

II

The Court: Structure and Attributions



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A. Creation

The Inter-American Court of Human Rights (hereinafter, “the Court”) was formally established on September 3, 1979, following the entry into force of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) on July 18, 1978. The Court’s Statute (hereinafter, “the Statute”) establishes that it is an “autonomous judicial institution” mandated to interpret and apply the American Convention.



B. Organization and Composition

As stipulated in Articles 3 and 4 of its Statute, the seat of the Court is in San José, Costa Rica. It is composed of seven judges, nationals of Member States of the Organization of American States (hereinafter “the OAS”).¹

1 American Convention on Human Rights, Article 52. Statute of the Inter-American Court of Human Rights, Article 4.

The judges are elected by the States Parties to the American Convention, by secret ballot, and by the vote of an absolute majority during the OAS General Assembly immediately before the expiry of the terms of the outgoing judges. Judges are elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights. In addition, they must possess the qualifications required for the exercise of the highest judicial functions, in accordance with the law of the State of which they are nationals or of the State that proposes them as candidates.²

Judges are elected for a term of six years and may be re-elected only once. Judges whose terms have expired shall continue to serve with regard to the “cases they have begun to hear and that are still pending judgment and, to this end, they will not be replaced by the judges newly elected by the OAS General Assembly.³ The President and the Vice President are elected by the judges themselves for a two-year period and may be re-elected.⁴

In 2023, Judge Ricardo C. Pérez Manrique, an Uruguayan national, continued as President. Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, assumed the Vice-presidency. Consequently, the composition of the Court for 2023 was as follows (in order of precedence):⁵

- ▶ Judge Ricardo C. Pérez Manrique (Uruguay), President
- ▶ Judge Eduardo Ferrer Mac-Gregor Poisot (Mexico), Vice President
- ▶ Judge Humberto Antonio Sierra Porto (Colombia)
- ▶ Judge Nancy Hernández López (Costa Rica)
- ▶ Judge Verónica Gómez (Argentina)
- ▶ Judge Patricia Pérez Goldberg (Chile); and
- ▶ Judge Rodrigo Mudrovitsch (Brazil).

During the 163rd Regular Session of the Inter-American Court of Human Rights, Judge Nancy Hernández López, a Costa Rican national, was elected as its new President. During the same session, Judge Rodrigo Mudrovitsch, a Brazilian national, was elected as the new Vice President. The President and Vice President elected will begin their term of office on January 1, 2024, and will conclude their term on December 31, 2025.

The judges are assisted in the exercise of their functions by the Court’s Secretariat. The Registrar of the Court is Pablo Saavedra Alessandri (Chile), and the Deputy Registrar is Romina I. Sijniensky (Argentina).

2 Idem.

3 Idem.

4 Statute of the Inter-American Court of Human Rights, Article 12.

5 According to Article 13(1) and (2) of the Statute of the Inter-American Court of Human Rights, “Elected judges shall take precedence after the President and Vice-President according to their seniority in office” and “Judges having the same seniority in office shall take precedence according to age.”



States Parties⁶

In 2023, of the 35 OAS Member States, the following 20 have accepted the Court's contentious jurisdiction: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay.

⁶ On May 26, 1998, Trinidad and Tobago presented an instrument denouncing the American Convention on Human Rights to the Secretary General of the Organization of American States (OAS). Pursuant to Article 78(1) of the American Convention the denunciation took effect one year later, on May 26, 1999. Also, on September 10, 2012, Venezuela presented an instrument denouncing the American Convention on Human Rights to the OAS Secretary General.

Regarding Venezuela, various cases are under the Court's consideration. Through these cases, the controversy arises as to whether the Court is competent to consider the facts that occurred after the denunciation was lodged.

CONTENTIOUS FUNCTION OF THE COURT



C. | Functions

According to the American Convention, the Court exercises three main functions: (i) the contentious function; (ii) the function of ordering provisional measures, and (iii) an advisory function.

Contentious function:

In cases submitted to its jurisdiction, this function enables the Court to determine whether a State has incurred international responsibility for the violation of any of the rights recognized in the American Convention or in any other human rights treaty applicable under the inter-American system and, if so, to order the necessary measures of reparation to redress the consequences of the violation of such rights.

There are two stages to the procedure followed by the Court to decide contentious cases submitted to its jurisdiction: a) the contentious stage, and (b) the stage of monitoring compliance with judgment.

A. Contentious Stage

This stage has six phases:

- 1. Initial briefs;**
- 2. Oral phase or public hearing and reception of statements;**
- 3. Final written arguments of the parties and observations of the Commission;**
- 4. Evidentiary procedures;**
- 5. Deliberation and delivery of the judgment, and**
- 6. Interpretation requests.**

a. Initial written phase

A1) Submission of the case by the Inter-American Commission on Human Rights⁷

The proceedings begin with the submission of the case by the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the Commission”). To ensure the appropriate processing of the case, the Court’s Rules of Procedure require that the brief presentation of the case include, *inter alia*:⁸

⁷ According to Article 61 of the American Convention, States also have the right to submit a case to be decided by the Court, in which case the provisions of Article 36 of the Court’s Rules of Procedure will be observed.

⁸ Rules of Procedure of the Inter-American Court of Human Rights, Article 35.

- ▶ a copy of the report issued by the Commission under Article 50 of the American Convention,
- ▶ a copy of the complete case file before the Commission, including any communications subsequent to the report under Article 50 of the Convention;
- ▶ the evidence offered, indicating the facts and arguments to which it refers, and
- ▶ the reasons that led the Commission to present the case.

Once the case has been presented, the President of the Court makes a preliminary examination to verify that the essential requirements for its presentation have been fulfilled. If this is so, the Secretariat notifies the case⁹ to the defendant State and to the presumed victim, to his/her representatives, or to the inter-American defender, if applicable. A judge rapporteur is now appointed to the case, in chronological order, and, with the support of the Court's Secretariat, the rapporteur examines the respective case.

A2) Designation of an inter-American Public Defender:

When a presumed victim does not have legal representation in a case and/or lacks financial resources and indicates his/her wish to be represented by an Inter-American defender, the Court will inform the AIDEF General Coordinator of the Inter-American Association of Public Defenders (AIDEF) so that, within 10 days, the latter may appoint the defenders who will assume the legal representation and defense. The AIDEF General Secretariat will select two defenders and one substitute¹⁰ from among the Inter-American public defenders to represent the presumed victim before the Court. The chosen defenders then receive the documentation relating to the submission of the case to the Court, so that they may assume the legal representation of the presumed victim before the Court from then on and throughout the processing of the case.

A3) Presentation of the brief with pleadings, motions, and evidence by the alleged victims:

Once the case has been notified to the parties, the alleged victims or their representatives have a non-renewable period of two months following the date of notification of the presentation of the case and its annexes to submit their autonomous brief with pleadings, motions, and evidence (also known as "the pleadings and motions brief"). This brief must include, inter alia:¹¹

- ▶ a description of the facts within the factual framework established by the Commission;
- ▶ the evidence offered, in the correct order, indicating the facts and arguments to which it relates; and
- ▶ the claims, including those relating to reparations and costs.

A4) Presentation of the answering brief by the respondent State

From the time it receives the pleadings and motions brief and its attachments, the State has two months to present its answer to this brief and to the brief submitting the case presented by the Commission and the alleged victims or their representatives. Its answering brief must indicate, inter alia:

9 Ibid. Articles 38 and 39.

10 Article 12 of the "Standardized Regulations for the actions of the AIDEF before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights," approved on June 7, 2013, by the AIDEF Board, and entered into force, pursuant to Article 27 of these regulations, on June 14, 2013.

11 Ibid. Article 40.

- ▶ whether it files preliminary objections;
- ▶ whether it accepts the facts and the claims or contests them;
- ▶ the evidence offered, in the correct order, indicating the facts and the arguments to which it relates;
- ▶ the legal arguments, the observations on the reparations and costs requested, and the pertinent conclusions; and
- ▶ the possible proposals of expert witnesses, indicating the purpose of their opinions, and accompanied by their curriculum vitae.

This answering brief is then forwarded to the Commission and the alleged victims or their representatives.¹²

A5) Presentation of the brief with observations on preliminary objections filed by the State:

If the State files preliminary objections, the Commission and the alleged victims or their representatives can submit their respective observations within 30 days of receiving notice of the objections.¹³

A6) Presentation of the brief with observations on the State's acknowledgment of responsibility:

If the State makes a partial or total acknowledgment of responsibility, the Commission and the representatives of the presumed victims are granted time to forward any observations they deem pertinent.

A7) Possibility of taking other measures in the context of the written proceedings:

Following submission of the principal briefs, and before the oral proceedings start, the Commission, the presumed victims or their representatives, and the respondent State may ask the President to take other measures in the context of the written proceedings. If the President considers this pertinent, he/she will establish time frames for the presentation of the respective documents.¹⁴

A8) Reception of amicus curiae briefs:

Any interested person or institution may submit amicus curiae briefs to the Court. These are briefs prepared by third persons who are not parties to a case, and who voluntarily offer their opinion on some aspect of the case in order to collaborate with the Court in its deliberations. In contentious cases, this type of brief can be presented at any moment of the proceedings, but no more than 15 days after the public hearing. In cases in which no public hearing is held, such briefs must be sent within 15 days of the order setting a deadline for forwarding the final arguments. Amicus curiae briefs may also be submitted in proceedings on monitoring compliance with judgment and on provisional measures.¹⁵

12 Ibid. Article 41.

13 Ibid. Article 42(4).

14 Ibid. Article 43.

15 Ibid. Article 44.

b. Oral phase or public hearing

The oral phase or public hearing begins with the submission by the parties and the Commission of the final lists of deponents. When these lists have been received, they are forwarded to the other party so that the latter may forward any observations or objections it deems pertinent.¹⁶

The Court or its President calls for a hearing in an order in which any observations, objections, or recusals presented by the parties are taken into consideration if this is deemed necessary. This order defines the purpose and the method of providing the testimony of each declarant,¹⁷ which may be offered orally or in form of an affidavit. The hearings are public unless the Court considers it desirable that they be totally or partially private.¹⁸

The public hearing begins with a presentation by the Commission in which it explains the grounds for the report under Article 50 of the Convention and for the submission of the case to the Court, as well as any other matter that it considers relevant for the case.¹⁹ The judges of the Court then hear the presumed victims, witnesses, and expert witnesses convened by the above-mentioned order, who are examined by the parties and, if appropriate, by the judges. The Commission may question certain expert witnesses in exceptional circumstances under the provisions of Article 52(3) of the Court's Rules of Procedure; that is, when the inter-American public order of human rights is notably affected and when their opinion refers to an issue contained in an expert opinion offered by the Commission. After this, the President gives the floor to the parties so that they may present their arguments on the merits of the case. Subsequently, the President grants them the opportunity for a reply and a rejoinder. Once the arguments have concluded, the Commission presents its final observations, and then the judges pose their concluding questions to the representatives of the State, of the alleged victims, and of the Inter-American Commission.²⁰ This hearing usually lasts a day and a half and is live streamed via the Court's social networks.

The recordings of the public hearings can be found [here](#).

c. Phase of final written arguments of the parties and final written observations of the Commission

During this phase, the presumed victims or their representatives, and the respondent State present their final written arguments. The Commission presents final written observations if it deems this pertinent.²¹

d. Evidentiary procedures

Pursuant to Article 58 of its Rules of Procedure, the Court may, "at any stage of the proceedings," require the following evidentiary procedures, without prejudice to the arguments and documentation submitted by the parties:

- ▶ obtain, on its own motion, any evidence it considers helpful and necessary;
- ▶ require the submission of any evidence or any explanation or statement that, in the Court's opinion, may be useful;
- ▶ request any entity, office, organ, or authority of its choice to obtain information, express an opinion, or issue a report or opinion on any given point; and
- ▶ commission one or more of its members to take steps to advance the proceedings, including hearings at the headquarter of the Court or elsewhere.

16 Ibid. Article 46.

17 Ibid. Article 46.

18 Ibid. Article 15.

19 Ibid. Article 51.

20 Ibid. Article 51.

21 Ibid. Article 56.

e. Phase of deliberation and delivery of judgment

During the phase of deliberation and delivery of judgment, the judge rapporteur of each case, supported by the Court's Secretariat and based on the arguments and evidence provided by the parties, presents a draft judgment to the full Court for its consideration. The judges then deliberate on this draft judgment. During these deliberations, the draft is discussed and approved until the operative paragraphs of the judgment are reached; these are then voted on by the Court's judges. In some cases, the judges submit their dissenting or concurring opinions. After the Court has delivered the judgment, it is published and notified to the parties.

f. Requests for interpretation and rectification

The Court's judgments are final and non-appealable.²² Nevertheless, the parties and the Commission have 90 days in which they may request clarification of the meaning or scope of the judgment in question. Pursuant to Article 67 of the Convention, the Court decides this matter by means of an interpretation of judgment. The interpretation may be made at the request of any of the parties, provided it is submitted within 90 days of notification of the judgment.²³ In addition, the Court may, on its own motion, or at the request of one of the parties submitted within one month of notification of the judgment, rectify any obvious clerical errors or errors in calculation. If a rectification is made, the Court will notify the Commission and the parties.²⁴

g. Stage of Monitoring Compliance with Judgment

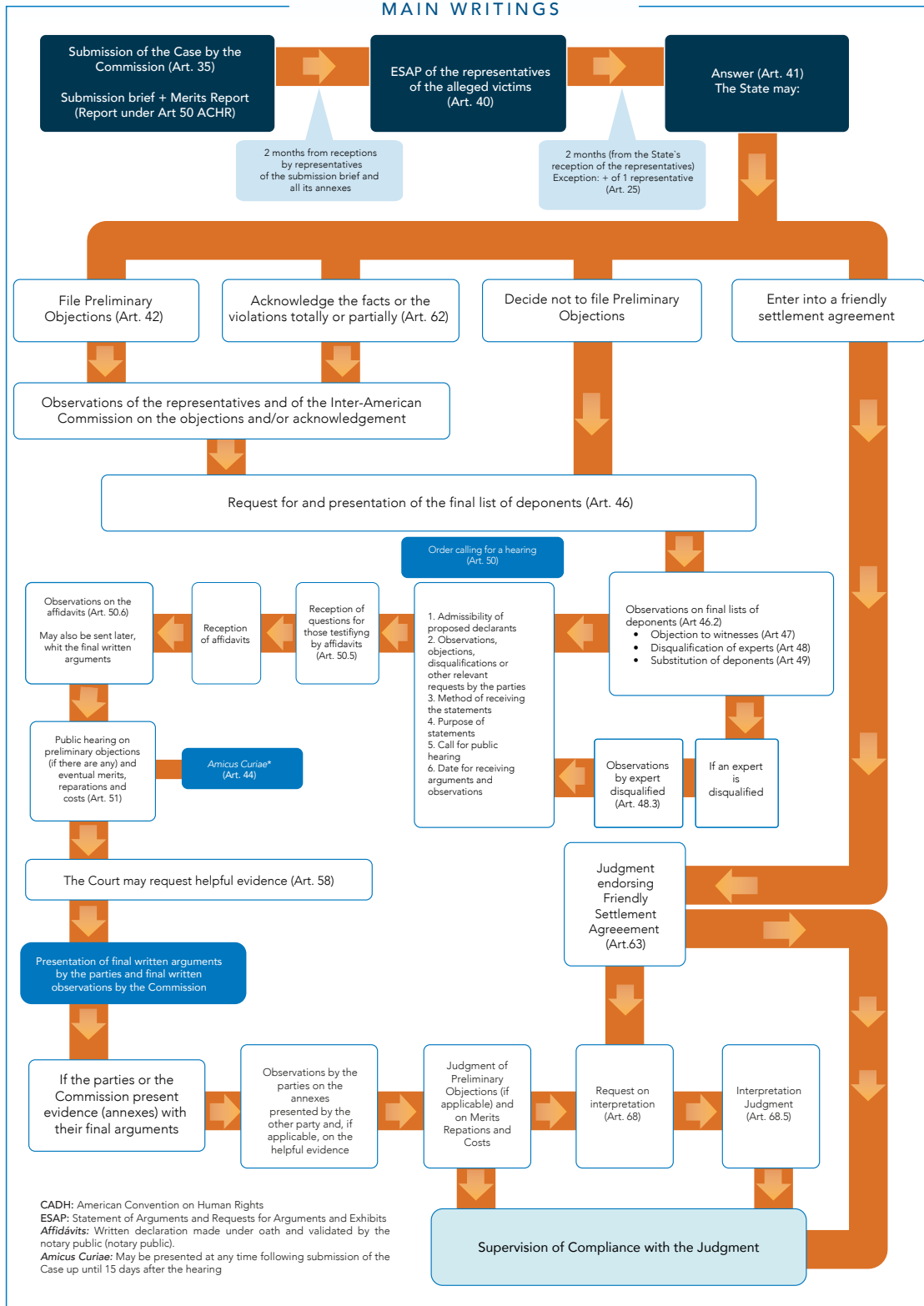
The Inter-American Court is responsible for monitoring compliance with its judgments, pursuant to Articles 33, 62(1), 62(3), and 65 of the Convention, Article 69 of the Court's Rules of Procedure, and Article 30 of its Statute. The purpose of monitoring the compliance of judgments is to ensure that the reparations ordered by the Court in each specific case are executed and fully complied with. See, Section V for a detailed analysis of the Court's activity in the area of monitoring compliance with judgments.

22 American Convention on Human Rights, Article 67.

23 *Idem*.

24 Rules of Procedure of the Inter-American Court of Human Rights, Article 76.

OUTLINE OF THE PROCEDURE BEFORE THE INTER-AMERICAN COURT



Function of ordering Provisional Measures

The Court orders provisional measures of protection in order to guarantee the rights of specific individuals or groups of individuals who are in a situation of: a) extreme gravity; b) urgency and, c) at risk of suffering irreparable harm.²⁵ These three requirements must be met for the Court to grant such measures.

The Inter-American Commission may request provisional measures at any time, even if the case has not yet been submitted to the Court's jurisdiction. In addition, the representatives of the presumed victims can request provisional measures, provided they are related to a case that the Court is examining, either at the merits stage or at the stage of monitoring compliance with the judgment. The Court may also order such measures *ex officio* at any stage of the proceedings.

These measures are monitored through the presentation of reports by the State, the corresponding comments by the beneficiaries or their representatives and by the Commission, and also by requesting reports from other sources of information. In addition, the Court or its President may decide to call for a public or private hearing to verify the implementation of provisional measures, and even order any procedures that are required, such as on-site visits to verify the actions that the State is taking or to request information from different state entities.

Advisory Function



This function allows the Court to respond to requests by OAS Member States or organs for the interpretation of the American Convention or other treaties for the protection of human rights in the Americas. Furthermore, at the request of an OAS Member State, the Court may issue its opinion on the compatibility of domestic norms with the instruments of the inter-American system.²⁶

The main purpose of the advisory opinion is to assist Member States of the inter-American system to comply

²⁵ American Convention on Human Rights, Article 63(2). Cf. Rules of Procedure of the Inter-American Court of Human Rights, Article 27.

²⁶ *Ibid.* Article 64.

with their commitments in the area of human rights. In other words, their objective is to help the States and their organs to comply with and apply human rights treaties, without subjecting them to contentious proceedings.

Although circumscribed by the limits indicated in the American Convention, the Court has established that its advisory function is as broad as necessary to safeguard human rights. Moreover, it should be emphasized that the Court is not obliged to issue advisory opinions on every aspect and that, based on the admissibility criteria, it may refrain from ruling on certain issues, and reject requests.

All the organs of the Organization of American States may request advisory opinions as well as all the OAS Member States, whether or not they are parties to the Convention. The organs of the inter-American system recognized in the OAS Charter are:

- ▶ The General Assembly
- ▶ The Meeting of Consultation of Ministers for Foreign Affairs
- ▶ The Councils
- ▶ The Inter-American Juridical Committee
- ▶ The Inter-American Commission on Human Rights
- ▶ The General Secretariat
- ▶ The Specialized Conferences, and
- ▶ The Specialized Organizations

The procedure for advisory opinions is regulated in Article 73 of the Court's Rules of Procedure. First, the OAS States or organs must forward to the Court a request for an advisory opinion that meets certain requirements.

The formal requirements for requests for an advisory opinion are established in Articles 70, 71, and 72 of the Court's Rules of Procedure. The requests must state with precision the specific questions on which the Court's opinion is sought; indicate the provisions to be interpreted and the international norms other than those of the American Convention that also require interpretation; the considerations giving rise to the request, and the names and addresses of the agent or the delegates. If the advisory opinion is sought by an OAS organ other than the Commission, the request must also specify how it relates to the sphere of competence of the organ in question. In addition, Article 72 of the Rules of Procedure establishes the requirements for requests related to the interpretation of domestic laws. In that case, the request must include the provisions of domestic law and of the Convention or of other international treaties to which the request relates.

Upon receipt of the request, the Court's Secretariat transmits it to the Member States, the Commission, the Permanent Council, the Secretary-General, and the organs of the OAS. In the communication, the President establishes a time limit for interested parties to forward written observations and, if pertinent, the Court will decide whether a public hearing should be held and will set a date. The Court also issues a wide-ranging invitation to submit observations to universities, human rights clinics, non-governmental organizations, professional associations, interested persons, state organs, and international organizations.

Lastly, the Court proceeds to deliberate in closed session on the matters presented in the request and to issue the advisory opinion. In addition, the judges have the right to issue a concurring or dissenting opinion on the request, which will form an integral part of the opinion.