THE SCOPE AND LIMITS OF THE JURISDICTION OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS ESTABLISHED IN ART. 25 OF THE CONVENTION STATUTE OF THE CENTRAL AMERICAN COURT OF JUSTICE

DIEGO CUAREZMA ZAPATA

Instituto de Estudio e Investigación Jurídica
28 AÑOS 1995-2023
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PROLOGUE

As the General Coordinator of the Ibero-American Interdisciplinary Network of Researchers, Socio-Legal Node, it is my pleasure to introduce a significant contribution to the field of international law and inter-American justice, authored by Master Diego Cuarezma Zapata. Serving as the Director of the International Law Program and Director of Research and Postgraduate Studies at the Institute for Legal Study and Research (INEJ) in Nicaragua, Master Zapata has crafted a meticulous scholarly work titled "Jurisdiction and Competence of the Inter-American Court of Human Rights: Scope and Limits according to Article 25 of the Statute Convention."

This book arrives at a crucial historical juncture, amid widespread debate and scrutiny concerning the efficacy of the inter-American legal system. Master Zapata's research provides a thorough examination of the legislation, jurisprudence, and statutes that govern the operations of the Inter-American Court of Human Rights (IACHR). His analysis elucidates the complex interactions between the IACHR and the Central American Court of Justice (CCJ), offering an indispensable resource for scholars, legal practitioners, and students of public international law and human rights.

Structured in a series of detailed chapters, the book dissects the theoretical and practical dimensions of the IACHR's jurisdiction. Its rigorous dogmatic approach, combined with a systematic and teleological interpretation of legal texts, makes this work invaluable not only to academics but also to practicing lawyers.

Master Cuarezma employs qualitative methodology research, allowing for an in-depth interpretation of relevant regulations and case law. This is enhanced by a comparative analysis that situates the IACHR's functionality in relation to other international courts, thereby broadening the scope of legal discourse through a comparative lens.

One of the most significant contributions of this book is the exploration of the interplay between jurisprudence and community regulations. Master Cuarezma Zapata critically analyzes how these elements influence legal practices within the realm of human rights, leading to pragmatic recommendations aimed at strengthening the inter-American legal framework.

This scholarly work serves as an essential academic resource and a practical guide for those involved in the international legal field. It addresses vital issues regarding the legal competencies and effectiveness of the IACHR, crucial for lawyers, judges, and academics engaged with the Inter-American Justice System.

Furthermore, this book is a valuable educational tool for international law students, providing clarity and insight into fundamental aspects of international human rights law. It enhances understanding of the legal frameworks that safeguard human rights and discusses ways to fortify these structures to ensure justice and equity.

With detailed case studies and robust legal theories, Master Cuarezma Zapata exemplifies the practical application of theoretical concepts in a clear and impactful manner.

In acknowledging his thorough research and contributions to the legal and academic communities, I highly recommend this work to those interested in inter-American law and justice, as well as a broader audience keen on contemporary human rights challenges.

Finally, I would like to highlight the author's commitment to excellence and academic ethics. Transparency in methodology and respect for academic standards are evident throughout the text, establishing a model to follow for future research.

This book is an indispensable addition to any academic library, an essential tool for international tribunals, and a source of critical knowledge for all human rights defenders and promoters. I thank Diego Cuarezma Zapata for his effort and dedication and hope that this book reaches a global audience, fostering greater understanding and respect for international Human Rights Law.

Bogotá, Colombia, April 14, 2024

Prof. Dr. Eduardo Andrés Calderón Marenco

General Coordinator, Ibero-American Interdisciplinary Network of Researchers, Socio-Legal Node,

Cooperative University of Colombia

INTRODUCTION

In a globalized and vertiginous world, sometimes the promotion and protection of the individual rights are overshadowed by collective welfare, economic indices as a country, technological development and the bureaucracy of private and public organizations. One of the main objectives of the Law as such is to ensure the collective and individual welfare in all its areas and ensure compliance with the rights in favor of each person.

Despite all this current situation, this investigation is an effort to clarify the adequate compliance of the protection, promotion and guardianship of human rights by the Central American Supreme Court of Justice, within the framework of Community Law.

The purpose of this research is to study the scope and competencies of the Central American Court of Justice (CCJ) through its original sources, ordinances, and status, up to 1991 Tegucigalpa protocol, in which it was agreed that The CCJ is qualified to deal with both Community Law and Human Rights cases and the last resolutions issued by the CCJ on this specific subject will be also present.

This investigation is necessary to clarify the controversies application that exist in the Central American In-

tegration System. The research method that will be carried out is the legal dogmatic method, which uses the recollection of information such as jurisprudence, doctrines, laws, etc. Also, an exhaustive documentary analysis will be done in order to verify the objective of this investigation in the entire Central American regional system.

Therefore, this research it is very interesting and useful, because this study will provide to the Central American people the information they need to defend and understand their rights within the framework of the Central American human rights.

So, taking into consideration all these, in Chapter I we will present the protocol of the Central American Integration System (SICA).

Charter II will be about the Central American Court of Justice and statutes.

In Chapter III we will present the scope and limit of the jurisdiction of the Inter-American Court of Human Rights established in art. 25 of the Convention Statute of the Central American Court of Justice.

And Chapter IV will be for conclusions and recommendations.

JUSTIFICATION

The scope and powers of the Central American Court of Justice is an issue that has not been fully clarified. The objective of this research work is to study this phenomenon through the documentary analysis of its original sources, ordinances, status and even the 1991 Tegucigalpa protocol. In this protocol it was agreed that the CCJ is able to follow up the Community law and the Human Rights, in addition to the last resolutions that the Court has done on specific issues of the matter.

This research will also take into account a comparative law in relation to the Community Court and its role in the promotion and protection of Fundamental Rights. This is a reference to the European integration system (European Union). Currently, the Central American Court of Justice, pursuant to Article 25 of its statute, states that the jurisdiction of said Court does not extend to the matter of Human Rights, which corresponds exclusively to the Inter-American Court of Human Rights.

In the practical aspect, this research may be useful by verifying the role of the Central American Court of Justice as a body that protects and promotes the Fundamental Rights, both directly and indirectly. This

would broaden their powers and show their potential, and would have a major impact on the protection of the inhabitants of Central America.

In this study, we reference the mechanisms that individuals can use to protect their rights within the framework of Community Law, in accordance with the jurisdiction of the Court. This becomes the main reason why the investigation is justified, since it provides individuals with information that will help them defend and understand their rights within the framework of the Central American regional system.

Problem Statement

In 1991, Central America opted for peace and democracy. Each country decided to put an end to the internal war and the conflicts that it caused between its neighbors in the area, for this purpose they signed the so-called Protocol of Tegucigalpa on the thirteenth day of the month of December, nineteen hundred and ninety-one, with the purpose of,

"Consolidate democracy, strengthen its institutions on the basis of the existence of governments elected by universal, free and secret suffrage, and of unrestricted respect for Human Rights; Specify a new model of regional security based on a reasonable balance of forces, the strengthening of civil power, the overcoming of extreme poverty, the promotion of sustained development, the protection of the environment, the eradication of violence, corruption, terrorism, drug trafficking and arms trafficking. Promote a comprehensive regime of freedom that ensures the full and harmonious development of the individual and society as a whole.

To achieve a regional system of economic welfare and social justice for the Central American people. To reach an economic union and strengthen the Central American financial system. Strengthen the region as an economic block to successfully insert it into the international economy. Reaffirm and consolidate the self-determination of Central America in its external relations, through a unique strategy that strengthens and expands the participation of the region, as a whole, in the international market. Promote, in a harmonious and balanced way, the sustained economic, social, cultural and political development of the Member States of the region as a whole. Establish concerted actions aimed at preserving the environment through respect and harmony with nature, ensuring the balanced development and rational exploitation of the natural area´s resources, with a view of establishing a New Ecological Order in the region. To form the Central American Integration System supported by an institutional and legal system, and also based on mutual respect between the Member of the States."

For the realization of the purposes, the Central American Integration System and its Members shall proceed in accordance with the following fundamental principles: a) The protection, respect and promotion of Human Rights constitute the fundamental basis of the Central American Integration System, for Peace, Democracy, Development and Freedom, are a harmonious and indivisible whole that guides the actions of the SICA member countries. (art. 4).

In order to carry out the purposes of SICA, the following Organs were established: a) The Meeting of Presidents; b) The Council of Ministers; c)The Executive Committee; d) The General Secretary are part of

this System. And as part of the SICA, the Central American Parliament (PARLACEN) as an organ of Approach, Analysis and Recommendation, whose functions and powers are those established by its Constitutive Treaty and current Protocols; the Central American Court of Justice (CCJ), which will guarantee respect for the law, in the interpretation and execution of this Protocol and its complementary instruments or acts derived from it, and the Consultative Committee that will be made up of the business, labor, academic and other sectors, main living forces of the Central American region, representative of the economic, social and cultural sectors, committed to the effort of the region integration. This Committee will have the function of advising the General Secretariat on the policy of the organization in the development of the programs it carries out (art. 12).

In this sense, it is considered that for the peace of the Isthmus to be lasting and permanent, the existence of a jurisdictional control is necessary to prevent the States from being able to claim rights that they do not have, or to become arbitrary powers that deny all justice. In this sense, the Central American Court of Justice is created based on the purposes of SICA, "the protection, respect and promotion of Human Rights constitute the fundamental basis" and consequently it is conceived as a Regional Court, with exclusive jurisdiction for the States of the Isthmus. Its doctrine and resolutions are binding, the State is obliged to abide by its decisions. Thus, with the creation of this Supranational body, it will allow solving the problems of the "Central American Integration System" in a peaceful and civilized manner. However, the CCJ in its Statute, and contrary to the purpose of the SICA of which it is a member body, states that its "jurisdiction of the Court does not extend to the mat-

ter of human rights, which corresponds exclusively to the Inter-American Court of Rights Humans" (art. 25).

Based on this dichotomy, the split between the purpose of the SICA and the renunciation of the competence of the CCJ to protect human rights. It is necessary to clarify an effective route to defend the human rights of Central Americans.

Problem formulation

Does the Central American Court of Justice have the legal competence to protect and promote Human Rights, individual or collective, within the framework of community law, without prejudice the jurisdiction of the Inter-American Court of Human Rights?

Objectives

General objective

Define the legal competence of the Central American Court of Justice before the protection and promotion of Human Rights, within the framework of Community Law, without prejudice the competence of the Inter-American Court of Human Rights.

Specific objectives

- Compare the legal system of the Central American Integration System (SICA) and the 1991 Tegucigalpa Protocol through a documentary analysis.
- Describe the jurisprudence of the Central American Court of Justice in terms of the protection and promotion of Human Rights based on origi-

nal sources, ordinances, status and even the 1991 Tegucigalpa protocol.

- Define the legal competence of the Central American Court of Justice in matters of Protection of Individual and Collective Rights and its application within the framework of Community law.

Hypothesis

The Central American Court of Justice has the legal competence to protect and promote Human Rights, individual or collective, within the framework of community law, without prejudice the jurisdiction of the Inter-American Court of Human Rights.

Methodology

This research work is an interpretive thesis to qualify for the Master's degree in International Law. It is a descriptive, cross-sectional and qualitative research.

The research method that will be carried out is the legal dogmatic method, that is, through the compilation of information such as treaties, jurisprudence, doctrines, sentences, etc. An exhaustive documentary analysis will be carried out in order to verify the object of this investigation in the entire Central American regional system.

First, the Right of Integration will be presented in the Central American Supreme Court of Justice, its origin in the Tegucigalpa protocol in 1991, then its jurisprudence and later its last sentences. Also, there will be an interpretation of the jurisprudence of the protection and promotion of human rights. Then, based on the initial law of the Supreme Court of Justice, the responsibi-

lity of protecting human rights based on the framework of Community Law will be exposed, carrying out a comparative study of what is stated in the original law and its application in reality practice.

It will be a study with an objective theory, to give more scientific validity to theresearch proposals. A systematic and teleological interpretation criterion will be used, in order to arrive at an exact understanding of the intention of the law and its theoretical perspective of interpretation is constructivist. All this in order to substantiate the acceptance of the theory raised in the research hypothesis.

Data collection techniques

To carry out this study we will use the following methods:

- Study and bibliographic review of the Doctrine of the Court and the Jurisprudence of the Central American Court of Justice.
- Analysis of the existing studies on the subject and the agreements related to the subject.

Theoretical framework

Community Law

Community law has borned as an expression of unity, according to Villalta,

> Community Law has guiding principles: Its Autonomy, insofar as it has its own normative order; Its Immediate applicability, insofar as it becomes clearly, precisely, and un-

> conditionally, into internal law norms of the Member States without the need for them to carry out any act to incorporate community norms into their law; its Direct Effect, insofar as community norms can create rights and obligations for individuals; Its Primacy, since community norms occupy a priority place with respect to national norms, given their application is preferential with respect to the Internal Law of the 4 Member States and the Principle of Responsibility, which the States are obliged to repair the damage caused to individuals as a result of the violation of community regulations. (Vizcarra, 2013)

Difference between Community Law and Integration Law

The current Central American Integration Process has an institutional framework capable to develop a community process (it has not yet been done), it must have all the essential elements of integration to be able to do it (free trade zone, customs union, markets and finally total economic integration) to reach a complete community law. That is to say, a total economic integration.

The name "Central American Integration System" appears for the first time, formally, by the "Protocol of Tegucigalpa to the Charter of the Organization of Central American States ODECA", signed by the constitutional presidents of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, on the occasion of the XI Summit of Central American Presidents.

(Vizcarra, 2013) It is precisely in the "Tegucigalpa Protocol" where it is reaffirmed that the reason of the new regional integration process is the promotion of the human person, and as well as democracy is inseparable for development, likewise economic development is inseparable from social, cultural, political and ecological development and that to achieve it requires the participation of all social sectors. The Tegucigalpa Protocol is the mold that gave legal form to the new Central America by collecting the experiences, principles, objectives and hopes contracted by the Central American Presidents during the "Esquipulas Process".

The "Central American Integration System (SICA)" is the expression of the transformation that has taken place in Central America since 1991 and is the legal and institutional structure of the new integration process. The "Protocol of Tegucigalpa" has the scope of a regional Constitution, where the Constitutive Framework Treaty of Central American Integration, the instrument with the highest hierarchy and the fundamental basis of any other Central American regulation.

Elements that make up Central American community law

The elements that compose the Law Integration for Central American regional community are the following: free trade zone, customs union, common markets and finally total economic integration. When an Integration System has all these elements, then it is considered a complete community right, so, a total economic integration. One of the clear examples of a community system is the European Union, which has all the aforementioned charac-

teristics (free movement of people and goods, common tariffs, the same currency, among other aspects).

HUMAN RIGHTS

According to the United Nations, "Human Rights are rights inherent to all human beings, without any distinction of race, sex, nationality, ethnic origin, language, religion or any other condition. Human rights include the right to life and liberty; not to be subjected to slavery or torture; to freedom of opinion and expression; to education and work, among many others. These rights correspond to all people, without any discrimination".

International Human Rights Law establishes the obligation of Governments to act in a certain way or to refrain from undertaking certain actions, to promote and protect human rights and fundamental freedoms of individuals or groups. (Naciones Unidas, 2020).

CENTRAL AMERICAN INTEGRATION SYSTEM (SICA)

SICA has an institutional structure made up of the following bodies: The Meeting of Presidents, the Council of Ministers, the Executive Committee, and the General Secretariat of SICA.

In addition, it is conformed of the Central American Parliament (PARLACEN), the Central American Court of Justice (CCJ) and different secretariats and specialized institutions in various areas.

The Central American Court of Justice was the first Permanent Court of International Justice in the world and the one that established the Jus Standi for the first time, so that individuals could enforce their violated rights by the States. (Central American Integration System, SICA., 2020)

Chapter I. Protocol and the Central American Integration System (SICA)

Summary:

- Background
- Legal Status of the Tegucigalpa Protocol
- Structure of the Central American Integration System (SICA)

Background

One of the first initiatives to unify the Central American countries, took place on October 14th of 1951, in the mid-twentieth century. It was the product of the framework of an extensive meeting of Ministers of Foreign Affairs of the countries of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica; developed in the San Salvador city, which produced the Organization of the Central American States (ODECA), configuring a decisive situation for the integrationist process of the region, which called for a pact that would collect the unionist ideals of the isthmus, following the model

of the United Nations (ONU) and the Organization of American States (OAS), at a juncture, where the end of the Second World War and a proliferating of the European integration, projected a distinction between economic union and political union. With the signing of this legal instrument, the intention was to create a regional integration that would promote and accelerate reciprocal economic, social and technical cooperation; after that, their created the Central American Court of Justice and an Economic Council.

Ten years later, ODECA assumed an important role in the Central American integration process, by ensuring the process of discuss topics such as the unification of traffic signals, educational programs in the different societies and governmental circles of the region, customs processes, cultural policies, the Convention on the Regime of Central American Integration Industries, the Multilateral Treaty of Free Trade and the Central American Economic Integration (Tegucigalpa, 1958), directed antecedents of the General Treaty of Central American Economic Integration, signed on December 13th, 1960, in Managua city, where their created the Central American Bank for Economic Integration (BCIE), too.

Another important aspect was the signing and formation of the General Treaty of Economic Integration between El Salvador, Honduras and Nicaragua as the Central American Common Market. The consequence of this, was the creation of a common Central American free trade tariff and a common external tariff. In addition, institutions were created to administer and promote integration such as the Permanent Secretariat of the General Treaty of Central American Economic Integration –SIECA– and the Central American Bank of Economic Integration, BCIE.

The governments of Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala, reinforced the integrationist process and reformed the ODECA Charter during the Sixth Extraordinary Meeting of Ministers of Foreign Affairs that was held in Panama City on December 12th, 1962; preserving its original name of "Charter of the Organization of Central American States (ODECA)."[1]The purpose of this legal instrument is to ensure the economic and social progress of the members, eliminate the barriers that divide them, improve the living conditions of their people, promote industrialization and confirm CentralAmerican solidarity.

In 1991, with the replacement of ODECA by the Central American Integration System (SICA), a definitive step was taken to achieve economic-political integration, thus, the new legal-political framework was capable of encompassing all the areas of the integration. It went from a system of intergovernmental cooperation, to build a system on the basis of solidarity, with supranational organizations capable of ensuring the common interests of the region, to guarantee the benefit of their own resources and the inhabitants of the region.

Consequently, on December 13th, in 1991, in the framework of the XI Meeting of Central American Presidents, held in Tegucigalpa, Honduras; a multilateral treaty called the Tegucigalpa Protocol to the Charter of

1 The ODECA Charter in 1962 was ratified by Nicaragua on October 2nd, 1963, during the administration of the President René Schick. The legal instrument was approved by the National Assembly on September 25th, 1963.

the Organization of Central American States (ODECA)[2] was singed, which entered into force on July 23rd, in 1992, giving rise to the Central American Integration System (SICA).

1.2 Legal Status of the Tegucigalpa Protocol

The legal status in th Nicaraguan system of the Tegucigalpa Protocol is:

> "Subscription by Nicaragua. Signed by the president of Nicaragua, Violeta Barrios de Chamorro, in Tegucigalpa city, Republic of Honduras, on December 13th, 1991. Published in Gazette No. 130 on July 8th, 1992.
>
> Approval Decree. The Tegucigalpa Protocol Charter of the Central American State Organization (ODECA), was approved by the National Assembly on June 3rd, in 1992; through the Decree A.N.No. 524. Published in La Gaceta Diario Oficial No. 106 on June 4th, 1992.
>
> Ratification Decree. The Tegucigalpa Protocol was ratified on June 10th, 1992, by the

2 According to the resolution of the Central American Court of Justice on May 24th, 1995, "The 1991 Tegucigalpa Protocol is currently the framework treaty for Central American integration, and therefore the one with the highest hierarchy and the fundamental basis of any other Central American regulations are these, Treaties, Conventions, Protocols, Agreements or other binding legal acts prior or subsequent to the entry into force of the Tegucigalpa Protocol".

Decree No. 35-92. Published in La Gaceta No. 122 on June 26th, 1992".

The construction of an integration system of a community of States, is a gradual and progressive process, starting from a set of common principles, values and objectives; of common policies, institutions and organizations which purposes and powers are delegated by the States. Over time, like any process, it presupposes the need of adjust the regulations, in accordance with the development of the system and in order to deepen the various aspects of the regional integration framework, in a dynamic process.

The Tegucigalpa Protocol is a legal instrument that proposes, encourages, orders and regulates the integration of the members of the states, based on the principles of gradualness, specificity and progressiveness of the economic integration process, supported by a harmonious and balanced regional development; and a special treatment for relatively less developed member countries; equity, reciprocity and the Central American Exception Clause; where It allows the adoption of common public policies and strategies in favor of the population of the SICA member countries.

The article three of the Tegucigalpa Protocol, determines as a fundamental objective, the realization of the integration of Central America, to constitute it as a Region of Peace, Freedom, Democracy and Development. This instrument establishes essential purposes, one is the conforms of the Central American Integration System supported by an institutional and legal system, and also based on mutual respect among the member of states.

The article fifteen, determines the powers of the Meeting of Presidents, as the Supreme organ of the Central American Integration System, with regards to harmonization. This permanent body defines and directs Central American policy, establishing guidelines of the integration of the region, as well as the necessary provisions to guarantee the coordination and harmonization of the activities of the organizations and institutions in the area, for the verification, control and monitoring of their mandates and decisions.

The Tegucigalpa Protocol, respects the sovereignty of its members, because it does not oblige the signatory states to adopt laws of any kind. In any case, it is up to each State to adopt the legal regulations necessary to contribute to the Central American integration process. For this reason, this amendment of the ODECA charter, cannot be linked to specific laws of the Nicaraguan legal framework.

However, the Republic of Nicaragua, reaffirmed the commitment and assumed it after the signing of the Tegucigalpa Protocol and accepted mutualrespect among the SICA member states, establishes in the Article 9 of the Political Constitution: "Nicaragua firmly defends Central American unity, supports and promotes all efforts to achieve political, economic integration and cooperation in Central America, as well as efforts to establish and preserve peace in the region. Nicaragua aspires to the unity of the Latin America and the Caribbean people, inspired by the unitary ideals of Bolívar and Sandino. Consequently, it will participate with the other Central Americanand Latin American countries in the creation and election of the organizationsnecessary for such pur-

poses. This principle will be regulated by the legislation and the respective treaties."

It is important to highlight that the Meeting of Presidents and the Supreme Body of the Central American Integration System, has the necessary powers to adopt it in a certain moment, a specific norm for the benefit of the subscribing countries, which can be assumed as an obligation emanating from the Tegucigalpa Protocol, and the will and disposition of the members of states.

1.3 Structure of the Central American Integration System (SICA)

The Central American Integration System (SICA) is the institutional framework for the Regional Integration of Central America, established by the signing Protocol, of the Charter of the Organization of Central American States (ODECA) or the Tegucigalpa Protocol. This system was created by the States of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama. Subsequently, Belize joined as full members in 2000, and in 2013 the Dominican Republic. The following countries are Regional Observers: The United Mexican States, the Republic of Chile, the Federative Republic of Brazil, the Republic of Argentina, the Republic of Peru, the United States of America, the Republic of Ecuador, the Eastern Republic of Uruguay and the Republic of Colombia. And as Extra-regional Observers, the Republic of China (Taiwan), the Kingdom of Spain, the Federal Republic of Germany, the Italian Republic, Japan, Australia, the Republic of Korea, the French Republic, the Holy See, the United Kingdom and the European Union (Dirección de Relaciones Internacionales Parlamentarias, 2014).

The General Assembly of the United Nations (ONU) supported the creation of SICA, leaving the Tegucigalpa Protocol duly registered with it. This allows the internationally enrollment and, in addition, allows the regional organs and institutions of SICA to interact with the United Nations System.

The fundamental objective of the Central American Integration System (SICA), is to achieve the integration of Central America, constitutes it in a region of peace, freedom, democracy and development. Its instances are constituted based on the following legal instruments:

- Protocol of Tegucigalpa signed on December 13th, 1991.
- General Treaty of Economic Integration, signed on October 29th, 1993.
- Social Integration Treaty, signed on March 30th, 1995.
- Alliance for Sustainable Development, signed on October 12th, 1994.
- Framework Treaty on Democratic Security in Central America, signed on December 15th, 1995.

The main administrative structure is constituted in the framework established in the article 12, of the Tegucigalpa Protocol, and now a days, all the members of the board collaborate with the stability of our nations. The members of the administrative structure are:

1. The Meeting of Presidents.
2. The Central American Parliament.
3. The Central American Court of Justice.
4. The Executive Committee.

5. The Meeting of Vice Presidents and Designated of the Presidency of the Republic.
6. The Council of Ministers.
7. The Advisory Committee (CC-SICA).
8. The General Secretary (SG-SICA).

The organs that conform SICA are different and independent from the organs of its member of states, and all of them have as their main objective, the consolidation of a regional system of well-being, sustained development and justice for the Central American people. SICA has its own legal personality, different from all the Member of States, which is essential for the fulfillment of its fundamental objectives, such as the integration of Central America like a Region of Peace, Freedom, Democracy and Development. All these aspirations, were decreed in the IX Meeting of Presidents of Central American, held on December 15th to December 17th, in 1990, in Puntarenas, Costa Rica.

Chapter II. The Central American Court of Justice

Summary:

- Central American Court of Justice
- Central American Court of Justice of the San Salvador
- Central American Court of Justice
- Creation of the Central American Court of Justice
- Characteristics of the Central American Court of Justice: a) Nature b) Organization c) Competition.

2.1 The Central American Court of Justice

The Central American Court of Justice had some antecedents that are necessary to mention, even briefly, such as the Central American Court of Justice in 1907 or the Court of Carthage, which began at a time when the Central American nations had not achieved their full identity, yet. Scarcely, eight years before the last federal pact had been broken and small groups brawls were debated that seemed to have no end.

When Guatemala, El Salvador and Nicaragua achieved peace; after a brief but bloody war between El Salvador and Honduras; under the initiative of the governments of Mexico and the United States, the governments of Central America were urged to start their plenipotentiaries to Washington to, in principle, rule out war as a solution to the disputes between them, but what was obtained after arduous negotiations, more difficult than they expected.

Indeed, during the months of November and December of that year, in addition to the General Treaty of Peace and Friendship, the following conventions were signed: "Convention for the establishment of a Central American Court of Justice", "Extradition Convention", "Convention for the establishment of a Central American International Office", and "TheConvention on future Central American Conferences"; therefore, a whole system of peacefully relations was established between the Central Americancountries that would allow them to resolve any differences that may arise between them.

It can be concluded, as Manuel Castro Ramírez said that, "with those treaties ..., the evolution that Central America operated was prodigious, creating an international public law of rigorous, application in interstate relations and, in some aspects, with action in the constitutional sphere of a country, with respect to those acts that involve threat or danger to the consolidation of the republican institutions that govern the life of these States" (Manuel, 1918).

The Court of Justice developed a Regulation that determined its internal organization and its Procedural Ordinance to carry out its work. While was being promulgated on November 6th, 1912; it took more than four

years for the beginning of its functions (May 25th, 1908), and it processed the claims filed before it, in accordance with the general principles of acceptance a universal jurisprudence and the decrees by the arbitration tribunals.

The most important aspect of this process was the constitution of the Court like the first permanent and obligatory International Judicial Organism, and the one where individuals could file lawsuits against the States.

A competence that should also be highlighted, is the contracting parties undertook to: "Submit to the Court all the controversies or questions that mayarise between them, of whatever nature and whatever their origin", even if the diplomatic agreement had not been previously achieved. As Carlos José Gutiérrez said: "Neither before nor after, a community or group of countries has given such broad powers to an international court." (Gutiérrez, 1957)

The activity of the Court, during its ten-year term, which was not extended, in addition to all those matters that it resolved, resulted private sentences, decided six private lawsuits against United States and three between governments. This apparent little activity should not be surprise us given the importance of the issues that were aired there; furthermore, the activity of world international tribunals has never been very intense. Between 1922 and 1940, the Permanent Court of International Justice in The Hague worked in only 66 cases.

The Court ended its work because one of the countries refused to abide by the ruling pronounced in the most outstanding case that it had to resolve. As a consequence, the losing state denounced the Court's creative convention, alleging economic reasons that preven-

ted it from continuing to contribute to its maintenance beyond the ten-year period established for its validity.

For future Central American generations, its outstanding characteristics of the Court remain as being the first permanent and compulsory international court of justice, where individuals were considered for the first time as active procedural subjects; and the wonderful and most dignified judgment pronounced in the cases of Costa Rica first and El Salvador later, against Nicaragua, on the occasion of the "Bryan-Chamorro Treaty, signed between the United States and Nicaragua" (Villamil, La corte Centroamericana de Justicia en la Política Internacional, 1960), as well as its noble purpose, since its competence was allowed, to request the governments of the United States of America and Mexico, on the occasion of the incursion of Pancho Villa to the population of Columbus, New Mexico and the corresponding retaliation ordered by President Woodrow Wilson to General Pershing so that punish within Mexican territory, that they resolve their disputes not through force, but through the use of legal instruments and before previously constituted courts or through the good offices of the Court itself.

2.2 Central American Court of Justice of the San Salvador letter

Another important precedent that should be cited is the creation of the Court signed by Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, the Charter of San Salvador in 1951, which started the Organization of Central American States (ODECA). Only in three articles (14, 15 and 16) refers to it. It was made up

of the presidents of the Supreme Courts of each state and was scheduled to meet and discuss issues that were raised. In fact, it never met and was not presented with any requests or demands that warranted it. On the other hand, its jurisdiction was voluntary, not compulsory, it was not permanent and it had no fixed seat. This, like the other Organizations that made up the ODECA, had a crisis due to the difficulties that arose between Honduras and El Salvador in 1969 and was suspended until December 13th, 1991, when the Protocol of Tegucigalpa of the Charter of Organization was signed.

2.3 Central American Court of Justice

As stated in the explanatory memorandum of the Statute of the Central American Court of Justice ... "it has been a permanent desire of the States of the Central American Isthmus to be recognized as a single nation, which allows its habitants the full realization of justice, legal security and the common good". "In the same way, it has also been their vehement desire, that all their differences can be resolved in a peaceful and civilized way, which allows them to permanently achieve the social peace that their habitants long for."

In relation to the history of the Carthage Court, the ODECA Court and the wishes of their people and governments, the Supreme Courts of Justice of Central America, in their first meeting held in Guatemala City in March 1989, agreed to study the way to give a new existence to the Central American Court of Justice, the delegation of Guatemala presented for that purpose, a draft agreement for the creation of the Court, which was left to be studied by all the countries and be discussed in the next meeting.

In June, 1990, in the second of these meetings held in San Salvador city, it was agreed to ratify the previous agreement and that the Board of Presidents of the Courts, called the Central American Judicial Council from that meeting, would continue with the study of the original presentation.

In May, 1991, the third meeting of the Court was held in Tegucigalpa, where all the topics were about everything related to the Central American Court of Justice. They agreed and ratified the first part, in addition, an attorney Mister Roberto Ramírez was commissioned to prepare the preliminary studies that determine the feasibility of establishing the Central American Court; having to present his results in the next meeting of the Central American Judicial Council that was going to be held the following November in San José, Costa Rica.

In the third meeting of the Central American Judicial Council, after receiving and analyzing the work of the attorney Mister Roberto Ramírez, the countries agreed: "to very respectfully suggest to the Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, signing of an agreement for the creation of the Court of Justice for Central America and Panama, which should satisfy the respective constitutional procedures for its effective functioning. Also, it was respectfully suggested to the governments some matters within its competence: "as comprehensive as possible"; and that the Court "be made up of lawyers with recognized professional and moral backgrounds in their respective countries, as well as being endowed with the material and legal instruments necessary for them to be able to perform properly."

As part of this agreement, it was finally included that a Permanent Executive Secretariat for the meetings of the Supreme Courts of Justice of Central America would analyze the project presented and the observations made, together with the attorney mister Roberto Ramírez, in Tegucigalpa, in the second fortnight of January of the following year (1992). The project was definitively adopted and approved that same year, at the IV meeting of the Supreme Courts of Justice, in Managua, Nicaragua.

The presidents of the Supreme Courts of Justice of Central America, never thought that their recommendation would be accepted by the presidents of the Central American Republics, just few days later!

2.4 Creation of the Central American Court of Justice

On December 13th, 1991, in the XI Summit of Central American Presidents, held in Tegucigalpa, the "Protocol of Tegucigalpa to the Charter of the Organization of Central American States (ODECA)" was signed, thereby creating the "System of Central American Integration (SICA)", whose fundamental objective was the integration of Central America, to constitute it as a Region of peace, freedom, democracy and development.

In the 12 Article of the Protocol, specifies its purposes and established them as part of the system, in addition to "The Meeting of Presidents", "The Council of Ministers", "The Executive Committee" and "The General Secretariat", the Meeting of Vice Presidents and those appointed to the Presidency of the Republic, the Central American Parliament (PARLACEN), the Central American Court of Justice and the Consultative Committee.

Regarding to the Central American Court of Justice, it is established that: "it will guarantee the respect for the law in the interpretation and execution of this Protocol and its complementary instruments or acts derived from it." It was also established that "the integration, operation and powers of the Central American Court of Justice, must be regulated in its statute, which must be negotiated and signed by the members of the states, ninety days after to published this protocol"; it was also established that" any controversy over the application or interpretation of the provisions contained in this protocol and other instruments referred to in the previous paragraph (which were the protocol and its complementary and derivative instruments), must be submitted to the Central American Court of Justice"; and 3rd Article of the transitory provisions of the aforementioned protocol established "for the purposes of what is established in second paragraph of the 35 Assignment article and as long as the Central American Court of Justice is not integrated, the controversies regarding to the application or interpretation of the provisions contained in this protocol must be in the responsibility of the Central American Judicial Council".

The signing of the Protocol of Tegucigalpa in the indicated matter, prompted the Supreme Courts of Justice of Central America to change the work plan that had been imposed for the elaboration of the Statute Agreement of the Central American Court of Justice and decided to work in parallel on two senses: 1) In organize the Central American Judicial Council, as the Central American Court of Justice ad iterim and in the preparation of its Ordinance of Procedures: and, 2) Work in the elaboration of the Agreement Statute of the Central Ame-

rican Court of Justice and offer them as a contribution for the next Meeting of Central American Presidents.

Both studies were carried out by commissions from the countries of El Salvador, Honduras and Nicaragua, which worked against the clock. They also received collaboration from the Supreme Courts of Justice of Panama and Guatemala, presenting the work in the IV meeting of the Supreme Courts of Justice of Central America held in Managua, Nicaragua, from September 9th to 11th, 1992, where its II Resolution was approved by all the Supreme Courts, including Costa Rica, the draft of the Convention on the Statute of the Central American Court of Justice, also agreed that, "forward the competent authorities and agencies of the Central American Integration System (SICA), so they may be fully considered by those who will sign and ratify the respective Agreement, since this document expresses the spirit that has animated the creation of that institution by the Supreme Courts of Justice of the Central American States".

The Supreme Courts of Justice of Central America, in their III Resolution, agreed to delegate to the Central American Judicial Council the power to draft their own Procedural Ordinances and Regulatory Norms and, that same day, on September 11th, 1992, as a result of the provisions of the Protocol of Tegucigalpa, the Central American Judicial Council agreed to be called the Central American Court of Justice ad interim, where its own procedural norms were given there. Also, Doctor Orlando Trejos Somarriba was elected as the President of the court and Doctor Rafael Chamorro Mora as the Secretary. In addition, it was installed, the members sworn in to the Attorney mister Roberto Ramírez, delegated by the IV Meeting of Supreme Courts of Justi-

ce of Central America, in the following way: Do you solemnly swear by the Central American Homeland fulfill the post of Magistrate of the Central American Court of Justice ad interim, with honesty, effort, diligence, ¿impartiality and independence? Each one of them responded: "Yes, we swear," so he told them: "If you do so, the Central American Homeland will reward you and if not, it will demand it."

With this emotional ceremony, the Central American Court of Justice, ad interim, began its institutional life while the Statute Agreement of the Central American Court of Justice was signed, ratified, deposited and entered into force, which fully happened on February 2nd, 1994.

Doing justice to the Central American Court of Justice ad interim, it can be affirmed that the Procedural Ordinances allowed it to resolve the queries that were raised and that, despite its limited jurisdiction, the controversies over the application or interpretation of the provisions contained in the Protocol of Tegucigalpa and its derivative instruments, decided them with solvency, determining their competence, applying the principles of international law and integration law, dictating procedural norms in matters not foreseen, maintaining the objectivity of the rights and the safeguarding of the purposes and principles of the Central American Integration System, the equality of the parties and the guarantee of the due process (14, 15 and 16 articles of the Procedural Ordinances of the Central American Court of Justice ad interim).

The Central American Judicial Council, as the Central American Court of Justice ad-interim, was summoned by its president to different meetings in the different ca-

pitals of Central America, except in Costa Rica, to evacuate the consultations, where assisted either the presidents or their delegates, who formed a resolution on the queries raised. In one of their cases, given the material impossibility of the meeting, the most modern means of communication were used, including facsimile, and thus a resolution could be achieved with half plus one of its members (Art. 4).

The cases that were presented to this Court are the following:

One, on the system of jurisdiction, competence, immunities and privileges of the Organization of Central American States (ODECA); second, on the state of the latter's assets; the third, on a technical opinion of the draft Protocol of the General Treaty of Central American Economic Integration; the fourth was already mentioned, and it was the most modern means of communication, used for the impossibility of the meeting, for the inclusion of the opinion expressed previously by the Court in the final draft of the Protocol of the General Integration Treaty mentioned above; and, the last one, referring to the validity of the Agreement Statute of the Central American Court of Justice.

Reference has been made to the activity of the Central American Court of Justice ad-interim, because as conceived in the Protocol of Tegucigalpa, it is the immediate precursor of the Central American Court of Justice, and its members, are the same Central American. They participated in the elaboration of its Procedural Ordinances, in the resolution of the made consultations and in the formulation of the Convention of the Statute draft of the Central American Court of Justice.

Having entered into force, the Protocol of Tegucigalpa in July, 1992, was been ratified by El Salvador, Guatemala, Honduras and Nicaragua, in accordance with the provisions of its validity, it was only necessary to be ratify in three countries. The next Meeting of the Central American Presidents was convened in December of that year in Panama, for which reason it was decided to forward to the Foreign Ministers the Draft Agreement of the Statute of the Central American Court of Justice, so they could include it in their agenda for that meeting and attend it in order to manage its subscription. It was approved in Managua in September of that same year, with two politics observations that were considered should not be resolved by the Supreme Courts of Justice of Central America or by the Central American Judicial Council; and there its headquarters and the one that in order to hear border, territorial or maritime disputes, the request of all the parties concerned was necessary, the latter at the request of the Delegation of Honduras.

As expected, with the presidents of the Supreme Courts of Justice of Central America as solemn witnesses, the "Statute of the Central American Court of Justice" was approved for the Supreme Courts of Justice, and the observations resolved as well. The headquarters would be in Managua, the capital of the Republic of Nicaragua, and the observations of Honduras were accepted regarding the to the borders, territorial and maritime controversies.

This Agreement Statute of the Central American Court of Justice has been ratified, in chronological order, by El Salvador, Honduras and Nicaragua, and the corresponding deposit was made by the three countries,

the last one on January 24th by Honduras, and was effectives on February 2nd, 1994.[3]

2.5 Characteristics of the Central American Court of Justice

A) NATURE

As it is stablished in its explanatory memorandum ... "the creation of the Central American Court of Justice, has not only been a wish and desire of the Central American countries, but also, to the Central American Integration System, it becomes an Organism that can issue a binding legal sentence for the resolution of regional conflicts ... it is conceived as a regional court, with exclusive jurisdiction for the States of the isthmus (this is exclusive) ... "Its competence is established as an attribution, to the exclusion of any other court and, in addition, of conflicts between States, it can hear disputes between natural or legal people residing in the area and the governments, States or Organizations of the Central American Integration System. I Article, second paragraph establishes: "The Central American Court of Justice is the main and permanent judicial organ of the Central American Integration System, whose jurisdiction and competence are mandatory for the States"; and in the second Article, exposes: "The Court will guarantee respect for the Law, both in the interpretation and in the execution of the Tegucigalpa Protocol of Reforms to the Charter of the Organization of Central American States (ODECA), and its complementary instruments or acts derived from it",

3 For Costa Rica, it entered into force on June 26, 1995, for Panama on March 26, 1996, and for Belize on December 8, 2000.

which leads her to know and resolve in the newest field of Integration and Community Law, which has characteristics of primacy over the internal law of the Members of States.[4]

B) ORGANIZATION

It is detailed in 7, 8, 9, 10 and 11 articles of the Statute Agreement, where it is determined these: it will be integrated with one or more Titular Magistrates, which the Central American Judicial Council defined in two, based on the attributions granted in the 46 Article of the aforementioned Statute Agreement of the Central American Court of Justice.

The conditions and requirements that each member must have are the same as those necessary for the exercise of the highest judicial functions in their respective countries and their election is made by the respective Judicial Bodies or Powers for a term of ten years, and they can be reelected.

4 According to the jurisprudence of the Luxembourg Court or Court of Justice of the European Communities, the "primacy" of Community Law is based on the nature and characteristics of the integrating process through a systematic and teleological or finalist interpretation of the Community Treaties. This jurisprudence also establishes that the basis of the primacy of Community Law is not a varied and variable basis with possible different consequences in the legal patrimony of individuals and in the obligations assumed by each Member State, which as a definitive and irreversible fact have constituted a Community of unlimited duration, endowed with its own institutions.

Its duration is permanent, and its members must reside in the host country, being able to meet and function temporarily anywhere in Central America.

Their budget will be determined by the Court itself and provided in equal parts by the Members of States.

c) COMPETITION

The Statute expresses that the Court will have a wide and complete jurisdiction and competence, in all contentious matters, with a mandatory character for all the States, whether voluntary, acting as arbitrator of law or fact. Thus, it will have various types of jurisdiction, from the International Regional Court will attendance a single instance the controversies that are raised by the States, and the ones that includes the disputes arising between natural or legal people or a State, with any of the Organizations that make up the Central American Integration System.

It should be noted that in the competence of the Court, it is established that it can received a request from a party, or any conflict that may arise between the Powers or Fundamental Organs of the States, or when the judicial decisions are not respected. In addition to the aforementioned jurisdictions, the Statute recalls that it is assigned to the Permanent Consultation Body of the Central American Courts of Justice, takes cognizance of the queries made to, as well as the issuing recommendations that promote the issuance of uniform laws.

The Statute confers to the Court, a jurisdiction that covers practically the entire Central American community universe. It is defined in the 22nd article of the same and will execute its functions mainly, in the following areas:

a) Containment between States (22nd article sections a and h);

b) Containments between individuals with States or between individuals and SICA bodies (22nd article sections b, c, f, g);

c) Consultative (22nd article sections d, e and 1, 23 Article);

ch) Arbitration: (22nd article section ch);

d) Administrative (22nd article section j);

e) Constitutional (22nd article section f)

It should be emphasized that with the change made in the Tegucigalpa Protocol to the Charter of the Organization of Central American States (ODECA) in the 35th article, the arbitration jurisdiction regarding to the Economic Integration Subsystem was modified, too, since the referred article was modified in its second paragraph and a third was added, the text of this begins like this:

"Except as provided in the following paragraph, disputes over the application or interpretation of the provisions contained in this Protocol and other instruments referred to in the preceding paragraph, must be submitted to the Central American Court of Justice".

The differences in the Economic Integration Subsystem as a consequence of the intra-regional trade relations, are going to be submit to the dispute resolution mechanism established by the Council of Ministers of Economic Integration, which will contain an alternative solution method for commercial disputes, including arbitration, whose decisions will be binding by the Members of States that intervene in the respective dispute. The breach of the comply with an arbitration award

will lead to the suspension of the benefits with an effect equivalent to those no longer received, as decided in the respective award.

Finally, the 24th Article establishes that the consultations conducted by the Court, in accordance with the Statute, Ordinances and Regulations, relative to the Central American Integration System, will be mandatory for the States that comprise it.

However, in the 25th Article of the same, the matter of human rights is expressly excluded from the jurisdiction of the Court, which corresponds exclusively to the Inter-American Human Rights Court.[5]

Therefore, on the other hand, are some provisions that require special comment, since this Judicial System is institutionalized for both, by the Protocol of Tegucigalpa and by the Convention of the Statute of the Court, as follows:

According to the 10th article of the Statute, the Court is constituted like an independent sphere of politics, sin-

5 According to the doctrine of the Central American Court of Justice in the case of José Viguer Rodrigo, _ this must be understood when the violation of Fundamental Rights is by a Member State, subject to the jurisdiction of the Inter-American Court of Human Rights, but not when the violation comes from organs, agencies or institutions of the Central American Integration System SICA, because they are not subject to the jurisdiction of the Inter-American Court of Human Rights. In the latter case, it could be known to the Central American Court of Justice in accordance with the objectives, purposes and principles (3, 4, 9 and 10 of the Tegucigalpa Protocol), on which the Central American integration process is based.

ce the Magistrates are elected by the Supreme Courts of Justice and not by the Legislative or Executive Powers.

In the 35th article of the Tegucigalpa Protocol, in its final paragraph states that any controversy regarding to the application or interpretation of this and other derivative instruments must be submitted to the Central American Court of Justice.

In the 1st Article in the second paragraph of the Statute, establishes that the Court is the main and permanent Judicial Organ of the Central American Integration System, whose regional jurisdiction and competence are mandatory for the Members of States.

In the 3rd Article of the Statutes of the Court, refers that the Court will have its own competence and jurisdiction with the power to judge a petition of a party and decide with rest judical a uthority, and its doctrine will have binding effects for all States, Bodies and organizations: that are part or participate in the Central American Integration System and also for private law subjects.

This last article is complemented by the 39th article of the same Statute, acquiring greater strength by providing that the interlocutory resolutions, awards and final judgments issued by the Court, will not admit any recourse, are binding for the States or for the Organs and Bodies of the System of Central American Integration to and for natural or legal people and will be executed as a matter of complying with a resolution, award or sentence of a national court of the respective State, for which a certification issued by the Secretary General of the Court will suffice. In the event of non-compliance with the judgments and resolutions by the State, the

Court will inform the other States that, using the pertinent they can ensure their execution.

This rule constitutes an organic system between the Courts of Justice of the Members of States and the Central American Court of Justice itself. It should be also emphasized that the Courts of Justice of the Members of States are the "natural courts" of community regulations, and it will be the first one to hear the disputes arising from the application and interpretation of community regulations.

The 33rd Article eliminates all homologation or executed procedures, in such a way that judgments, resolutions or any other mandate from the Court must be considered as if it were issued in the territory where they must be executed.

On the other hand, if the Court passes judgment on appeal of the administrative decisions issued by the Central American integration bodies or agencies that have pronounced it in the first instance, they will directly execute the ruling or resolution issued in appeal by the first.

The rules and assumptions on which the processes must rest are determined by the 5th Article of the Statute, by stating that the procedures provided and established by the Regulations and Ordinances will have the purpose of safeguarding the purposes and principles of the Central American Integration System, the objectivity of rights, the equality of the parties and the guarantee of due process.

Finally, in the 35th Article of the Statutes gives to the Court a full freedom to assess all the evidence of the cases that are submitted to it, reasoning in its ruling the

evaluation criteria that it has applied, thus, in its rulings, and the use any of the methods of investigation, interpretation and application of the law to avoid falling into the traditional syllogistic system of sentences.

Chapter III. The scope and limit of the jurisdiction of the Inter-American Court of Human Rights established in the 25th article of the Convention Statute of the Central American Court of Justice

Summary:

- Introduction
- Background
- Jurisdiction and jurisdiction
- Process and procedure
- Imparting justice
- The Central American Court of Justice and Human Rights first paragraph subsection c) of the 22nd article, CCJ statute agreement. e) Literal f) Literal g) Literal j) Legitimacy vs. Legitimation of the Central American Court of Justice.

3.1 Introduction

The jurisdictional competence of the Central American Court of Justice, as an organ of the Central American Integration System (SICA), makes us reflect on its nature, that it is the exercise of the jurisdictional function, and as provided in the Statute of the Court "is the main and permanent judicial organ of the SICA", whose regional jurisdiction and competence are mandatory for the States (1st Article of the Statute of the Central American Court of Justice).

By its nature, the jurisdiction of the Court is the activity (of the State) aimed atthe performance of the objective right, through the application of the general rule to the specific case. This jurisdictional activity, is according to the constitutional theory and following Montesquieu's conceptions, corresponds to the judicial body, which has declared the exercise of the exclusive functionof imparting justice.

However, this exclusive attribution suffers exceptions in the constitutional texts that create another jurisdictional body outside the Judicial Power. In this case, when the constitutionally created the Judicial Power; the case of "another jurisdiction" is presented, when an organ of another power of the State attributed competence to exercise its attributions. In this regard, although materially the activity is jurisdictional (application of the rule), formally the function may be administrative or legislative according to the body that performs it.

The distinction of the function in formal and material, is that, in the formal, it is typified by the body that performs it (Example: It is only the written law, the one issued by the legislative body, is that the others are norms).

However, the function is classified as material, due to the content of the activity, regardless of which body performs it (Example: Political judgment in the Legislative Power is formally a legislative act, although it is materially jurisdictional. The approval of a regulation of the Executive formally is an administrative function, but is materially the legislative).

Also, in this same topic we can analyze this phrase "the jurisdictional competence" that is very important. We know that competence is the ability of a body to deal with matters that the law places within the sphere of its powers. Of this, being competent is having a legal authority assigned to carry out acts or carry out tasks in a specific body.

In this Chapter we want to emphasize the exercise of this competence is jurisdictional, since it belongs to the judicial sphere, but that this does not exclude that there may be other competences such as administrative, legislative, constitutional or special jurisdictions (such as the military that it is erroneously placed outside the Judicial Branch and is exercised by an organ of the Executive Branch).

Together with the foregoing, we highlight the problem of supranationalism, since the jurisdictional exercise of the Court is the supranational application of Community law; and that it is part of a national law as the writer Pico Mantilla (Galo, 1992) said, who explains that these regulations are approved by the competent authorities indicated by the Constitution and the laws of each country, "in joint exercise of the powers granted."

It is convenient to analyze the situation of the so-called supranational powers against the internal constitu-

tional law of each State, which are those that recognize an international regime and resolve the conflict that may exist between the international norm and the internal constitutional law, in favor of the former.

In the work Central American Community Law, it is explained that

"... in conditions of equality and reciprocity, far from undermining or affecting in any way national sovereignty, which all Latin American Constitutions proclaim, configures, by itself, a typically sovereign act, proper to the concurrent exercise of the sovereignty of several States for the common benefit of their peoples". The requirement that this attribution of powers to international organizations will be "under conditions of equality and reciprocity" is obvious and self-explanatory. The same occurs with the idea that it is a "coincident exercise of the sovereignty of several States", as well as the idea that said that exercise serves the purpose of obtaining a "common benefit". What, at least in legal purity, could raise some reservations, is the assertion that an attribution to international organizations of powers that authorize them to make decisions erga omnes, does not undermine or affect "in any way national sovereignty."

Supranationalism has as a characteristic that it entails limitations to the exercise of the sovereign rights of the State, are not requiring the consent of the State. It has been the State itself that by means of a declaration of will, creates a system in which joint acts are recognized and applicable to it. Oncethe legitimacy of the concurrent act of will of the States it is signing, the international instrument has been recognized, and the effects or results are also recognized, too. When the document has been elaborating this conception, is good to empha-

size and taken into account the "fundamental rights of the States, their duties and responsibilities".

3.2 Background

The main antecedent of the Central American Court of Justice, which is interesting to analyze, is that this Tribunal was created by the Convention signed by the Republics of Honduras, Nicaragua, El Salvador, Guatemala and Costa Rica, signed in Washington city on December 20th, 1907, as a result of the Conference or Pacts of Washington. This Court is considered asthe first International Court in modern history (Villamil, La Corte Centroamericana de Justicia en Política Internacional, 1959).[6]

In the Articles I to IV of its Statutes, the Court functioned as it is indicated by López Villamil, from May 25th, 1908, to March 12, 1918. In the Statute that was agreed upon for its operation The Court itself, in 17th and 19th articles, indicated the following attributions:

"Art. 17. The ordinary jurisdiction of the Court comprises:

1st. Give a resolution to all the questions or controversies that occur between the Central American States, about any topic, if the interested Chancelleries have not been able to reach an agreement, whether this is demons-

6 "Jurists of the most renowned international prestige, such as Manley, or Hudson, Álvarez, Bustamante, Guggenheim, Hambro, etc., have dedicated to the Central American Court of Justice the merit and historical significance among legal institutions, establishing it as the first Court International in contemporary times, established with permanent functions, based on a tradition of solidarity among the Central American States".

trated by proceedings or other efficient documents or by the fact of The Parties are in a state of war.

2nd. The disputes that a Central American establishes against any of the Contracting States other than its own, when they refer a violation of Treaties, conventions or other international matters, provided that it has exhausted the remedies that the laws of the respective country grant it, against the motivating acts of the judicial action, or that a denial of justice is demonstrated.

3rd. The power to establish, in harmony with the XVIII article of the Convention, the situation in which the disputing Parties must remain during the trial between them initiated, and, consequently, to dictate the precautionary measures that it deems indispensable for this purpose, as well as the one to modify, suspend or revoke them, according to the circumstances.

4th. The cases of domestic Public Law included in the annexed article of the aforementioned Convention, with respect to the States that included this clause in the legislative ratification of the Pact.

About the 19th article, an extraordinary or arbitration jurisdiction constitutes:

1° Issues not included in the second paragraph of the 17th Article, that arise between one of the Central American governments and private people when they are submitted to it by a mutual agreement.

2° Disputes of an international organ between any of the Central American Governments or a foreign nation that, by means of a Convention held for this purpose, the Parties decide to ventilate and settle before the Court. "These rules of jurisdiction were in fewer num-

bers than those of the current Court, which in the Statute are established in the next article:

22nd Article: The jurisdiction of the Court will be:

a) To know, at the request of any of the Member States, the controversies that arise between them. Border, territorial and maritime controversies are excepted, for which knowledge the request of all the parties is required.

Previously, the respective foreign ministries must seek an agreement, without prejudice any of the parts, try it later in any stage of the trial.

b) Be aware of the nullity actions and non-compliance with the agreements of the Central American Integration System organizations.

c) Know the request of any interested party, about the legal, regulatory, administrative or any other provisions issued by a State, when they affect the Agreements, Treaties or any other regulation of the Central American Integration Law, for the Agreements or Resolutions of its Organs and agencies.

ch) Know and rule, if it so decides, as arbitrators, the matters in which the parties have requested it as a competent Court. It may also decide, hear and resolve a dispute ex aequo et bono, if the interested parties agree.

d) Act as the Permanent Court of Consultation of the Supreme Courts of Justice of the States, for illustrative purposes.

e) Act as a consultative body for the Organs or agencies of the Central American Integration System, in the interpretation and application of the "Tegucigalpa Pro-

tocol of reforms to the Charter of the Organization of Central American States (ODECA)", and the complementary instruments and acts derived from them.

f) Know and resolve, at the request of the aggrieved party, conflicts that may arise between the Powers and fundamental organs of the States, and whenin fact judicial decisions are not respected.

g) To be aware of the matters submitted directly and individually by any person affected by the agreements of the Body or Organizations of the Central American Integration System.

h) To know the controversies or questions that arise between a Central American State and another body, when they are submitted to it by mutual agreement.

i) Carry out comparative studies of the Legislations of Central America to achieve their harmonization and draft uniform laws to carry out the legal integration of Central America.

This work will be carried out directly or through specialized institutes and organizations such as the Central American Judicial Council or the Central American Institute for Integration Law.

j) Know as a last resort, on appeal, the administrative resolutions, issued by the Organs and Organizations of the Central American Integration System, that directly affect a member of its staff and whose replacement has been denied.

k) Resolve any preliminary inquiry required by any Judge or Judicial Court that is working on a pending case, a ruling aimed at obtaining the uniform application or in-

terpretation of the norms that make up the legal system of the"Central American Integration System", created by the Tegucigalpa Protocol", its complementary instruments or acts derived from it.

Art. 23. The States may formulate illustrative consultations with the Court on the interpretation of any existing International Treaty or Convention; also, regarding conflicts between the Treaties or with the Internal Law of each State.

Art. 24. The consultations conducted by the Court in accordance with this Statute, ordinances and regulations, regarding the Central American Integration System, will be mandatory for the States that comprise it. "Another precedent that we can cite, is the Andean Court created by the Agreement of Sub regional Integration of May 26th, 1969 (known as the Cartagena Agreement) signed between Bolivia, Colombia, Chile, Ecuador and Peru.

In the Treaty, which creates the Court of Justice of the Cartagena Agreement, in the III Chapter, the powers of the Court are established as follows: Action for annulment (17th Article); Action for non-compliance (2nd article) and Preliminary Interpretation (28th article).

Regarding the European experience, the jurisdiction of the Court of Justice of the European Communities has been modified when the Court of First Instance was created, as it is explained by Professor Faramiñan Gilbert and Professor Gil Carlos Rodríguez Iglesias in the aforementioned work (Faramiñan, 1993), *Some of these powers, initially attributed exclusively to the Court of Justice, have been transferred to the Court of First Instance of the European Communities. On the other hand, the Maastricht Treaty modifies article 168A, so that the only competences that will*

be excluded from any possibility of transfer to the Court of First Instance will be those of a preliminary ruling nature.[7]

In America the antecedent of these International Tribunals was produced withthe Treaty of the Union, signed in Panama on July 15th, 1826. In Central America the Arbitration Treaty in 1902 was signed, signed by the Central American States and which was considered as the antecedent to the Central American Court of Justice (Corte de Cartago) in 1908.

7 "The Court of Justice will be competent to rule and appeals annulment due to incompetence, substantial formal defects, violation of the Treaty or any legal norm relating to its execution, or misuse of power, brought against the decisions and recommendations of the Commission by one of the Member States or by the Council. However, the examination of the Court of Justice may not refer to the assessment of the situation resulting from economic facts or circumstances in consideration of which such decisions or recommendations were made, Except when the Commission is accused of having incurred in misuse of power or of having manifestly ignored the provisions of the Treaty or any legal norm relative to its execution.

The companies or associations referred to in article 48 may file, under the same conditions, an appeal against individual decisions and recommendations that affect them or against general decisions and recommendations that they consider to be subject to misuse of power with respect to them.

The appeals provided for in the first two paragraphs of this article must be filed within a period of one month, from the notification or publication of the decision or recommendation, depending on the case.

The Court of Justice shall have jurisdiction under the same conditions to rule on actions brought by the European Parliament in order to safeguard its prerogatives."

The continental confederative ideas in America began with Bolívar in South America, who in 1818 proposed an American pact for the Spanish-speaking countries and which were further specified in the Treaty of the Union of Panama.

In 1822, in Central America, José Cecilio del Valle, launched his great unionist ideology, aimed at the total unity of the American Continent in which he specified his ideas and specified guidelines for their realization (Valle, 1977).[8]

The most important international antecedent in America that creates an Arbitration Court is the Washington Conference, signed in 1889 (First Pan American Conference).

8 Del Valle, José Cecilio (Honduran) published in El Amigo de la Patria on March 12, 1822 the article "The Abbot of San Pedro dreamed and I also know how to dream", reproduced in the Law Review N'S, 1977, National Autonomous University of Honduras, p. 15., which in the relevant part says: "Listen, Americans, my wishes. You are inspired by love for America, which is your dear homeland and my worthy cradle. I would like to:

1º. That in the province of Costa Rica or León, a General Congress should be formed, more likely than that of Vienna, more important than the allowances where the interests of the civil servants and not the rights of the peoples are combined:

2° That each province of both Americas sends to sign it, their Deputies or representatives with full powers for large matters that should be the object of their meeting:

3° That the Deputies take the political, economic, fiscal and military status of their respective provinces, to form with the sum of all the generals of all America.

4º.- That the Deputies united and their powers recognized, should take care of the resolution of this problem: Draw up the most useful

Then, on November 22nd, 1969, at the Inter-Ameri-

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plan so that no province of America falls prey to external invaders, or victims of internal divisions.

5° That solved this first problem, they work on the resolution of the second: Form the most effective plan to raise the provinces of America to the degree of wealth and power to which they can rise:

6° That by looking at these objects, they form: 1st. The great Federation that must unite all the states of America: 2nd. The economic plan that should enrich them:

7°.- That in order to fulfill the first, the solemn pact to help each other be celebrated by the States, in foreign invasions and internal divisions: that the contingent of men and money with which each one should contribute to the relief of the one who was attacked be designated. divided; and that in order to ward off all suspicion of oppression in the case of internal war, the force sent by the other States to quell it, be limited only to making the differences be decided peacefully by the respective Courts of the divided provinces and to oblige them to respect the decision of the courts.

8° That in order to achieve the latter, the measures be taken, and the general trade treaty of all the States of America be formed, always distinguishing with more liberal protection the reciprocal turn of one with the other, and seeking the creation and promotion of the Marine that needs a part of the Globe separated by seas from the others.

With the representatives of all the powers of America gathered to deal with these matters, what a great spectacle they would present at a congress never seen in centuries, never formed in the old world, nor dreamed of before in the new! ".

And Valle ends his futuristic dream with this expression: "America will be my exclusive occupation from today. America by day when I write. America by night when I think. The most worthy study of an American is America."

can Specialized Conference on Human Rights, the American Convention on Human Rights (Pact of San José, Costa Rica) was signed, which entered into force on July 18th, 1978, and which created the Inter-American Court of Human Rights, which is based in San José, Costa Rica. This Court has competence to solvecases of violation of human rights, freedom and protected the Human Rights Convention, to conduct consultations on the interpretation of that Convention or other Treaties concerning to the protection of human rights in the American States.

3.3 Jurisdiction and competence

In the Theory of Procedural Law, the unity of jurisdiction is an accepted principle. Jurisdiction is the power of a State that is exercised through the Judicial Power. This power consists of applying the general law to specific cases to decide intersubjective conflicts of interest, by means of a judgment with a judicata authority, that is, to judge and execute what is judged.

We refer to the previous doctrinal conception, to differentiate the institution from the competency of the jurisdiction, with which it is often confused and misrepresented. Mattirolo, since the last century, noted the conceptual confusion between jurisdiction and competency. This author, rarely quoted but very repeated in his conceptions, says: "The power, which each judicial authority develops in the exercise of its functions, is called jurisdiction. Competence is the extent to which this power is distributed among the different judicial authorities" (Mattirolo, 1901).

We mention the above, because like many Codes and Laws, the Court´s regulations have not escaped this tra-

ditional imprecision. Thus, in Articles 1, 3 and 7, the Statute uses the concepts jurisdiction and competence, as synonyms, and in the 3rd and 7th it says that the Court will have power "to divide or distribute its competence and jurisdiction in Chambers or Rooms". We believe that only competencies can be distributed, since the jurisdiction is unique and indivisible.

The jurisdiction is unique, as a power of an organ. We must also indicate thatit is a pleonasm to say Court with jurisdiction, because that is why it is Court. Therefore, the proper thing is to reserve the generic name of Court only to designate a judicial organism.

The Procedural Ordinance uses the terms analyzed in Article 6, making them synonymous or with a similar meaning. Precisely due to the improper use of the indicated concepts. As the Italian Mattirolo said, both words are frequently confused. He also said that "Competition is the extent to which this power is distributed among the different judicial authorities"; Even so, we believe that there is no distribution of jurisdiction, since it is not divided, each Court has it innate and exercises it integrally in each case, but in which case Court can exercise it, that is already a matter of having jurisdiction or not. So Mattirolo´s concept is that, competency is the measure of jurisdiction, is still valid and repeated by all.

The jurisdictional power of the Court arises from the "Protocol of Tegucigalpa; that reforms the Letter of the Organization of Central American States (ODECA) which in the Article 12 provides:

"The Central American Court of Justice, which will guarantee respect for the law, in the interpretation and execution of this Protocol and its complementary ins-

truments or acts derived from it", and that, in Article 35, in its final part, says: "All controversy over the application or interpretation of the provisions contained in this Protocol and other instruments referred to in the preceding paragraph must be submitted to the Central American Court of Justice".

Thus, the main function of the Court is jurisdictional, but not the only one, since it carries out legislative and material activity when it approves its regulations and ordinances. It does the same when it issues consultation resolutions, which are mandatory and therefore are standards of conduct for the Central American Integration System.[9] It should be noted that a special legislative body was not conceived in SICA,[10] since the Central American Parliament does not have this function.

Undoubtedly, the Court also performs a material administrative function, by applying its rules that govern it and in the fulfillment of some attributions that are not properly jurisdictional, such as in the case of literal: i) to carry out legislative studies and literal d), e) and k)

9 In 2014, the new Ordinance came into force: "Art. 105. This Ordinance shall enter into force on June 1, two thousand and fifteen and, consequently, renders the previous Ordinance of January 1, nineteen hundred and ninety-five, and its subsequent amendments, without legal effect. It must be published in the digital Gazette of the Court, without prejudice to its publication in the Official Gazettes or Gazettes of the Member States and make it known to the General Secretariat of SICA and other Central American Integration Bodies and Organizations. Given in the city of Managua, Nicaragua, Central America, on the third day of the month of December of the year two thousand and fourteen. "

10 SICA: Central American Integration System.

on the evacuation of consultations, etc., of article 22 of the Statute.

Competence has already been defined as the aptitude of a Court to hear the matters that the Law places within the sphere of its attributions, and we have said that this attribution of tasks is not distribution of parts of jurisdiction, since as power-duty, it is unitary and indivisible, it is not exercised by fractions or pieces, what can be divided are the fields in which it is exercised.[11]

The Central American Court of Justice is responsible for:

a) By value or amount: Without limitation.

b) By subject: of integration matters related to it and of private matters beforethe States; in consultation; as a referee; matters related to integration heard by the Courts of the States; in the preparation of legislative integration studies; Conflicts between Powers of States and Inapplicability of rulings.

c) By territory: in all SICA States or in other States that are subject to its jurisdiction.

d) By grade: the appeal, in the last instance, of administrative resolutions that affect SICA personnel; and in the sole instance of the aforementioned matters.

11 Traditionally, the criteria for the classification of competences are indicated as follows: 1st. Objective: a) By subject (Civil, criminal, integration, family, administrative, etc.); b) By value or amount (Minor, minor, major, indeterminate); 2nd. Functional or by grade (First and second instance, knowledge of resources) and 3rd. Territorial.

Border, territorial or maritime matters are only excluded from its competence, except for voluntary submission; and especially human rights issues are excluded.

Article 30 of the Statute provides that the Court, "In accordance with the rules established above, it has the power to determine its competence in each specific case, interpreting the treaties or agreements pertinent to the matter in dispute and applying the principles of Integration Law and International Law".

The established norms, referred to in the aforementioned article, are essentially those of article 22 of the Statute, which contains the rules of its competence. Thus, although the Court, in each case, can determine its jurisdiction, it must do so in accordance with the provisions of the rules of Article 22, being able to interpret them to determine their scope. But we consider that it cannot create new competencies other than those indicated in article 22 of the Statute and that, in the event of alleged incompetence, it corresponds to the same Court, in sole instance, to rule on such claim.[12]

12 The Central American Court of Justice is a permanent Court based in Managua, Nicaragua, and due to its powers of jurisdiction, it is the Integration, International and Arbitration Court. Dr. Jorge A. Giammattei A., Former President of the Court adds that it is also a Constitutional and Consultative Court. LEGAL REGULATIONS. Central American Court of Justice, p.17; Imprimátur, 1996. 3rd Edic. Managua, says: "The Statute gives the Court a jurisdiction that covers practically the entire Central American judicial universe. It is defined in Article 22 of the same and it appears that it will exercise its functions mainly in the following areas: A) Containment between States (Article 22 literals a and h); B) Between individuals with States or between individuals and SICA Bodies (Art. 22 literals b,

3.4 Process and procedure

The Statute of the Court in article 5, provides that: "The procedures provided in this Statute and those established in the regulations and ordinances, shall have the purpose of safeguarding the purposes and principles of the Central American Integration System, the objectivity of rights, equality of the parties and the guarantee of due process". In the Ordinance of Procedures in force in articles 1 and 4, due process is mentioned as a guarantee of the procedure.

The principle and guarantee of "due process" has its origin in America, in the Constitution of the United States of America, which in the XIV Amendment says: "No State shall deprive any person of his life, liberty or property without due legal process, nor will it deny any person within its jurisdiction, the equal protection of the Law".

The principle of due process consists in the person being judged and heard by a competent Court and with the legal formalities. Couture says that: "This guarantee consists, substantially, in a notice (notice) and in it the possibility of being heard (hearing) by suitable and responsible judges ... The Argentine Supreme Court has been faithful to this interpretation and in the face of an analogous constitutional text has upheld the same thesis that the guarantee of due process is constituted, essentially, by the possibility of adducing a defense for the possibility of producing evidence and by the possibility

c, f, g); CH) Arbitration (Art. 22 literal ch); D) Administrative (Art. 22 literal j); E) Constitutional (Art. 22 literal f).

of being convicted by means of a judgment issued by the Judges of the Constitution" (Couture, 1978).

The concept of process is theoretical, as it does not appear in any law. Eduardo B. Carlos, says that "The process must be understood as a set or complex of acts, carried out by the parties (actor, defendant, plaintiff, accused) and the Judge or Court, linked together, as soon as one succeeds the one who precedes it and is the cause of the one that follows and goes from the initial act that naturally initiates it, to the one that decides it" (Eduardo, 1959).

Under the previous criteria and the process being a theoretical conception, which is not defined in the Law, having due process is being judged according to a previously established procedure and by a competent judge, no matter what kind of procedure it is. The fundamental thing is that the judicial body and its jurisdictional function, cannot act except through the process, that is, walk along a path known to be previously established, that does not contain traps, surprises or arbitrariness, for the defendant.

Parallel to the concept of process and rather within it, let's analyze the concept of procedure. Jaime Guasp says that "The figure of the procedure is, therefore, the special manifestation of the plurality of acts within a process, constituting the way to externalize the process itself, although without identifying with it as for so long it has been erroneously believed".

That is why the procedure is the way in which the doctrinal concept of process is externalized in each case, since there are diversity of kinds of procedures: Civil, criminal, cognition, plenary, summary, special, oral, written,

mixed, simple, complex, etc. According to the need that is addressed, this will be the procedure or the way in which the jurisdictional process is developed.

In this regard, a former judge of the Court stated:

> "But whatever the type of process, its form must be previously established and known by potential users. Being judged in accordance with those pre-established forms is the guarantee of due process, to guarantee the freedom and security of the defendant. Following the traditional classification of the classes of process or rather of procedures, we could identify in the Ordinance, a common or ordinary process in Titles II to III and the processes or special procedures in Title V in Chapters I to VI (The Appeal, Consultations, Prejudicial Interpretation, Demand for Nullity and Non-compliance and Constitutional Controversies) (Gómez, 1995)".

It should be noted that according to Article 101 (unforeseen procedure) of the Court Procedures Ordinance, in matters not provided for in that Ordinance, the Court may indicate the procedures to be followed, maintaining the objectivity of the rights and the safeguarding of the purposes and principles of the Central American Integration System, the equality of the parties and the guarantee of due process.

3.5 Impartation of justice

We have mentioned the jurisdictional function of the Court, directed fundamentally to the decision of con-

flicts, but we have to say that it performs an administrative function, as in the case of consultations, proposing draft integration laws, among others.

And although these functions are incumbent upon it, in no case is it an administrative body. Therefore, we do not agree with the expression "Administration of Justice." Within the scheme of the division of functions, each one has its own field, the judicial, next to the legislative and administrative fields. More content is jurisdictional, that is, conflict resolution through the application of the Law. But, in addition, in this field there are small-scale administrative activities (appointment of personnel, budget management, etc.), and there is also legislative activity; as when ordinances and regulations are issued, but in any case, these are formally judicial and not administrative or legislative activities.

The widely used expression of "Administration of Justice" or "Administer Justice" seems inappropriate, although it is commonly incorporated in laws and even in Political Constitutions. Its origin comes from Montesquieu's conception of the separation of powers, in which he considered the Judicial Power as administrator of things pertaining to civil law, as analyzed by the Argentine writer Vanossi (Teoría Constitucional, 1976).[13]

13 A. Vanossi, Jorge Reinaldo. Constitutional Theory. T. 11., p. 76. Ed. Depalma. Argentina 1976; says: "In Locke's thought the judicial power did not yet appear as an independent power, and it is with the inspiring father of the theory of the separation of powers, Montesquieu, that the distinct and separate judicial power appears, although called" power executive of things pertaining to civil law. "And here is in part the trap of the matter: the judiciary had independence, but it was not understood as a state power. Montesquieu himself is in charge

The matter is not a pure semantic question, but a fundamental one, of a different conception of the independence of the Judicial Power and of its evolution towards a Power of true political decision, which has made Europeans call, referring to the judicial system of the United States of America, as the "government of the judges."

When wanting to differentiate the jurisdictional function from the administrative one, there is difficulty, since the law applies in both. The difference is that the administrator applies the law for himself, for the administrative body and when there is a conflict, it is between the official and the individual.

In the jurisdictional activity the situation is different, since the judge applies the norm to resolve a conflict of third parties. The administrator is interested in the conflict (for example: the auditor who demands the tax tries to raise it in favor of the State), while the Jud-

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of explaining to us that the judiciary is a power neutral, is the mere applicator of the syllogism, which takes the major premise that is the law, faces the minor premise that are the facts of the cause, and dictates the sentence that is the reasoned and automatic conclusion of that operation: the judicial syllogism. The judiciary could not merit the value of the law, much less its constitutionality, that is, its confrontation with higher standards. The idea that Montesquieu had was the idea of a simple detachment, of a simple "administration" of justice. Ultimately, administering justice was as much as administering things, that is, a function of the same nature as that of the executive branch. Execute or apply norms, but separately from the executive power, to avoid the danger that the confusion of the two expressions in the same hand and the same power represented; that is to say, the fear of the accumulation of the two notions led to their separation, but without wanting to confer on the judicial power the nature that the North Americans later give it.

ge is disinterested and therefore places himself outside the conflict, being objective and impartial in the application of the law.

Sayagués Lazo (Sayarguez, 1974), citing Mayer, says that administration is the activity of the State to achieve its goals, under the legal order. It is thus distinguished from legislation, which is the creation of law, and from justice, which is an activity for the maintenance of the legal order. He defines the administrative function as the state activity that aims to carry out state tasks insofar as they require practical execution, through legal acts that are regulatory, subjective or condition acts and material operations.

And the expression "administration of justice" seems even more inappropriate to us, compared to the principle of independence of the judiciary. The administrative public servant is essentially subordinate, acts under subjective criteria dominated by the interest of the State. He totally lacks principles that are natural to the judge, such as independence (external and internal), since he is totally dependent and hierarchical. The Judge is an impartial third party in the conflict, while the administrator is the citizen's counterpart, developing an activity contrary to the interest of the latter and is the main interested in the success of the state thesis.

The judge's objectivity, his impartiality, and his lack of interest are distinctive marks before the public administrator. The judge personifies or embodies the jurisdictional function, while the public servant fulfills instructions and is an executor of the decisions of other superiors.

And we conclude by saying, just as the legislative function is not administered, nor is the administration

legislated, justice is not administered either. Justice is imparted or dispensed, for this reason we believe that the correct name is "impartation of justice", which is the function that corresponds to the Central American Court of Justice.

3.6 The Central American Court of Justice and Human Rights

Currently, Human Rights constitute a true universal political and legal priority in the western world. As it was before with religions (in the Middle East), authentic heroic acts have been committed in the name of Human Rights, as well as actions that disguised as the impulse to defend them at all costs, have resulted in serious damage and arbitrariness that paradoxically they also rape and offend them.

In Central America, the "Esquipulas Agreements" in the eighties, constitute the basis of the norms that infuse the Integration Rights in Central America, have recorded the permanent non-observance of those rights inherent to the human person as a large extent, together with social injustice and the absence of democracy, it lit the flames of the bloody civil war that struck us for more than fifteen years. Since the peace agreements began to be celebrated in the states in conflict, part of the result in "Esquipulas Accords", their constitutions began to be reformed to gradually become more humane, fairer, more civil and with democratic instruments.

In this framework, Human Rights came to occupy a priority and a fundamental place in these primary texts, to the extent that, for example, the Guatemalan Constitution expressly says that International Human Rights

Law is above their Constitution and that its compliance by the State its rigorous and unavoidable (46th article). Similarly, the Constitution of Costa Rica and its jurisprudential regime, establishes pertinent provisions of similar meaning. The same happens, with greater or less rigor, in the other Central American constitutions, which highlight as supreme paradigms of the institutional regime that established the principle of Human Rights in all its expressions and manifestations.

In the case of Nicaragua, in the judgment No. 57 of the Supreme Court of Justice, Constitutional meeting on March 2nd, 2010; making an analysis of how the International Human Rights and their Instruments are hierarchically placed against the Political Constitution indicates that they have rank, recognition and character of constitutional norm, stating that: In the case of Nicaragua, in the 46th article of the Political Constitution of the Republic, recognizes the full validity and integrates in it the content of the international instruments of the Universal Declaration of humans Rights.

In the American Declaration of the Rights and Duties for the Man; in the International Covenant on Economic, Social and Cultural Rights and in the International Covenant on Civil and Political Rights of the United Nations organization; and in the American Convention on Human Rights of the Organization of American States, granting them rank and constitutional recognition. These instruments are integrated as constitutional norms compared to the other legal norms of our legal system, in order to promote the effective protection of human rights and fundamental rights of people, in order that the State and institutional powers observe, apply, comply with and respect them in the field of ac-

tivity of the administration of justice and public administration in general.

This judgment of the Supreme Court of Justice recognizes that some universal, regional, binding and ethical instruments have the status, recognition and character of constitutional norms. These are all the pacts, agreements and declarations mentioned in the 46th article of the Supreme Law, and it is interpreted that the Constitution places them at the top of the legal system, therefore, the entire legal system of the country must be subject to them.

The purpose of this recognition, according to the ruling of the highest organ of the country, is the effective protection of human rights and fundamental rights, that is, all the individual and collective rights of individuals, groups, people, The State and society. They have the obligation to create and / or strengthen the institutions, mechanisms and procedures so that these rights are effectively respected. This obligation in the public sphere is according to the ruling of all the institutional powers, for the administration of justice and the public administration in general, it means, all the powers, organs and instances of the State, as well as its officials must comply with all human rights recognized in the International Human Rights Instruments and in the Constitution, since both would become part of the country's constitutionality block (Mora, 2009).

In another historic ruling, No. 78 of the Supreme Court of Justice, Constitutional meeting on March 10th, 2010, once again reaffirms the rank, recognition and constitutional nature of the International Human Rights Instruments indicated in the 46th article and adds more in the 71st Article, in the second paragraph of the

Political Constitution, leaving no doubt to the legal supremacy of these universal and regional human rights standards. The ruling makes it explicit that constitutional rights and guarantees acquire international commitments through international human rights treaties and instruments signed by the State of Nicaragua and integrated into 46th and 71st articles, second paragraph of the Political Constitution, considers that these International Human Rights Instruments share the supremacy character that the Political Constitution has over the ordinary norms of the legal system. The ruling states that: "The will of the State of Nicaragua to have integrated these principles and norms of international law on human rights in the Political Constitution, demonstrates its unequivocal desire to consider the person as the axis or fundamental value of its Democratic State and Social Law, and as a consequence of the foregoing, has the purpose of promote the effective and real protection of human rights and fundamental rights of the person, so that the State, the powers of the State and all the institutions, without prejudice of their level and nature, observe, apply, comply and respect them in the scope of their respective activity, with the administration of justice, public administration, electoral or the administration of the autonomous regions of the Atlantic Coast of the country."

This judgment also reaffirms the obligation of all levels and expressions of the State to comply with human rights, indicating that people are subject to the principles recognized in international human rights law. This judgment ratifies the constitutional status of the International Human Rights Instruments mentioned in the 46th article of the Constitution and adds the aforementioned in the 71st article, second paragraph, which is the

Conventionof the Child Rights, here is something presented in many conferences; the constitutionalizing of children's rights in Nicaragua. It also adds that the regional authorities of the Caribbean Coast must comply with and respect thehuman rights of the international legal system, this is important due to the existing mandates regarding the rights of indigenous people and all matters related to interculturality.

It is certainly and not strange, that the Tegucigalpa Protocol of Central American Integration Framework Treaty, which acts as a Community Constitution, is clearly inspired and respect for these immutable principles. Thus, in its third article, section a), refers: "The Central American Integration System has as its fundamental objective the realization of the integration of Central America, to constitute it as a Region of Peace, Freedom, Democracy and Development. In that sense, the following purposes are reaffirmed: a) Consolidate democracy and strengthen its institutions on the basis of the existence of governments elected by universal, free and secret suffrage, and of **unrestricted respect for Human Rights**".[14] In fact, all SICA regulations refers directly or indirectly to the fundamental rights of citizens, since the rightof the community is precisely for and by the citizens of the region, and this regulation means, not an end in itself, to achieve full democracy, and the full validity of Human Rights and its manifestations in civil, social and politicians' rights. However, will the CCJ be applying the community provisions that are practically confused with the Human Rights of Central Americans? It is enough to read the initial provi-

14 Bold is ours.

sions of the Democratic Security Treaties, the ALIDES resolution or agreement, and the Social Security Treaty, to realize how taxing the treatment of these rights is in our fundamental Integration texts.

The Central American Court of Justice, as the fundamental organ of the System (12th Article of the Tegucigalpa Protocol), cannot and should not refrain from hearing conflicts over the SICA regulations, referring to the defense of the Human Rights of Central Americans. In this sense, we should interpret 25th article of the C.E that says: "The jurisdiction of the Court does not extend the matter of Human Rights, which corresponds exclusively to the Inter-American Court of Human Rights."

The 25th article (with excessive caution and prudence, and far from the purpose of the Tegucigalpa Protocol), has always wanted, in a very general and unsatisfactory wording, to establish the respect between the States, in the application of two fundamental international regulations that interact and coexist, in the Central American Regional area: that the Inter-American OAS System and the SICA, meaning that the exclusive scope of the Inter-American Court of Human Rights (IACHR) is specifically the American Convention on Human Rights, an instrument of classic International Law, which demarcates the scope of the exclusive jurisdiction of its own "jurisdictional body" (the IACHR). What the legislator has wanted is not to confuse the institutional spheres in which each of the two Rights is applied and to call on the Central American Court of Justice to respect the scope of that current convention or Treaty. However, due to the similarity of the matter, there must be situations in which, theoretically and practically, they may give rise to the simultaneous concurrence of both competences,

that of the American Convention and its Inter-American Court of Human Rights and that the Central American Court of Justice.

Thus, we must take into account the position expressed by the doctrine, referring to what was stated by one of the most prestigious and sexperienced jurists in the Central American region, the former president of the Supreme Court of Justice in Costa Rica, Luis Paulino Mora, who clearly stated in his work "Community Law and Human Rights" the following:

> "In accordance with the foregoing, Community Law cannot conflict with the protection of human rights, if it did, the former enjoys supremacy, not only because it is a matter of jus cogens, but also because of the provisions of the Constitutional jurisprudence that grantsit supra-constitutional rank in which favors protects the person in a better way. **In the same line of reasoning, it can be said that, if a norm of community law protects the human being in a better way, in that case, The source that provides the best protection would apply, by virtue of the "pro homine" principle, in such a way that the order of priority is reversed –for that case– and the Community Law rule would be applied as it is the one that provides the most effective result. favorable…"**[15]

15 Bold is ours.

The Central American Court of Justice, in several sentences, has come to know different cases that directly affect the human rights of Central Americans, in which it has courageously resolved to protect and defend them. Thus, jurisprudentially, the doctrine of "Community Human Rights" has been created, which reflects an unorthodox and timid conception, when deep down, what is being done is nothing other than acting in accordance with the principles, objectives, purposes and foundations of the Tegucigalpa Protocol, so it is not necessary to resort to any euphemism, less excuses or far-fetched concepts of any kind, since it is the human rights of Central Americans that are defended under the law, because they constitute the backbone of the purpose of the System as a whole.

In spite of everything, the restriction in the 25th Article is incompatible, not only with the same Protocol that being original law, prevails over the Status Convention in accordance with the principle of normative hierarchy; but it is also incompatible with the principles that gave rise to the System, whose fundamental basis are defined in 4th article of the Tegucigalpa Protocol, the protection, respect and promotion of the Human Rights. Based on this premise and the relationship of articles 12 and 35 of the Tegucigalpa Protocol, where the Central American Court of Justice has jurisdiction over any matter in which there is a Treaty or Instrument of Integration (general jurisdiction).

The Human Rights are the base of the Tegucigalpa Protocol, in Treaties suchas the Democratic Security Framework Treaty, the Central American Social Integration Treaty (TISCA), the Alliance for Sustainable Development (ALIDES) and in the rest of the Law Deri-

ved from SICA constitute its central nucleus. Therefore. the Central American Court has the function of guaranteeing respect for community law and, as a logical consequence, respect for the human and fundamental rights of its citizens, being guidedwith *prima facie*, by the purposes and principles established in its Functional treaty.

In fact, the CCJ has powers through which it can protect fundamental rights, expressed in the 22nd article of its Statute Agreement, specifically in sections f), g), c) and j).

PARAGRAPH C) 22ND ARTICLE, CCJ STATUTE AGREEMENT

Not only is it the article[16] that legally supports the individual's access to this Jurisdictional Court, thereby safeguarding their right of access to justice and due process (within its powers), but also, this literal gives jurisdiction to the Centroamerican Court of Justice, in order to be able to hear those cases in which the legal provisions of certain members of states directly affect the Conventions, Treaties and any Community Law regulations and also that directly affect another member of State and its population.

Jurisprudence in this regard: file 06-03-12-1999; in which case the State of Honduras sued Nicaragua before

16 Chapter II. Of The Competition And Other Powers. Article 22. The jurisdiction of the Court will be: c) To know, at the request of any interested party, about the legal, regulatory, administrative or any other provisions issued by a State, when they affect the Agreements, Treaties and any other regulations. of the Law of Central American Integration, or of the Agreements or resolutions of its Organs or agencies.

the Central American Court of Justice for the creation of the 325 Law, "Law Creating Tax on Goods and Services for Honduran and Colombian Origin", which created a 35% tariff on any imported, manufactured and assembled goods or services for Honduran origin, undoubtedly constituting discrimination, and breaching the rules established in the Central American regulations that safeguard equality and fair treatment among the nations that make up the community. This article also constitutes in itself a kind of control of conventionality or legality of an international nature, which could constitute a guarantee that the States Parties will not issue legal, regulatory, administrative or other provisions that are detrimental to the community and its members.

One of the highly commented cases in the last decade, was the one presented in the file 12-06-12-2011 by the National Recycling Forum Association (FONARE) and the Nicaraguan Foundation for Sustainable Development against the State of Costa Rica, for having violated the Articles, *inter alia*: 3, 4 and 6 of the Tegucigalpa Protocol; Articles 26 and 35 of the Protocol of Guatemala; Articles 1st and 2nd, sections a, b and g of the CCAD; Article 3 of the CCAD Regulations; Articles 2, 10, 13, 25, 29, 33 and 37 of the Convention for the Conservation of Biodiversity and Protection of the Priority Wilderness Areas in Central America; Objectives 3 and 7 of the Alliance for Sustainable Development (ALIDES), as well as provisions of current International Conventions such as RAMSAR (Article 5) and other Treaties, Conventions and Agreements on the matter of Environmental Law. For the Protection of a third generation of human right and a fundamental right protected by the Central American Constitutions with the verdict.

LITERAL F)

Paragraph f) of the 22nd article of the CCJ Statute Agreement is divided into two parts. The first part allows the request of the victim, of conflicts that may arise between the Powers of the State; and the second part that says: "and when in fact the judicial decisions are not respected". Regarding the first part, in our opinion, it protects the balance that must exist between the powers of the State as a guarantee of the equality of rights inherent in a democracy.

This article has been the subject of harsh criticism towards the Central American Court of Justice in the two occasions where it has exercised its jurisdiction, but under what argument could the Central American Court of Justice not hear a case that is properly founded and that is part of your specific skills? In both cases, Nicaragua in 2005 (Judgment of the Supreme Court of Justice of Nicaragua, declaring partial unconstitutionality on subsection f) of article 22 of the Convention on the Statute of the Central American Court of Justice, 2005) and El Salvador in 2012 , the Supreme Courts of Justice of both countries declared article 22, unconstitutional when the cases were already in progress, in constitutional processes that were late for decades before a Treaty signed and ratified by both.

In the case of Nicaragua, article 163 of the Political Constitution says "... The Full Court will hear and resolve the appeals of unconstitutionality of the law and conflicts of jurisdiction and constitutionality between the Powers of the State ...", when conflicts arise between whichever of the three powers in which the Judicial Power was not involved".

In our opinion, the constitutional norm provides a valid and necessary recourse within the internal mechanism of the same State, but in an alleged case in which the Judicial Power is involved in the refers conflict, the fact of being a judge and part of it, tarnishes the transparency of the decision; and being in a case of this type when article 22 f) literal, first part would regain validity.

In the case of El Salvador, through ruling 71-2012 of the Constitutional Chamber, article 22 f) of the Convention on the statute of the Central American Court of Justice, is declared unconstitutional, despite the norm established in the 89th article of the same Political Constitution that bases the creation of bodies with supranational functions for integration purposes, said ruling declares the following:

> …3. Declared unconstitutional, in a general and mandatory way, art. 22 letter f) of the Statute of the Central American Court of Justice, since the competence assigned, is supranational body to resolve conflicts between "Powers or fundamental organs of the States", and those derived from non-compliance with judicial decisions, deprives the Salvadoran State of the autonomous decision-making, giving the capacity on the basic competences of its organs, violates the constitutional prohibition of non-deputation of the functions and the exclusivity of the jurisdiction, according to 83 and 86 articles inc.1, 146 and 172 inc. 1 ° Cn. 4. Declare unconstitutional by connection, in a general and mandatory way, 62 and 63 articles of the Ordinance of Procedures of the Cen-

> tral American Court of Justice, because these are limited to determinate the procedure of application of a jurisdiction of the Court, that is incompatible with the Constitution, so they share the vice of contrast with 83 and 86 articles inc. 1, 146 and 172 inc. 1 ° Cn ...

In El Salvador, the Political Constitution in its174 article and the Organic Law of the Judicial Power in its 53 article, second numeral, grants the power of the constitutional chamber to resolve disputes between the Legislative Branch and the Executive Branch, to referred in the 138 articles of the Constitution.[17] Remaining the same unknown as in the case of Nicaragua: Can the Judicial Power through the Constitutional Chamber be a judge and a party to a conflict between powers in which it is involved? In our opinion and for transparency reasons, the CCJ as a competent jurisdictional body through an express rule must be the one who knows a case in which the Judiciary is one of the parties in conflict, which was precisely what happened in the conflict aired in the year 2012.

Regarding the second part of 22 article, literal f): disrespect for judicial decisions, in the case of Nicaragua the declaration of unconstitutionality leaves this second part in force, otherwise El Salvador declares the literal in its entirety unconstitutional. The second part of this literal may have as an aggrieved party any procedural sub-

17 Art. 183.- The Supreme Court of Justice through the Constitutional Chamber will be the only competent court to declare the unconstitutionality of the laws, decrees and regulations, in their form and content, in a general and mandatory way, and may do it at the request of any citizen.

ject described in the 10 articles of the Ordinance of the Court Procedures to whom a State body or entity does not respect a judicial ruling. In this competition, the CCJ directly protects the fundamental right of legal security of an entire society that is seriously affected when these disrespects are continuously found in a state action.

In the case of the Central American Court of Justice, on this issue there is jurisprudence with a different interpretation; The first generation of the Full Court issued jurisprudence (Application alleging the claim of non-compliance with judgment No. 11, pronounced by the Constitutional Chamber of the Supreme Court of Nicaragua, 1998), (Application for non-compliance with the arbitration judgment of the First Court for civil matters in the District of Managua issued on 06/08/92, in which it ordered the monetary Fund for Technological Research and Development to pay professional fees plus damages, 1996), (Lawsuit for disrespect of judicial ruling, issued at 2 pm on 07/18/1996 by the sole District Judge of Jinotega, Nicaragua, Dr. Mario Luis Soto Quiroz, 1996), in the sense of disrespect for a judicial ruling in the broadsense of this.

The second generation of the Full Court has issued the jurisprudence in the sense that the disrespect of judicial decisions that the Court resulted, must be related to the current legal regulations, contained in the Community Law due to not incurring in invasion of legal spaces, not reserved to your competition. In this sense, the CCJ has been cautious in its last years, in the analysis of the specific criteria to consider a case of its full jurisdiction, having taken the agreement of the Full Court (Jurisdictional Act No. 32, 2014), by unanimous votes in which 4 assumptions were specified

for the admission of a lawsuit for disrespect or non-compliance with judicial decisions and the requirements that the respective resolution must contain. Among these assumptions are: a) that the disrespect or non-compliance with the judicial ruling that is involved and related to the regional integration law; b) its fundamental principles are specifically invoked; c) that the judgment invoked has been duly executed; e) that, in order to consider the petition, the time elapsed between the date of the final judgment of merit and the process of non-compliance with it, must be taken into account.

According to our assessment, we consider that this decision of the CCJ allows us to have a more orderly vision of this competence, the spirit of which continues to be the protection of the legal security of the person (natural or legal), because by enforcing a ruling, the Court Central America collaborates, influences and allows the citizen to be restored a right, recognized by their respective State through the sentence in question.

LITERAL G)

When the fundamental rights are violated by the Organs, Agencies, or Institutions of the System, the Inter-American Court does not have jurisdictionto know the matter, since the 44 Article of the Convention recognizes the access of the Inter-American System when it is a State that has violated the rights protected by the Convention. In this logical iteration of ideas, the CCJ is competent through the 22 article literals g and j to protect violated rights byan integration body.

Regarding literal g), the Court may know the matters submitted to it by any affected party (which also bases

the *ius standi*) that is affected by the agreements of an Organ or Agency of the Central American Integration System. This is how any individual can go to the Central American Court of Justice if he or she feels aggrieved by a virtue of the agreements or resolutions of the SICA (Demand of Mr. Oscar Roberto Balcáceres Castro, against the PARLACEN for having violated his community rights that correspond to him in his capacity as Alternate Deputy of the PARLACEN, 2006).

Literal j)

The meaning of the literal j of the 22 articles of its Statute Agreement, the CCJ can know like the last instance, on appeal, the administrative resolutions issued by the organs or agencies that directly affect a member of his staff and whose replacement has been denied. With this competence, the CCJ acts as guarantor of the labor rights of SICA officials and employees (Appeal against the resolution issued by the SG-SICA by Omar Enrique González and Dr. Oscar Alfredo Santamaría Jaimes, General Secretary of the SICA, which confirms the dismissal of its worker at that institution and denies his recourse, in 2005), guaranteeing the personnel of these bodies and agencies the legitimate right to a job stability, and each and every one of the rights in force in terms of labor law and contracts, constitutionally protected a second generation labor and human rights.

After this analysis, expressing the powers of the CCJ Statute Convention in the 22 articles, we can conclude that the CCJ has delegated powers in which it can protect and guardianship, the fundamental rights that are protected and contained in the acquis communautaire.

LEGITIMACY VS. LEGITIMATION OF THE CENTRAL AMERICAN COURT OF JUSTICE

Legitimacy has been a debated issue, intrinsically linked to legality and its recognition and protected in any situation strictly based on the current legal system. Therefore, what is done or obtained under the Law is understood as legitimate and constitutes a legal mandate.

In accordance with the aforementioned, the Central American Integration System (SICA) was created into legal life in 1991, through the signing of the Tegucigalpa Protocol to the ODECA Charter, this document began as the original instrument of the System that creates the Central American Court of Justice as a jurisdictional organ of the System through its 12 article and together with 35 article of the same grants, in competence to resolve any controversy of application and interpretation of the provisions manifested in the community legal system.

Regarding the normative hierarchy of the Integration Treaties in Central America, the complementary and derivative instruments, have a relationship of interdependence of the Tegucigalpa Protocol, as established by jurisprudence by the Central American Court in the consultation carried out by the General Secretary of the SICA l. Otherwise, the Statute Agreement, as it is a formal Treaty that regulates the powers, organization and duties of the CCJ, within the SICA regulations, is a complementary right due to the Tegucigalpa Protocol. The States party to it committed to compliance with the provisions of the supreme rule and accepted its 12 and 35 articles of the jurisdiction and competence of the Central American Court of Justice in matters of Integration.

Legitimation determines the conditions to be able to participate in a specific process in attention of the ma-

terial rights, it is intimately related to the capacity and ownership of the exercise of an action through formal recognition. In the case of the Central American Court of Justice, its legitimacy before those States that have not ratified its Statute Convention has been repeatedly questioned, as well as the fact that its membership is currently represented by Magistrates from the three countries.

At this point, it is important to make a necessary separation between the different procedural subjects: States that have historically been considered the subjects for an excellence of international law; the Bodies, Agencies and Integration institutions that are directly, formally and materially linked to the entire process; natural and legal people through their access and direct participation in the respective court (*ius standi)*. To the Central American individual (natural or legal person), object and primary subject and have the benefits of the integration process, the legitimacy route, proposed and gives the legal conditions to access to the Central American Court, an inalienable right of access to justice, which has been fully exercised.

In the case of Costa Rica and Panama as States that have not ratified the Agreement of the Statute (as for the Dominican Republic, its adherence to SICA has been subsequent to the Court's Statute Agreement), both signatories and ratifies of the Tegucigalpa Protocol in accordance with their constitutional procedure, they have fully accepted the jurisdiction and compulsory competence expressed in the decision of the Court in a case, where they were a party as an inescapable compliance in accordance with the provisions of the 39 article of the Convention of Statute of the Central American Court of Justice and in the 66 article of its Procedural Ordi-

nance, Central America being also a community of law, where each of the Memberof States, Bodies, Agencies and Institutions of the System are subject to the control of the legality of their acts.[18]

Regarding to the legal approach of incompetence for the lack of ratification of the Convention Statute, we can highlight the fact that at the executive body level, both States have recognized the jurisdiction and competence of the CCJ, in the traditional doctrine of the Public International Law constitutes and an unilateral act of the will of the State that generates responsibility and legal effect on the actions derived from it (Third Report

18 Statute Agreement Article 39. The interlocutory resolutions, awards and final judgments issued by the Court will not admit any recourse, they are binding for the States or for the Organs or Organizations of the Central American Integration System, and for natural and legal persons, and They will be executed as if it were a matter of complying with a resolution, awards or judgments of a national court of the respective State, for which the certification issued by the Secretary General of the Court will suffice. In the case of non-compliance with the judgments and resolutions by a State, the Court will inform the other States so that, using the pertinent means, they can ensure their execution. Procedural Ordinance Article 66. The sentence shall have binding force and character of res judicata as of its notification and is applicable in the territory of the Member States; It will not admit any recourse, it is binding for the States or for the Organs or Bodies of the System and for natural and legal persons and it will be executed as if it were a matter of complying with a resolution, award or sentence of a national court of the respective State, for which which will suffice the certification issued by the Secretary. In the event of non-compliance with the judgments and resolutions by a State, the Court will inform the other States so that, using the pertinent means, they can ensure their execution.

of the United Nations International Law Commission, p. 13), said that the doctrine recognition of unilateral acts has been recognized by the Central American Court of its jurisprudence (Judgment of the claim filed by the Association of Customs Agents of Costa Rica v. State of Costa Rica, 2009).

Likewise, the Court has reiterated its jurisprudence with the mandatory and binding nature of its competence and jurisdiction with the SICA Members of States that are not ratifying the Statute Agreement (Advisory Opinion of Dr. Raúl Zaldívar. President of PARLACEN, 1996), (Request for an Advisory Opinion from Mr. José Rodolfo Dougherty, Vice President of PARLACEN, 1996), (Request from Dr. Juan Francisco Reyes Wyld, Principal Deputy of PARLACEN v. Guatemala, 2004), (Request from Lic. Adolfo Portillo Cabrera, Ex-President of Guatemala v. Guatemala, 2006), (Demand of the Customs Association Agents of Costa Rica v. Costa Rica, 2008), (Advisory Opinion of Gloria Aquald Solórzano, President of PARLACEN, 2009), among others, existing a full legal recognition and the legal link of legitimacy.

CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Having developed, in accordance with the guidelines of the research protocol, the three chapters of this study, the analysis of the approach and having demonstrated the hypothesis of the work, we conclude that:

The historical origin of the creation of the Central American Integration System (SICA) allows us to establish the purpose and commitment of the region to consolidate democracy and strengthen its institutions on the basis of the existence of governments elected by universal, free and secret suffrage. "And the unrestricted respect for Human Rights."

With the change from ODECA to the Central American Integration System (SICA), as the institutional framework of the Regional Integration of Central America, a definitive step was taken to achieve economic-political integration, becoming the new legal-political framework capable of covering all areas of integration. It went from an intergovernmental cooperation system, to a system built on the basis of solidarity, with suprana-

tional organizations capable of safeguarding the common interests of the region, to guarantee the benefit of their own resources to the inhabitants, and oriented to the fundamental objective of constituting it as a Region of Peace, Freedom, Democracy and Development, as a harmonious and indivisible whole.

That, in order to carry out the aforementioned purposes, the Central American Integration System and its Members shall proceed in accordance with the fundamental principles of the protection, respect, and promotion of Human Rights that constitute the fundamental basis of the Central American Integration System; Peace, Democracy, Development and Freedom are a harmonious and indivisible whole that will guide the actions of the member countries of the Central American Integration System.

Community Law in its multidimensional nature exercises a normative protection of various human rights based on its original Treaty, complementary Treaties and a wide production of derivative law.

The existing protection in the Treaties and commitments assumed by our States in the regional human rights instruments under the normative framework of the OAS, is not in any way opposed to the protection established in the integration instruments; on the contrary, under the principles of primacy, direct effect and immediate applicability of Community law, the citizen obtains a higher level of protection and the right to exercise *ius standi* before the Central American Court of Justice.

Under the *pro homine* principle, Community Law and the Central American Court of Justice provide more direct and expeditious attention to Central American citi-

zens, with regard to the protection and guardianship of those Human Rights recognized and protected by the Community acquis. It is precisely marked as the purpose of the Tegucigalpa Protocol as a consequence of the most serious violation of Human Rights that the Central American region had been suffering over several decades.

Despite the fact that the Community legal order contains norms related to Human Rights, they are scattered in various instruments, centralization in a material document is necessary, not only for the ordering of these norms, but also to materialize a specific guarantee of protection to the Central American citizen in the matter of Human Rights.

The existing material restriction in Article 25 of the Convention on the Statute of the Central American Court of Justice on its competence in Human Rights is unsustainable with the commitment, purpose, meaning and scope that inspired the creation of the Central American Community.

The creation of a Central American Charter of Fundamental Rights would expand the material jurisdiction of the Central American Court of Justice on Human Rights, without this implying a conflict of material jurisdiction with respect to the Inter-American Court of Human Rights (which its processes are extremely slow and bureaucratic), since each jurisdictional body is clearly conceived in its own institutional framework based on the normative scheme that creates it: the Inter-American Court under the scheme of the Pact of San José and its complementary instruments, and the Central American Court of Justice within the institutional context of the Central American Integration System and its own spe-

cific instruments, whose genesis can be found in the Tegucigalpa Protocol.

A Central American Charter of Fundamental Rights must be built on the basis of rights already protected in the various community instruments, and must also regulate the assumption of when an Integration Body, Organization or Institution is the one that violates Human Rights.

The proposed Central American Charter of Fundamental Rights is presented as a modification, through its annex, to the Tegucigalpa Protocol, since when dealing with fundamental rights, it must start from the first norm and not from a separate document.

Finally, it is important to always keep in mind respect for the primary rule, in this case, the Tegucigalpa Protocol, which clearly addresses the issues of Human Rights and Community Law.

Recommendations

Below, we detail some recommendations as they are considered of utmost importance in complying with the aforementioned in the documents:

It is essential to be able to order in a single document all those Human Rights that are already protected and dispersed in our broad community heritage, which would define more clearly the protection of the citizen and the competence of the CACJ in this matter, since under the principle *pro homine*, Community Law constitutes the most convenient and immediate protection norm.

As a step consistent with the spirit of the Central American community and the commitments assumed from the signing of the Tegucigalpa Protocol, the Statute Agreement of the Central American Court of Justice must be amended in its article 25.

The Charter of Fundamental Rights must renew the commitment of the States Parties to the Inter-American Protection of Human Rights, clearly delimiting the competencies of both jurisdictional bodies before their respective legal instruments.

It is important that, in the creation of a possible Charter of Fundamental Rights, important and new factors of our social reality are analyzed and taken into account, for example, those human rights related to digital interaction and data protection, rights that some of our Political Constitutions already protect by incorporating the Habeas Data resource in their protection system.

The consultation that must precede the creation of an instrument of this type must include an in-depth analysis of the rights of special sectors such as the elderly and gender inclusion; The issue of the right to migration and the free mobility of labor (right to work without excessive restrictions), as well as social security and its regional extension, must also be studied in depth.

The Central American Parliament currently has the power (art. 5) of proposing Treaties, Conventions and Protocols that contribute to broadening and perfecting the integration process, for which the draft Charter of Fundamental Rights should be an impulse that comes

from PARLACEN (Central American Parliament –in Spanish–) with the support of the General Secretariat.[19]

In a necessary and eventual comprehensive reform to the Integration System, the Constitutive Treaty of the Central American Parliament must be reformed, expanding its powers and granting them links; On the subject that concerns us, PARLACEN (Central American Parliament) must have the power not only to promote the Charter, but also to adequately monitor compliance with it.

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19 The last Protocol of reform was carried out in 2008 and entered into force in 2010, without these including a substantial modification in its powers, which remain non-binding, despite being the institution of the System that represents the democratic principle of our people.

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This research, conducted by Diego Cuarezma Zapata, who holds the position of Director of the Master's Program in International Law at the Institute for Legal Study and Research (INEJ), focuses on examining the scope and limits of the jurisdiction of the Central American Court of Justice (CCJ) in the field of Human Rights. This study focuses on the analysis of what is established by Article 25 of the Statute of the CCJ and the Tegucigalpa Protocol of 1991, highlighting its fundamental objective of guaranteeing the protection, respect and promotion of Human Rights as essential pillars of the System of Central American Integration. The author has a Master in International Law (LL.M.int) from the Ruprecht-Karls Universität Heidelberg, Germany, a Master in International Law in Investment, Trade and Arbitration by the University of Chile and a Master in Higher Education and Research from the Institute of Legal Study and Research (INEJ); in addition, he is the Director of Research and Postgraduate Studies at INEJ, Nicaragua.

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