Court of Human Rights ruled on the Boyce et al. v. Barbados case, which refers to the State's responsibility for the generic imposition of the death penalty on victims convicted of homicide, who were imprisoned in degrading conditions for 10 years before being hanged, based on domestic legislation. In its ruling, the Inter-American Court affirmed the unconventionality of the interpretation that the Judicial Committee of the Privy Council of Barbados had of art. 26 of the Constitution of Barbados, which prevented those convicted of homicide from having access to an effective remedy, an understanding that did not take into account international standards for the imposition of the death penalty, and reaffirmed the duty of state courts to conventionally monitor even constitutional norms that violate human rights. Thus, the State was found guilty of violating articles 1, 2, 4 and 5 of the American Convention.

In the Heliodoro Portugal v. Panama case, sentenced in 2008, the State's responsibility for forced disappearance and extrajudicial execution during the military dictatorship was discussed, as well as for the failure to investigate, punish the guilty and provide adequate reparations to the families. In this sense, the Inter-American Court highlighted the need to ensure that the control of conventionality has a useful effect so that domestic rules or practices do not prevent or diminish its incidence and declared the unconventionality of the State's omission, so that it condemned the Republic of Panama not only in Articles 1, 5, 7, 8 and 25 of the ACHR, but also in Articles 1, 2 and 3 of the Inter-American Convention on the Forced Disappearance of Persons (1994) and in Articles 1, 6 and 8 of the Inter-American Convention

to Prevent and Punish Torture (1985), thus carrying out the control of conventionality beyond the Pact of San José de Costa Rica (Inter-American Court, 2008).

After that, in 2009, when judging the case Radilla Pacheco v. v. Mexico, whose discussion focused on the State's responsibility for the forced disappearance of Rosendo Radilla Pacheco by the country's Armed Forces in 1994 and the failure to investigate and punish those responsible, the Inter-American Court of Human Rights reaffirmed the need to interpret national law ex officio in accordance with the ACHR and the case law on the subject, expanding the duty of control by taking into account the understandings established by it, and condemned the State for violating Articles 1, 3, 4, 5, 7, 8 and 25 of the ACHR and Article 25 of the Inter-American Convention on the Forced Disappearance of Persons (1994) (Inter-American Court of Human Rights, 2009).

The Inter-American Court of Human Rights ruled on the Cases of Comunidad Indígena Xákmok Kásek v. Paraguay (2010), Fernández Ortega y otros v. Mexico (2010), Rosendo Cantú y otra v. Mexico (2010) and Ibsen Cárdenas and Ibsen Peña v. Bolivia (2010), reiterating its position on the jurisdiction of the Judiciary to carry out the control of conventionality. And, in the Vélez Loor v. Panama case, also sentenced in 2010, it extended the jurisdiction to exercise the control of conventionality ex officio to any bodies of the powers endowed with jurisdictional function (Moreira, 2017).

In the same year, when judging the Gomes Lund y otros ("Guerrilha do Araguaia") vs. Brazil case, related to the State's responsibility for the forced disappearance, carried out by the Brazilian Armed Forces between 1972 and 1975, of at least 354 victims and the lack of investigation of such facts resulting from the 1979 Amnesty Law, the Inter-American Court reaffirmed the possibility of examining the control of conventionality through the analysis of internal processes, including decisions of higher courts, and declared the unconventionality of the Brazilian amnesty law. In this sense, the Inter-American Court condemned the Federative Republic of Brazil for violating articles 1, 2, 3, 4, 5, 7, 8, 13 and 25 of the ACHR (Inter-American Court, 2010). However, in a "completely asymmetrical" manner (Moreira, 2017, p. 265), the Court returned to the position that the Judiciary was the only one competent to carry out, ex officio, the control of conventionality between domestic norms and the American Convention.

In 2011, the Gelman v. Uruguay case was tried, which was processed due to the State's responsibility for the forced disappearance of Marcelo Ariel Gelman Schubaroff and María Claudia García Iruretagoyena de Gelman, who was pregnant at the time of the events, during

the coup d'état that occurred between 1973 and 1985 and for the suppression and substitution of the identity of María Macarena Gelman García (the couple's daughter), facts that were never investigated and punished until the Case was submitted to the Inter-American Court due to the Law on Expiration of the State's Punitive Claims, which granted amnesty for crimes committed by the military regime. In it, the Inter-American Court returned to the understanding that any public authority must exercise control of conventionality, not only the Judiciary, and condemned the State based on articles 1, 2, 3, 4, 5, 7, 8, 17, 20 and 25 of the ACHR (Inter-American Court, 2011). From that moment on, there were asymmetries in the understanding of the Inter-American Court regarding who is responsible for exercising internal control of conventionality, and in the cases of Chocrón v. Venezuela (2011), López Mendoza v. Venezuela (2011), Fontevecchia y D'Amico v. Argentina (2011), Atala Riffo y niñas v. Chile (2012), Furlan y familiares v. Argentina (2012) and Masacres de Río Negro v. Guatemala (2012) understood that only judges and justice bodies would be obliged to exercise it (Moreira, 2017).

However, in the Massacres de El Mozote y lugar aledaños vs. El Salvador case, sentenced in 2012, regarding the State's responsibility for the massive, collective and indiscriminate execution of approximately one thousand people in December 1981 by the Armed Forces of El Salvador in seven locations in the Morazán region, the Inter-American Court of Human Rights once again considered that the competence to exercise ex officio conventionality control lies with both the Judiciary and all powers and bodies of the State (Inter-American Court of Human Rights, 2012).

After that, the Inter-American Court continued to decide in a discordant manner on the duty to exercise conventionality control, sometimes recognizing it as an obligation for all State bodies and powers, and sometimes considering it as an exclusive attribution of the Judiciary (Moreira, 2017).

On this subject, the Inter-American Court understood that control should be carried out ex officio only by the State Judiciary and by bodies linked to the administration of justice in the cases of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala (2012), Mendoza et al. v. Argentina (2013), J. v. Peru (2013), Personas Dominicanas y haitianas expulsadas v. República Dominicana (2014), Norín Catrimán et al. (Leaders, Members and Activists of the Mapuche Indigenous People) v. Chile (2014), Comunidad Garifuna de Punta Piedra and its members vs. Honduras (2015), López Lone and others vs. Honduras (2016), Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal vs Guatemala (2016) and Chinchilla Sandoval vs. Guatemala (2016).

Regarding the duty to carry out conventionality control attributed to all powers and bodies of the State, there are the cases of Masacre de Santo Domingo v. Colombia (2013), Liakat Ali Alibux v. Surinam (2014), Rochac Hernández et al. v. El Salvador (2014), Ruano Torres et al. v. El Salvador (2015), García Ibarra et al. v. Ecuador (2015), Andrade Salmón v. Bolivia (2016) and Trabajadores de la Hacienda Verde v. Brazil (2016).

In the period from 2012 to 2016, the Inter-American Court of Human Rights also ruled on other topics related to conventionality control in addition to jurisdiction, among which the Liakat Ali Alibux v. Surinam case deserves special mention due to its thematic relevance.

In the Liakat Ali Alibux v. Suriname case, sentenced in 2014, the issue of state liability was addressed due to the lack of a suitable appeal against the criminal sentence imposed on Liakat Ali Alibux in a case governed by the Law on the Prosecution of Officials Holding Public Offices in relation to facts that occurred before this law came into effect and due to the restriction on the victim from leaving the country due to proceedings against him. In its ruling, the Inter-American Court ruled that although all State bodies and powers are required to review domestic standards based on the ACHR, there is no imposition of a specific model for reviewing conventionality or constitutionality, and that States must, therefore, establish their own review systems in light of domestic law and the available remedies arising therefrom, and condemned the Republic of Suriname for violating Articles 8 and 22 of the ACHR (Inter-American Court, 2014).

In 2018, the Herzog et al. v. Brazil case, which refers to the international responsibility of the Federative Republic of Brazil for the arbitrary detention, torture and death of Vladimir Herzog during the military dictatorship, as well as for the lack of investigation, trial and punishment of those responsible, promoted by the internal Amnesty Law. In it, the Inter-American Court of Human Rights understood that the Brazilian State did not properly exercise the control of conventionality by having closed the investigative procedures and highlighted that the Supreme Federal Court took a different position from the ACHR when declaring the validity of the interpretation of the Amnesty Law, when the Court had already declared it unconventional in the aforementioned Gomes Lund v. Brazil Case. In addition, it condemned the State for violating articles 1, 2, 5, 8 and 25 of the ACHR and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, once again carrying out the control of conventionality with another parametric standard in addition to the American Convention (Inter-American Court of Human Rights, 2018). In 2019, the Inter-American Court of Human Rights returned to the discussion, in the Cases under judgment, on who is responsible for

carrying out the diffuse control of conventionality, maintaining, in a more uniform manner, the understanding that all State authorities must carry out the examination of the compatibility of acts of commission or omission with the SIPDH, ex officio. This can be seen in the Cases of Gorigoitía v. Argentina (2019), National Association of Retired and Retired Employees of the National Superintendence of Tax Administration (ANCEJUB-SUNAT) v. Peru (2019) and Azul Rojas Marín et al. v. Peru (2019). This position was maintained in the Cases of Petro Urrego v. Colombia (2020), Urrutia Laubreaux v. Chile (2020), Acosta Martinez et al. v. Argentina (2020) and Fernández Prieto y Tumbeiro v. Argentina (2020), with the Court having decided in a dissenting manner only in the Olivares Muñoz y otros v. Venezuela case (2020), followed, days later, by the judgment of the Casa Nina v. Peru case, in which the Inter-American Court reiterated what it had previously decided regarding the mandatory control of conventionality extending to all powers and agents linked to the State.

In 2021, the Inter-American Court of Human Rights ruled on the Guachalá Chimbo y otros v. Ecuador case, which concerned the State's responsibility for the disappearance of Luis Eduardo Guachalá Chimbo, a person with a mental disability, from a public psychiatric hospital in 2004, where he was admitted without consent. This fact was insufficiently investigated and handled by the domestic authorities, and the only judicial proceeding was a habeas corpus that, despite being correctly judged in light of the conventionality block, was not complied with and ended up being archived. In its judgment, the Court understood that although the decision of the Constitutional Court was conventional, there was no execution or effective appeal and, therefore, condemned the Republic of Ecuador based on articles 3, 4, 5, 7, 11, 13, 24 and 26 (Inter-American Court of Human Rights, 2021). Also in 2021, the Inter-American Court of Human Rights reaffirmed that the duty to carry out conventionality control is incumbent on all State powers and bodies in the cases of Los Buzos Miskitos (Lemoth Morris et al.) v. Honduras, Barbosa de Souza et al. v. Brazil and Vera Rojas et al. v. Chile.

Following this, in 2022, the Inter-American Court of Human Rights, when judging the cases of Federación Nacional De Trabajadores Marítimos y Portuarios (Femapor) v. Perú, Moya Chacón et al. v. Costa Rica, Habbal et al. v. Argentina and Baraona Bray v. Chile, once again emphasized that all State authorities must exercise conventionality control based on the principles of the Convention and the Court's own jurisprudence, ex officio.

After that, in the Benites Cabrera y otros vs. Peru case, sentenced in 2022, whose theme was the State's responsibility for the arbitrary dismissal of 184 employees of Congress, dissolved in 1992 during the government of Alberto Kenya Fujimori during a personnel

rationalization program, as well as the existence of regulations that prohibited them from filing any action for compensation for the dismissal, the Inter-American Court reinforced the idea of a comprehensive hermeneutics of the ACHR so that one human right is never invoked to the detriment of another and highlighted the importance of the jurisprudence of the Inter-American Court itself, in addition to domestic and international standards on human rights, for the dynamics of conventionality control and the consequent improvement of jurisprudential dialogue, as well as condemning the Republic of Peru based on articles 1, 8, 23, 25 and 26 of the ACHR.

Finally, considering the scope of this research, in 2022, the Inter-American Court of Human Rights considered the Tzompaxtle Tecpile y otros v. Mexico case, which dealt with the State's responsibility for the detention of three indigenous people in 2006, carried out without a court order, under suspicion of links to organized crime. The Inter-American Court of Human Rights highlighted, in light of the Vienna Convention on the Law of Treaties (1969), that a State cannot allege provisions of domestic law, even if they are constitutional, to fail to comply with obligations arising from international human rights treaties, and the interpretation developed on them, nor to fail to carry out an adequate control of conventionality. Furthermore, the court reiterated the thesis that decision-making criteria and protection mechanisms, whether national or international, can be shaped and adapted to each other, in a dynamic and complementary system of control of the conventional obligations of States to respect and guarantee human rights, and condemned the United Mexican States based on Articles 1, 2, 5, 7, 8 and 25 of the ACHR.

4. Conclusions

Based on the considerations made, it is clear that conventionality control is a tool for implementing international human rights standards in States that are subject to their jurisdiction, which consists, in short, of analyzing the compatibility of domestic acts of commission or omission in light of these international standards, and can be exercised at the international and domestic levels.

In the inter-American case, the Inter-American Court has been responsible for developing and applying the jurisdictional control of conventionality and, in this activity widely carried out in recent years, has pointed out several characteristics of conventionality control,

among which the following were highlighted: a) conventionality control was exercised implicitly since the beginning of the contentious activities of the Inter-American Court, and the expression "conventionality control" was used in the inter-American sphere for the first time in the Myrna Mack Chang v. Guatemala case; b) as of 2006, the obligation of States to exercise conventionality control ex officio was formally inaugurated; c) decisions by the domestic Judiciary may be declared unconventional, in order to ensure that the control of conventionality has a useful effect; d) the control of conventionality is applicable to both acts of commission and omission; e) the control of conventionality must take into account not only the ACHR, but also all human rights treaties relevant to the matter in question; f) the case law of the Inter-American Court must be taken into account when exercising the control of conventionality, for a consistent interpretation of human rights standards; g) despite some asymmetries, the prevailing understanding of the Inter-American Court is that all authorities, powers and bodies of the State have the duty to carry out the control of conventionality; h) there is no specific model for exercising the control of conventionality, and States must carry it out in accordance with domestic law and international law; i) the SIPDH has a complementary role, and States must exercise the control of conventionality primarily; j) it is not enough for the courts to decide based on the conventionality block, but the effectiveness of decisions taken based on the control of conventionality is also necessary; k) that it is not possible to allege provisions of domestic law for States to fail to comply with the rules of international human rights law; l) that the control of conventionality must be exercised through a comprehensive hermeneutics of international human rights standards, in a way that is dynamic and complementary.

In this way, it was possible to analyze the development of the theory of the control of conventionality in its theoretical and practical aspects, in order to perceive its relevance and potential for the effective and correct application and protection of human rights, both at the international and domestic levels.

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