

## **GUIDE FOR THE APPLICATION OF THE PRINCIPLE OF CONVENTIONALITY**

### **(PRELIMINARY PRESENTATION)**

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#### **1. PRESENTATION**

The Inter-American Juridical Committee has the responsibility to carry out, on its own initiative, the preparatory studies and work that it deems appropriate (article 12 c of the Statutes), all of this within the framework of its objective to foster the progressive development and codification of international law and to study the legal problems related to the integration of developing countries of the continent and enabling its legislations to standardize whenever convenient.

This 87<sup>th</sup> Regular Session has been analyzing a catalogue of themes linked to this objective which should afford the Committee work for the mid-term without jeopardizing the assignments that it comes to receive from the organs that consult it.

One such theme is the application of the principle of conventionality, which corresponds to the obligation on the part of member States to incorporate into their internal systems the signed Conventions, that is to say by (i) abolishing the norms contrary to them, (ii) expediting norms to develop them, or (iii) applying the conventional norms together with those in conformity with the internal system, and (iv) applying the interpretation that the IACH gives to conventional norms, both in decisions and considerations.

The proposition to decide to address the study of this theme is supported by the repeated decisions of the Inter-American Court of Human Rights through its sentences, consultative opinions and provisional measures, which have emphasized the role of internal judges as the principal actors responsible for monitoring conventionality and obliging the Party States to harmonize their internal systems with the Conventions on Human Rights, namely, on Human Rights, to Prevent and Punish Torture, and on Forced Disappearance of Persons.

Furthermore, enforcement of the sentences passed by this Court interpreting conventional norms with *erga omnes* effects, or providing normative changes, even of a constitutional nature, is a theme of interest to the analysis of the principle of conventionality.

#### **CONVENTIONAL FRAMEWORK**

Article 2 of the Inter-American Convention of Human Rights, which establishes the obligation to adopt provisions in internal law deemed necessary to enforce the rights and freedoms included in this Convention.

Article 1-d of the Inter-American Convention on Forced Disappearance of Persons, which imposes on States the obligation to take measures of a legislative, administrative, judicial or any other nature necessary for enforcement of the commitments assumed in this Convention.

Article 6 of the Inter-American Convention for Prevention and Punishment of Torture.

## **EVOLUTION**

The doctrine has identified several stages in the evolution of this institute, supporting the content of decisions of the Inter-American Court of Human Rights, in terms of the judge responsible for monitoring conventionality, whether in respect to any juridical operation – including the administrative authorities – or solely the judges or court organizations

The analysis of the binding effect of the sentences of the IACHR is also relevant. That is to say, if the effect of the decision impacts only the Party State in the process, or if it presents an *erga omnes* effect (i.e. towards everyone), regarding the interpretation of the conventional norms of the “Whereas statements” section.

## **JURISPRUDENCE**

The jurisprudence of the Inter-American Court of Human Rights on the application of this principle is really abundant, as is the jurisprudence of the domestic Courts.

The Inter-American Court, as well as the other domestic Courts, must therefore be consulted in order to establish the current status of the matter. After such a consultation a guide must be proposed, which should be instrumental in terms of the effects of the conventional norms when these norms are enforced in each State.

## **METHODOLOGY**

I. Determination of the current status regarding the enforcement of the principle of conventionality in each one of the States. In this regard, the Secretariat is being asked to send the following questionnaire to the Party States:

1. What mechanism is there in domestic law to incorporate the following conventions?  
The American Convention on Human Rights or Pact of San José de Costa Rica, signed in November 1969;  
The Convention to Prevent and Punish Torture, adopted on December 9, 1985; and  
The Convention on Forced Disappearance of Persons, adopted on June 9, 1994.
2. Under what kind of established rules in your country have the American Convention on Human Rights, the Convention to Prevent and Punish Torture, and the Convention on Forced Disappearance of Persons been incorporated into domestic law?
3. In keeping with Article 2 of the American Convention on Human Rights, do your country's domestic laws have a guide or resolution for judges to apply the aforementioned conventions?
4. Does the domestic system have a legal or constitutional provision for justice operators – administrative and judicial – to resolve discrepancies between convention rules and the constitutional or legal system?
5. In your country, do legal operators – judicial as well as administrative – apply the American Convention on Human Rights, the Convention to Prevent and Punish Torture, and the Convention on Forced Disappearance of Persons?
6. What practice do legal operators follow for applying the American Convention on Human Rights, the Convention to Prevent and Punish Torture, and the Convention on Forced Disappearance of Persons?
7. Have rules been repealed in order to harmonize the domestic system with the American Convention on Human Rights, the Convention to Prevent and Punish Torture, and the Convention on Forced Disappearance of Persons?

8. Have rules been introduced in order to harmonize the domestic system with the American Convention on Human Rights, the Convention to Prevent and Punish Torture, and the Convention on Forced Disappearance of Persons?
  9. Has your country's judicial body handed down decisions in which it applies conventionality control?
  10. Are there other authorities that hand down decisions in which conventionality control is applied?
  11. Do judges in your country take the decisions of the Inter-American Court of Human Rights into consideration only when said decision affects your state, or are interpretative criteria taken into account instead in all of that Court's rulings?
- II. Analysis of the decisions of the Inter-American Court of Human Rights through their sentences, consultative decisions and provisional measures, vis-à-vis the enforcement of the principle of conventionality.
  - III. Analysis of the decisions of the domestic Courts in each State.
  - IV. Consultation with experts on the issue.

The information compiled will be useful in drafting a GUIDE FOR THE ENFORCEMENT OF THE PRINCIPLE OF CONVENTIONALITY

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