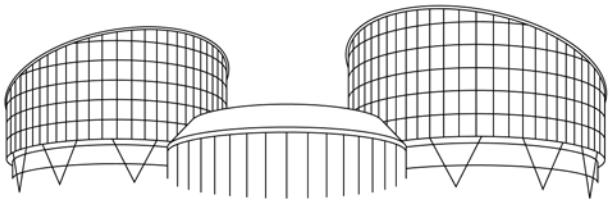

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

RESEARCH REPORT

References to the Inter-American Court of Human Rights and Inter-American instruments in the case-law of the European Court of Human Rights

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The report has been prepared by the Research Division (in English only) and does not bind the Court. The text was updated 1 November 2016 and may be subject to editorial revision.

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REFERENCES TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND INTER-AMERICAN INSTRUMENTS IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

This document contains a table listing references that have been made in the judgments of the European Court to judgments of the Inter-American Court of Human Rights, the American Convention on Human Rights or other Inter-American instruments, updated 1 November 2016. The table covers references made in any part of the Court's judgments (facts and law), including separate opinions of Judges. It does not cover references made in the submissions to the Court by parties or third-party interveners.

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
1.	***Akdivar and Others v. Turkey*, no. 21893/93, 16/09/96 Grand Chamber**	**Case of Velásquez-Rodríguez v. Honduras** Preliminary Objections. Judgment of June 26, 1987. Series C No. 1. **Advisory Opinion of 10 August 1990 on "Exceptions to the Exhaustion of Domestic Remedies"**	**Relevance: exhaustion of domestic remedies** (LAW) "68. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see ... also the judgment of 26 June 1987 of the Inter-American Court of Human Rights in the **Velásquez Rodríguez** case, Preliminary Objections, Series C no. 1, para. 88, and that Court's **Advisory Opinion of 10 August 1990 on "Exceptions to the Exhaustion of Domestic Remedies"** (Article 46 (1), 46 (2) (a) and 46 (2) (b) of the American Convention on Human Rights), Series A no. 11, p. 32, para. 41) …"
2.	***Kurt v. Turkey*, no. 24276/94, 25/05/98, Grand Chamber**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4.	(FACTS: RELEVANT INTERNATIONAL MATERIAL) "67. The Inter-American Court of Human Rights had considered the question of enforced disappearances in a number of cases under the provisions of the American Convention on Human Rights and prior to the adoption of the Inter-American Convention on Forced Disappearance of Persons: **Velásquez Rodríguez v. Honduras**, judgment of 29 July 1988 (Inter-Am. Ct. H. R. (Ser. C) no. 4) (1988)); **Godínez Cruz v. Honduras,** judgment of 20 January 1989 (Inter-Am. Ct. H. R. (Ser. C) no. 5) (1989)); and **Cabellero-Delgado and Santana v. Colombia,** judgment of 8 December 1995 (Inter-Am. Ct. H. R.) …"

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Case of Godínez-Cruz v. Honduras Merits. Judgment of January 20, 1989. Series C No. 5. **Case of Caballero-Delgado and Santana v. Colombia** Merits. Judgment of December 8, 1995. Series C No. 22.	**Relevance: enforced disappearances** Cited as relevant international material on the issue of enforced disappearances.
3.	***Ertak v. Turkey*, no. 20764/92, 09/05/00, First Section**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4. **Case of Godínez-Cruz v. Honduras** Merits. Judgment of January 20, 1989. Series C No. 5. **Case of Caballero-Delgado and Santana v. Colombia** Merits. Judgment of December 8, 1995. Series C No. 22.	(FACTS: RELEVANT INTERNATIONAL MATERIAL) "106. In his written submissions to the Court, the applicant drew attention to international material on the issue of forced disappearances, such as … (c) the case-law of the Inter-American Court of Human Rights, in particular the **Velásquez Rodríguez v. Honduras** judgment of 29 July 1988 (Inter-Am. Ct. HR (Ser. C) no. 4 (1988)); the **Godínez Cruz v. Honduras** judgment of 20 January 1989 (Inter-Am. Ct. HR (Ser. C) no. 5 (1989)); and the **Cabellero-Delgado and Santana v. Colombia** judgment of 8 December 1995 (Inter-Am. Ct. HR)." **Relevance: International material on the issue of forced disappearances.**

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4.	***Cicek v. Turkey*, no. 25704/94, 27/02/01, First Section**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988 Series C No. 4.	Judge Maruste (concurring): "Disappearance is a recognised category in international law, see for example the UN Declaration on the Protection of All Persons from Enforced Disappearance - G.A. res. 47/133, 18.12. 1992, which provides *inter alia*, that «… disappearance ... violates ... the right to life»; see also the UN Human Rights Committee Case-law on that respect (for example Quinteros v. Uruguay, 107/1981, Report of the Human Rights Committee, GAOR, 38th Session, Supplement no. 40, 1983, Annex XXII, § 14) and the case-law of the Inter-American Court of Human Rights (for example **Velásquez Rodríguez Case**, Judgment of July 29, 1988, Series C, No. 4, § 157)."
5.	***Anguelova v. Bulgaria*, no. 38361/97, 13/06/02, First Section**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4.	Judge Bonello (dissenting): "11. … [I]n the cornerstone protection against racial discrimination, the Court has been left lagging behind other leading human rights tribunals. The Inter-American Court of Human Rights, for instance, has established standards altogether more reasonable: "The international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of States responsible" [***Velásquez Rodríguez* v. *Honduras***, Inter-American Court of Human Rights, 29 July 1988, § 134]."
6.	***Hasan Ilhan v. Turkey*, no. 22494/93, 09/11/04, Second Section**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4.	Judge Loucaides (partly dissenting): "The Inter-American Court of Human Rights has pointed out that: *'The international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of States responsible.'* (Footnote 3)" **Relevance:** standard of proof required in respect of judicial proceedings for alleged violations of human rights.
7.	***Mamatkulov and Askarov v. Turkey*, nos. 46827/99, 46951/99, 04/02/05, Grand Chamber**	**Case of Loayza-Tamayo v. Peru** Merits. Judgment of September 17, 1997. Series C No. 33. **Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago**	(FACTS: RELEVANT INTERNATIONAL LAW AND PRACTICE) "50. … In its judgment of 17 September 1997 in ***Loayza Tamayo v. Peru***, the Inter-American Court of Human Rights ruled that the State "has the obligation to make every effort to apply the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organisation of American States, whose function is 'to promote the observance and defence of human rights' ... . 53. The Inter-American Court has stated on several occasions that compliance with provisional measures is necessary to ensure the effectiveness of its decisions on the merits (see, among other authorities, the **following orders**: 1 August 1991, *Chunimá v. Guatemala*; 2 July and 13 September 1996, 11 November

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		Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94.	1997 and 3 February 2001, *Loayza Tamayo v. Peru*; 25 May and 25 September 1999, 16 August and 24 November 2000, and 3 September 2002, *James et al. v. Trinidad and Tobago*; 7 and 18 August 2000, and 26 May 2001, *Haitians and Dominican nationals of Haitian origin in the Dominican Republic v. the Dominican Republic*; 10 August and 12 November 2000, and 30 May 2001, *Alvarez et al. v. Colombia*; see also the judgment of 21 June 2002, ***Hilaire, Constantine, Benjamin et al. v. Trinidad and Tobago***). In two orders requiring provisional measures, the Inter-American Court of Human Rights ruled that the States Parties to the American Convention on Human Rights 'must fully comply in good faith (*pacta sunt servanda*) with all of the provisions of the Convention, including those relative to the operation of the two supervisory organs of the American Convention [the Court and the Commission]; and that, in view of the Convention's fundamental objective of guaranteeing the effective protection of human rights (Articles 1 § 1, 2, 51 and 63 § 2), States Parties must refrain from taking actions that may frustrate the *restitutio in integrum* of the rights of the alleged victims' (see the orders of 25 May and 25 September 1999 in *James et al. v. Trinidad and Tobago*). (LAW) 116. In various orders concerning provisional measures, the Inter-American Court of Human Rights has stated that in view of the fundamental objective of the American Convention on Human Rights, namely guaranteeing the effective protection of human rights, 'States Parties [had to] refrain from taking actions that may frustrate the *restitutio in integrum* of the rights of the alleged victims' (see the orders of 25 May and 25 September 1999 in *James et al. v. Trinidad and Tobago*)." **Relevance: importance and purpose of interim measures** (LAW) "112. Different rules apply to interim, provisional or precautionary measures, depending on whether the complaint is made under the individual petition procedures of the United Nations organs, or the Inter-American Court and Commission, or under the procedure for the judicial settlement of disputes of the ICJ. In some instances provision is made for such measures in the treaty itself and in others in the rules of procedure … . 113. In a number of recent decisions and orders, international courts and institutions have stressed the importance and purpose of interim measures and pointed out that compliance with such measures was necessary to ensure the effectiveness of their decisions on the merits. In proceedings concerning international disputes, the purpose of interim measures is to preserve the parties' rights, thus enabling the body hearing the dispute to give effect to the consequences which a finding of responsibility following adversarial process will entail. 124. The Court observes that the ICJ, the Inter-American Court of Human Rights, the Human Rights Committee and the Committee against Torture of the United Nations, although operating under different treaty provisions to those of the Court, have confirmed in their reasoning in recent decisions that the

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			preservation of the asserted rights of the parties in the face of the risk of irreparable damage represents an essential objective of interim measures in international law. Indeed it can be said that, whatever the legal system in question, the proper administration of justice requires that no irreparable action be taken while proceedings are pending …" See also partly Dissenting Opinion of Judges CAFLISCH, TÜRMEN AND KOVLER
8.	***Öcalan v. Turkey*, no. 46221/99, 12/05/05, Grand Chamber**	**Constantine and Benjamin et al. v. Trinidad and Tobago** Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94. **The Right to Information on Consular Assistance.** **In the Framework of the Guarantees of the due Process of Law.** **Advisory Opinion OC-16/99 of October 1, 1999.** Series A No. 16.	(FACTS: RELEVANT INTERNATIONAL LAW AND PRACTICE: OTHER INTERNATIONAL DEVELOPMENTS CONCERNING THE DEATH PENALTY) "60. In an advisory opinion on the right to information on consular assistance in the framework of the guarantees of due process of law (**Advisory Opinion OC-16/99** of 1 October 1999), the Inter-American Court of Human Rights examined the implication of the guarantees of a fair procedure for Article 4 of the American Convention on Human Rights, which permitted the death penalty in certain circumstances. It stated: *'134. It might be useful to recall that in a previous examination of Article 4 of the American Convention (Restrictions to the Death Penalty, Advisory Opinion OC-3/83 of 8 September, 1983, Series A No. 3) the Court observed that the application and imposition of capital punishment are governed by the principle that '[n]o one shall be arbitrarily deprived of his life'. Both Article 6 of the International Covenant on Civil and Political Rights and Article 4 of the Convention require strict observance of legal procedure and limit application of this penalty to 'the most serious crimes'. In both instruments, therefore, there is a marked tendency toward restricting application of the death penalty and ultimately abolishing it. 135. This tendency, evident in other inter-American and universal instruments, translates into the internationally recognised principle whereby those States that still have the death penalty must, without exception, exercise the most rigorous control for observance of judicial guarantees in these cases …'* In ***Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*** (judgment of 21 June 2002), the Inter-American Court stated: *'Taking into account the exceptionally serious and irreparable nature of the death penalty, the observance of due process, with its bundle of rights and guarantees, becomes all the more important when human life is at stake." (paragraph 148)'."* **Relevance: death penalty** (LAW) "166. As regards the reference in Article 2 of the Convention to 'the execution of a sentence of a court', the Grand Chamber agrees with the Chamber's reasoning: *'... It also follows from the requirement in Article 2 § 1 that the deprivation of life be pursuant to the 'execution of a sentence of a court', that the 'court' which imposes the penalty be an independent and impartial tribunal within the meaning of the Court's case-law (see Incal, cited above; Çıraklar, cited above; Findlay v. the United Kingdom, judgment of 25 February 1997, Reports 1997-I; and Hauschildt v. Denmark, judgment of 24 May 1989, Series A no. 154), and that the most rigorous standards of fairness be observed in the criminal proceedings both at first instance and on appeal. Since the execution of the death penalty is irreversible, it can only be through the application of such*

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			*standards that an arbitrary and unlawful taking of life can be avoided (see, in this connection, Article 5 of ECOSOC Resolution 1984/50 and the decisions of the United Nations Human Rights Committee ...; also **Advisory Opinion OC-16/99** of 1 October 1999 of the Inter-American Court of Human Rights on 'The right to information on consular assistance in the framework of the guarantee of due process of law', §§ 135-36, and Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, § 148 ...). Lastly, the requirement in Article 2 § 1 that the penalty be 'provided by law' means not only that there must exist a basis for the penalty in domestic law but that the requirement of the quality of the law be fully respected, namely that the legal basis be 'accessible' and 'foreseeable' as those terms are understood in the case-law of the Court (see Amann v. Switzerland [GC], no. 27798/95, § 56, ECHR 2000-II, and Rotaru v. Romania [GC], no. 28341/95, § 52, ECHR 2000-V).* *... It follows from the above construction of Article 2 that the implementation of the death penalty in respect of a person who has not had a fair trial would not be permissible.'"*
9.	***Ergin v. Turkey (No. 6)*, no. 47533/99, 04/05/06, Fourth Section** **(see also *Maszni v. Romania*, no. 59892/00, 21/09/06, Fourth Section, §§ 32-33, 47-49)**	**Case of Cantoral-Benavides v. Peru** Merits Judgment of August 18, 2000. Series C No. 69. **Case of Durand and Ugarte v. Peru** Merits. Judgment of August 16, 2000. Series C No. 68.	(FACTS: RELEVANT INTERNATIONAL LAW AND PRACTICE) "25. The settled case-law of the Inter-American Court of Human Rights excludes civilians from the jurisdiction of military courts in the following terms: *'In a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces. Consequently, civilians must be excluded from the military jurisdiction scope and only the military shall be judged by commission of crime or offenses that by its own nature attempt against legally protected interests of military order*" (IACHR, ***Durand and Ugarte v. Peru,*** 16 August 2000, § 117).'" **Relevance: exclusion of civilians from the jurisdiction of military courts** (LAW) "45. The Court derives support in its approach from developments over the last decade at international level (see paragraphs 22-25 above), which confirm the existence of a trend towards excluding the criminal jurisdiction of military courts over civilians. In that connection, mention should be made of the report on the issue of the administration of justice through military tribunals, submitted to the relevant UN sub-commission. Principle No. 5 of the report states: 'Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts". A similar position had previously been adopted by the Inter-American Court of Human Rights (see, for example, ***Cantoral Benavides v. Peru***, judgment of 18 August 2000, series C no. 69, § 75), which had emphasised that military courts had been set up by various laws with the aim of maintaining order and discipline within the armed forces. Their jurisdiction should therefore be reserved for military personnel who had committed crimes or lesser offences in the performance of their duties."
10.	***Stoll v. Switzerland*, no. 69698/01/, 10/12/07,**	**Case of Claude-Reyes et al. v. Chile**	(FACTS: INTERNATIONAL LAW AND PRACTICE) "43. … The Inter-American Court of Human Rights found as follows:

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	Grand Chamber	Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151.	*'84. ... In several resolutions, the OAS General Assembly has considered that access to public information is an essential requisite for the exercise of democracy, greater transparency and responsible public administration and that, in a representative and participative democratic system, the citizenry exercises its constitutional rights through a broad freedom of expression and free access to information. …* *86. In this regard, the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately…'"* **Relevance: the disclosure of confidential information** (LAW) "111. … Similarly, the Inter-American Commission on Human Rights has taken the view that the disclosure of State-held information should play a very important role in a democratic society because it enables civil society to control the actions of the government to which it has entrusted the protection of its interests (see the submissions to the Inter-American Court of Human Rights in the case of ***Claude Reyes and others v. Chile,*** 19 September 2006, paragraph 43 above)."
11.	***Bevacqua and S. v. Bulgaria*,** **no. 71127/01, 12/06/08,** **Fifth Section**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4.	(FACTS: RELEVANT INTERNATIONAL MATERIAL) "53. In his third report, of 20 January 2006, to the Commission on Human Rights of the UN Economic and Social Council (E/CN.4/2006/61), the Special Rapporteur on violence against women considered that there is a rule of customary international law that "obliges States to prevent and respond to acts of violence against women with due diligence". This conclusion was based mainly on analysis of developments in the case-law of several international bodies, including this Court (reference to *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII), the Inter-American Court of Human Rights (reference to the case of ***Velasquez Rodriguez v. Honduras***), the Inter-American Commission of Human Rights (reference to Report no. 54/01, Case 12.051, *Maria da Penha Maia Fernandes (Brazil)*) and the committee monitoring the UN Convention on the Elimination of All Forms of Discrimination against Women (reference to the case of *A.T. v Hungary* – 2005)." **Relevance: domestic violence** (LAW) "65. … The Court notes in this respect that the particular vulnerability of the victims of domestic violence and the need for active State involvement in their protection has been emphasised in a number of international instruments (see paragraphs 49-53 above)."
12.	***Lexa v. Slovakia*,** **no. 54334/00, 23/09/08,** **Fourth Section**	**Case of Barrios Altos v. Peru** Merits. Judgment March 14, 2001. Series C No. 75.	(FACTS: INTERNATIONAL LAW AND PRACTICE) "97. In the ***Barrios Altos v. Peru*** judgment (Series C No. 75 [2001], IACHR 5, 14 March 2001, § 41) the Inter-American Court of Human Rights held: *'... all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those*

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		Case of Bulacio v. Argentina Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100.	*responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.'* 98. In ***Bulacio v. Argentina*** (18 September 2003, § 116) the Inter-American Court of Human Rights held: *'... any other domestic legal obstacle that attempts to impede the investigation and punishment of those responsible for human rights violations are inadmissible'*." **Relevance: amnesty laws**
13.	***Sergey Zolotukhin v. Russia*,** **nos. 14939/03, 10/02/09,** **Grand Chamber**	**Case of Loayza-Tamayo v. Peru** Merits. Judgment of September 17, 1997. Series C No. 33. **American Convention on Human Rights** Article 8.	(FACTS: RELEVANT AND COMPARATIVE INTERNATIONAL LAW) "40. The Inter-American Court of Human Rights gave the following interpretation of [Article 8.4 of the IACHR] ((**Loayza-Tamayo v. Peru**, 17 September 1997, Series C No. 33, § 66): "*This principle is intended to protect the rights of individuals who have been tried for specific facts from being subjec new trial for the same cause. Unlike the formula used by other international human rights protection instrume example, the United Nations International Covenant on Civil and Political Rights, Article 14(7), which refers to th 'crime'), the American Convention uses the expression 'the same cause,' which is a much broader term in the victim's* …" **Relevance: principle of *non bis in idem*** (LAW) "79. An analysis of the international instruments incorporating the *non bis in idem* principle in one or another form reveals the variety of terms in which it is couched. Thus, Article 4 of Protocol No. 7 to the Convention, Article 14 § 7 of the UN Covenant on Civil and Political Rights and Article 50 of the Charter of Fundamental Rights of the European Union refer to the '[same] offence' ('[même] infraction'), the **American Convention on Human Rights** speaks of the 'same cause' ('mêmes faits'), the Convention Implementing the Schengen Agreement prohibits prosecution for the 'same acts' ('mêmes faits'), and the Statute of the International Criminal Court employs the term '[same] conduct' ('[mêmes] actes constitutifs') . The difference between the terms 'same acts' or 'same cause' ('mêmes faits') on the one hand and the term '[same] offence' ('[même] infraction') on the other was held by the Court of Justice of the European Communities and the Inter-American Court of Human Rights to be an important element in favour of adopting the approach based strictly on the identity of the material acts and rejecting the legal classification of such acts as irrelevant. In so finding, both tribunals emphasised that such an approach would favour the perpetrator, who would know that, once he had been found guilty and served his sentence or had been acquitted, he need not fear further prosecution for the same act ... . 82. … The Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second 'offence' in so far as it arises from identical facts or facts which are substantially the same."

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14.	***Silih v. Slovenia*, no. 71463/01, 09/04/09, Grand Chamber**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4. **Case of Godínez-Cruz v. Honduras** Merits. Judgment of January 20, 1989. Series C No. 5. **Case of the Serrano-Cruz Sisters v. El Salvador** Preliminary Objections. Judgment of November 23, 2004. Series C No. 118. **Case of the Moiwana Community v. Suriname.** Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124.	(FACTS: RELEVANT INTERNATIONAL LAW AND PRACTICE) "114. The Inter-American Court of Human Rights (IACHR) has established the procedural obligations arising in respect of killings or disappearances under several provisions of the American Convention on Human Rights ('the American Convention'). In cases concerning breaches of procedural obligations, in particular where it found that the substantive aspect of the right to life had also been violated, the IACHR was ready to find a violation of Article 4 (right to life) taken together with Article 1 § 1 (obligation to respect rights) of the American Convention (see ***Velásquez Rodríguez v. Honduras***, judgment of 29 July 1988, and ***Godínez Cruz Case v. Honduras*,** judgment of 20 January 1989). In many cases, in particular those where the substantive limb of Article 4 had not been breached, the IACHR examined such procedural complaints autonomously under Article 8, which, unlike the European Convention, guarantees the right to a fair trial for the determination of rights and obligations of any nature, and Article 25, which protects the right to judicial protection, taken together with Article 1 § 1. The IACHR followed the latter approach in cases where the killing or disappearance took place before the recognition of its jurisdiction by a respondent State. 115. In ***Serrano-Cruz Sisters v. El Salvador*** (judgment of 23 November 2004 – Preliminary Objections), which concerned the disappearance of two girls thirteen years before El Salvador recognised the IACHR's jurisdiction, the IACHR decided that: *'77. ... the facts that the Commission alleges in relation to the alleged violation of Articles 4 (Right to Life), 5 (Right to Personal Integrity) and 7 (Right to Personal Liberty) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Ernestina and Erlinda Serrano Cruz, are excluded owing to the limitation to the recognition of the Court's jurisdiction established by El Salvador, because they relate to violations which commenced in June 1982, with the alleged 'capture' or 'taking into custody' of the girls by soldiers of the Atlacatl Battalion and their subsequent disappearance, 13 years before El Salvador recognized the contentious jurisdiction of the Inter-American Court.* *78. In view of these considerations and pursuant to the provisions of Article 28 of the 1969 Vienna Convention on the Law of Treaties, the Court admits the preliminary objection ratione temporis ...'* 116. As regards alleged deficiencies in the domestic criminal investigations into the disappearances in this case, the IACHR found that the allegations concerned judicial proceedings and thus independent facts which had taken place after the recognition of the IACHR's jurisdiction. It therefore concluded that it had temporal jurisdiction to deal with these allegations as they constituted specific and autonomous violations concerning the denial of justice that had occurred after the recognition of the IACHR's jurisdiction … . 117. In ***Moiwana Village v. Suriname*** … The IACHR, referring to Article 28 of the Vienna Convention, noted that: *'39. ... [a]ccording to this principle of non-retroactivity, in the case of a continuing or permanent violation, which*

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			begins before the acceptance of the Court's jurisdiction and persists even after that acceptance, the Tribunal is competent to examine the actions and omissions occurring subsequent to the recognition of jurisdiction, as well as their respective effects.'" **Relevance: jurisdiction *ratione temporis* over procedural obligations arising out of Article 2 ECHR** (LAW) "159. Against this background, the Court concludes that the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by the acts concerning the substantive aspects of Article 2 it can give rise to a finding of a separate and independent "interference" within the meaning of the *Blečić* judgment (cited above, § 88). In this sense it can be considered to be a detachable obligation arising out of Article 2 capable of binding the State even when the death took place before the critical date. 160. This approach finds support also in the jurisprudence of the United Nations Human Rights Committee and, in particular, of the Inter-American Court of Human Rights, which, though under different provisions, accepted jurisdiction *ratione temporis* over the procedural complaints relating to deaths which had taken place outside their temporal jurisdiction (see paragraphs 111-18 above)."
15.	***Opuz v. Turkey*, no. 33401/02, 09/06/09, Third Section**	**Case of Velásquez-Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4. **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 1994 (Belém do Pará Convention)** **Case 12.051 (*Maria da Penha Maia Fernandes v. Brazil*)** **Inter-American Commission on Human Rights** Report no. 54/01 April 16, 2001	(FACTS: RELEVANT INTERNATIONAL MATERIAL) "83. In ***Velazquez-Rodriguez***, the Inter-American Court stated: *'An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.'* 84. The legal basis for the ultimate attribution of responsibility to a State for private acts relies on State failure to comply with the duty to ensure human rights protection, as set out in Article 1(1) of the American Convention on Human Rights. The Inter-American Court's case-law reflects this principle by repeatedly holding States internationally responsible on account of their lack of *due diligence* to prevent human rights violations, to investigate and sanction perpetrators or to provide appropriate reparations to their families. 85. The **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 1994 (Belém do Pará Convention)** sets out States' duties relating to the eradication of gender based violence. It is the only multilateral human rights treaty to deal solely with violence against women. 86. The Inter-American Commission adopts the Inter-American Court's approach to the attribution of State responsibility for the acts and omissions of private individuals. In the case of ***Maria Da Penha v. Brazil***, the Commission found that the State's failure to exercise due diligence to prevent and

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			investigate a domestic violence complaint warranted a finding of State responsibility under the American Convention and the Belém do Pará Convention. Furthermore, Brazil had violated the rights of the applicant and failed to carry out its duty (inter alia, under Article 7 of the Convention of Belém do Pará, obliging States to condemn all forms of violence against women), as a result of its failure to act and its tolerance of the violence inflicted …" **Relevance: attribution of responsibility to a State for private acts and discrimination in the context of domestic violence against women** (LAW) "185. In this connection, when considering the definition and scope of discrimination against women, in addition to the more general meaning of discrimination as determined in its case-law (see paragraph 183 above), the Court has to have regard to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women. 189. Furthermore, the **Belém do Pará Convention**, which is so far the only regional multilateral human rights treaty to deal solely with violence against women, describes the right of every woman to be free from violence as encompassing, among others, the right to be free from all forms of discrimination. 190. Finally, the Inter-American Commission also characterised violence against women as a form of discrimination owing to the State's failure to exercise due diligence to prevent and investigate a domestic violence complaint (see ***Maria da Penha v. Brazil***, cited above, § 80). 191. It transpires from the above-mentioned rules and decisions that the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."
16.	***Scoppola v. Italy (No. 2)*, no. 10249/03, 17/09/09, Grand Chamber**	**American Convention on Human Rights**	(FACTS: INTERNATIONAL TEXTS AND DOCUMENTS) "36. Article 9 of the American Convention on Human Rights, which was adopted on 22 November 1969 at the Inter-American Specialised Conference on Human Rights and came into force on 18 July 1978, reads as follows: *'No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom'*"" **Relevance: retrospective application of a more lenient penalty** (LAW) "105. The Court considers that a long time has elapsed since the Commission gave the above-mentioned *X v. Germany* decision and that during that time there have been important developments internationally. In particular, apart from the entry into force of the American Convention on Human Rights, Article 9 of which guarantees the retrospective effect of a law providing for a more lenient penalty enacted after the commission of the relevant offence (see paragraph 36 above), mention should be

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			made of the proclamation of the European Union's Charter of Fundamental Rights … 106. The Court therefore concludes that since the *X v. Germany* decision a consensus has gradually emerged in Europe and internationally around the view that application of a criminal law providing for a more lenient penalty, even one enacted after the commission of the offence, has become a fundamental principle of criminal law."
17.	***Varnava and others v. Turkey*, no. 16064/90, 18/09/09, Grand Chamber**	**Case of Blake v. Guatemala** Preliminary Objections. Judgment of July 2, 1996. Series C No. 27. **Case of the Serrano-Cruz Sisters v. El Salvador** Preliminary Objections. Judgment of November 23, 2004. Series C No. 118. **Case of Heliodoro Portugal v. Panama** of 12 August 2008	(FACTS: RELEVANT INTERNATIONAL LAW AND PRACTICE: Case-law concerning *ratione temporis* jurisdiction in disappearance cases before other international bodies) "93. The Inter-American Court of Human Rights (IACHR) has established that procedural obligations arise in respect of killings and disappearances under several provisions of the American Convention on Human Rights ('the American Convention'). In many cases, in particular those where the substantive limb of Article 4 (right to life) had not been breached, the IACHR has examined such procedural complaints autonomously under Article 8, which, unlike the Convention, guarantees the right to a fair trial for determination of rights and obligations of any nature, and Article 25, which protects the right to judicial protection, taken together with Article 1 § 1 (obligation to respect rights). The IACHR has followed the latter approach in cases where the killing or disappearance took place before the recognition of its jurisdiction by a respondent State. 94. In ***Blake v. Guatemala*** the IACHR had to deal with the *ratione temporis* exception raised by the Government, since the disappearance itself had taken place before the critical date (acceptance of the compulsory jurisdiction in 1987). The court considered that forced disappearances implied the violation of various human rights and that the effects of such infringements – even though some may have been completed – "may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established" (*Blake*, 2 July 1996, Preliminary Objections, § 39) … 96. In its judgment on the merits (24 January 1998, see p. 54), the IACHR considered the disappearance as marking the beginning of a 'continuing situation'. It proceeded to examine the complaint under Article 8 in relation to Article 1 § 1 and declared that Guatemala had violated the right of Mr. Blake's relatives to have his disappearance and death effectively investigated, to have those responsible prosecuted and punished where appropriate, and to be compensated, notwithstanding the lack of temporal competence to deal with the substantive complaints. 97. The IACHR came to a similar conclusion in cases of disappearances in which the victim's whereabouts had never been established. In ***Serrano- Cruz Sisters v. El Salvador*** (judgment of 23 November 2004, Preliminary Objections), the Court found that it had no competence to examine, under Articles 4, 5 and 7 (right to personal liberty), the disappearances of the sisters as such, since they had allegedly taken place thirteen years before El Salvador had accepted the contentious jurisdiction of

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			the court. It came to the same conclusion as regards the procedural violations invoked under Article 4 by the Inter-American Commission, since they were linked to the alleged forced disappearance (§ 95). However, the IACHR considered that all the facts that occurred following the critical date and which referred to Articles 8 and 25 of the Convention (filing of a petition for habeas corpus, criminal proceedings), were not excluded by the temporal limitation established by the State, since they constituted "independent facts" or "specific and autonomous violations concerning denial of justice" (§ 85). On the merits, it declared that the State had violated Articles 8 and 25 of the Convention, to the detriment of both sisters and their next of kin (judgment of 1 March 2005). 98. In a more recent judgment, ***Heliodoro Portugal v. Panama*** of 12 August 2008, the San José Court made a clear distinction between forced disappearances and extrajudicial killings for the purposes of its jurisdiction ratione temporis. The case concerned the forced disappearance in 1970 (twenty years before Panama accepted the compulsory jurisdiction of the court) of Heliodoro Portugal, whose remains were found in 2000. It considered that the victim should be presumed dead before the date of acceptance of the Court's jurisdiction (9 May 1990), with regard to the fact that twenty years had elapsed since his disappearance. It characterised the extrajudicial killing as an instantaneous act and accepted the Government's preliminary exception as regards the right to life (Article 4). However, with regard to the forced disappearance as such, it applied its previous case-law and found that it was a permanent or continuous violation, since it had been prolonged after the critical date until the victim's remains were found in 2000. It was competent to examine the following violations arising out of the disappearance: the deprivation of liberty of the victim (Article 7), the violation of the relatives' right to humane treatment (Article 5), the non-compliance with the obligation to investigate into the alleged disappearance, the failure to incriminate forced disappearances and tortures in domestic law and the failure to investigate and punish acts of torture. On the merits, the IACHR went on to find a violation of the right to liberty (Article 7) and a violation of Articles I and II of the Inter-American Convention on Forced Disappearance of Persons with regard to the deceased. It further found a breach of Articles 5 (right to humane treatment), 8 and 25 in respect of his relatives."

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			Relevance: jurisdiction *ratione temporis* over procedural obligations under Article 2 ECHR arising from disappearances "147. The Court would emphasise that, as found in *Šilih v. Slovenia* concerning the procedural obligation under Article 2 to investigate unlawful or suspicious deaths, the procedural obligation under Article 2 arising from disappearances operates independently of the substantive obligation. It notes that the Inter-American Court, and to some extent the Human Rights Committee, apply the same approach to the procedural aspect of disappearances (see paragraphs 93-107 above), examining allegations of denial of justice or judicial protection even where the disappearance occurred before recognition of its jurisdiction."
18.	***Gäfgen v. Germany*, no. 22978/05, 01/06/10, Grand Chamber**	**Case of Maritza Urrutia v. Guatemala** Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103.	(FACTS: Practice of the courts of other States and of other human-rights monitoring bodies) "66. The Inter-American Court of Human Rights, in its judgment of 27 November 2003 (Merits, Reparations and Costs) in the case of ***Maritza Urrutia v. Guatemala*** (Series C No. 103), found: *'… 92. An international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, has been developed and, with regard to the latter, it has been recognized that the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered 'psychological torture'. …'"* **Relevance: legal qualification of threats of torture under Article 3 ECHR** (LAW) "108. Having regard to the relevant factors for characterising the treatment to which the applicant was subjected, the Court is satisfied that the real and immediate threats against the applicant for the purpose of extracting information from him attained the minimum level of severity to bring the impugned conduct within the scope of Article 3. It reiterates that according to its own case-law (see paragraph 91 above), which also refers to the definition of torture in Article 1 of the United Nations Convention against Torture (see paragraphs 90 and 64 above), and according to the views taken by other international human-rights monitoring bodies (see paragraphs 66-68 above), to which the Redress Trust likewise referred, a threat of torture can amount to torture, as the nature of torture covers both physical pain and mental suffering. In particular, the fear of physical torture may itself constitute mental torture."
19.	***Portmann v. Switzerland*, no. 38455/06, 11/10/11, Second Section (only in French)**	**Case of Maritza Urrutia v. Guatemala** Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103.	Judge Pinto de Albuquerque (dissenting): "La Cour interaméricaine a également jugé que le fait d'encapuchonner un détenu et de le soumettre au son d'une radio allumée à plein volume constituait une torture psychologique (affaire ***Urrutia c. Guatemala***, 27 novembre 2003, no 58.6, 94 et 103)." **Relevance**: **use of hood to restrain particularly dangerous suspect for two hours.**

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
20.	***Al-Skeini and Others v. United Kingdom*, no. 55721/07, 07/07/11, Grand Chamber**	**Case of the Mapiripán Massacre v. Colombia** Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134	(FACTS: RELEVANT INTERNATIONAL LAW MATERIALS) "94. In its judgment in the *Case of the **Mapiripán Massacre v. Colombia***, 15 September 2005, the Inter-American Court of Human Rights held, *inter alia*, in connection with the respondent State's failure fully to investigate the massacre of civilians carried out by a para-military group with the alleged assistance of the State authorities: *'238. In this regard, the Court recognizes the difficult circumstances of Colombia, where its population and its institutions strive to attain peace; However, the country's conditions, no matter how difficult, do not release a State Party to the American Convention of its obligation set forth in this treaty, which specifically continue in cases such as the instant one. The Court has argued that when the State conducts or tolerates actions leading to extra-legal executions, not investigating them adequately and not punishing those responsible, as appropriate, it breaches the duties to respect rights set forth in the Convention and to ensure their free and full exercise, both by the alleged victim and by his or her next of kin, it does not allow society to learn what happened, and it reproduces the conditions of impunity for this type of facts to happen once again.'"* **Relevance: the duty to investigate alleged violations of the right to life in situations of armed conflict and occupation** (LAW) "164. The Court has held that the procedural obligation under Article 2 continues to apply in difficult security conditions, including in a context of armed conflict (see, amongst other examples, Güleç v. Turkey, 27 July 1998, § 81, Reports of Judgments and Decisions 1998-IV; Ergi v. Turkey, 28 July 1998, §§ 79 and 82, Reports 1998-IV; Ahmet Özkan and Others v. Turkey, no. 21689/93, §§ 85-90 and 309-320 and 326-330, 6 April 2004; Isayeva v. Russia, no. 57950/00, §§ 180 and 210, 24 February 2005; Kanlibaş v. Turkey, no. 32444/96, §§ 39-51, 8 December 2005). It is clear that where the death to be investigated under Article 2 occurs in circumstances of generalised violence, armed conflict or insurgency, obstacles may be placed in the way of investigators and, as the United Nations Special Rapporteur has also observed (see paragraph 93 above), concrete constraints may compel the use of less effective measures of investigation or may cause an investigation to be delayed (see, for example, Bazorkina v. Russia, no. 69481/01, § 121, 27 July 2006). Nonetheless, the obligation under Article 2 to safeguard life entails that, even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life (see, amongst many other examples, Kaya v. Turkey, 19 February 1998, §§ 86-92, Reports of Judgments and Decisions 1998-I; Ergi, cited above, §§ 82-85; Tanrıkulu v. Turkey [GC], no. 23763/94, §§ 101-110, ECHR 1999-IV; Khashiyev and Akayeva v. Russia, nos. 57942/00 and 57945/00, §§ 156-166, 24 February 2005; Isayeva, cited above, §§ 215-224; Musayev and Others v. Russia, nos. 57941/00, 58699/00 and 60403/00, §§ 158-165, 26 July 2007).

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
21.	***Zontul v. Greece*, no. 12294/07, 17/01/12, First Section (only in French)**	**Case of the Miguel Castro-Castro Prison v. Peru** Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.	(FACTS: INTERNATIONAL LAW) "65. La Cour interaméricaine des droits de l'homme a considéré, dans l'affaire ***Penal Miguel Castro Castro c. Pérou*** (arrêt du 25 novembre 2006, série C. no 160, § 312), qu'une inspection vaginale digitale d'une détenue, effectuée de manière abrupte par plusieurs gardiens encapuchonnés, correspondait à la définition du viol et que ce traitement était suffisamment sévère pour constituer un acte de torture." **Relevance : penetration with an object amounts to torture** (LAW) "91. Par ailleurs, différentes juridictions internationales, telles que le Tribunal pénal international pour l'ex-Yougoslavie, le Tribunal pénal international pour le Rwanda et la Cour interaméricaine des droits de l'homme, ont admis que la pénétration par un objet constituait un acte de torture (paragraphes 61-65 ci-dessus)."
22.	***Palomo Sánchez and Others v. Spain*, nos. 28955/06, 28957/06, 28959/06, 28964/06, 12/09/11, Grand Chamber**	**Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985.** Series A No. 5.	(FACTS: RELEVANT INTERNATIONAL INSTRUMENTS AND PRACTICE) "26. In its **Advisory Opinion OC-5/85**, the Inter-American Court emphasised the fundamental nature of freedom of expression for the existence of a democratic society, stressing among other things that freedom of expression was a *sine qua non* for the development of trade unions. It found as follows (paragraph 70 of the Opinion): *'Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a conditio sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.'"* **Relevance: freedom of expression of trade unions** (LAW) "56. The Court takes the view that the members of a trade union must be able to express to their employer their demands by which they seek to improve the situation of workers in their company. In this respect, the Court notes that the Inter-American Court of Human Rights, in its **Advisory Opinion OC-5/85193**, emphasised that freedom of expression was 'a *conditio sine qua non* for the development of ... trade unions' (see paragraph 26 above; see also paragraph 24 and in particular point 155 cited therein). A trade union that does not have the possibility of expressing its ideas freely in this connection would indeed be deprived of an essential means of action. Consequently, for the purpose of guaranteeing the meaningful and effective nature of trade union rights, the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members' interests. Trade-union expression may take the form of news sheets, pamphlets, publications and other documents of the trade union whose distribution by workers' representatives acting on behalf of a trade union must therefore be authorised by the management, as stated by the

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			General Conference of the International Labour Organisation in its Recommendation No. 143 of 23 June 1971 (see paragraph 21 above)." See also Joint Dissenting Opinion of Judges Tulkens, Thór Björgvinsson, Jočienė, Popović And Vučinić
23.	***Hirsi Jamaa and Others v. Italy*,** **no. 27765/09, 23/02/12, Grand Chamber**	**Matter of Haitians and Dominicans of Haitian-origin in the Dominican Republic regarding Dominican Republic,** order of 18/08/2000.	Judge Pinto de Albuquerque (concurring) "The due procedure provision of Article 4 of Protocol No. 4 is of much broader personal scope than the one provided for in Article 1 of Protocol No. 7, since the former includes all aliens regardless of their legal and factual status and the latter includes only aliens lawfully resident in the expelling State … ." **Relevance: the prohibition of collective expulsion**
24.	***Konstantin Markin v. Russia*,** **no. 30078/06, 22/03/12, Grand Chamber**	**Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru** Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198. **Advisory Opinion OC-17/02** of 28 August 2002. **Case of the "Five Pensioners" v. Peru** Merits, Reparations and Costs. Judgment of February 28, 2003. Series C No. 98.	Judge Pinto de Albuquerque (concurring): Footnote 25: "[T]he Inter-American Court of Human Rights has affirmed the State's obligation to adopt the 'the measures required for children's existence to develop under decent conditions' (**Advisory Opinion OC-17/2002** of 28 August 2002, § 80, and point 7 of the Opinion)." Also cited in footnotes 16 and 30. **Relevance: social rights, parental leave** The principle of the judiciability of social rights; positive obligations for the States to promote and guarantee the effective enjoyment of family life; and retrogressive legislation.
25.	***Babar Ahmad and Others v. United Kingdom*,** **no. 24027/07, 10/04/12, Fourth Section**	**Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela** Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150.	(FACTS: RELEVANT INTERNATIONAL MATERIAL ON SOLITARY CONFINEMENT) "117. … In ***Montero Aranguren et al (Detention Center of Catia) v. Venezuela***, judgment of 5 July 2006, the Inter-American Court of Human Rights stated: *'... solitary confinement cells must be used as disciplinary measures or for the protection of persons only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfil the minimum standards for proper accommodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that the prisoner is fit to sustain it (footnotes omitted)'."* **Relevance: solitary confinement**

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
26.	***Tautkus v. Lithuania*, no. 29474/09, 27/11/12, Second Section**	**Yakye Axa Indigenous Community v. Paraguay**, 17 June 2005, Series C No. 125. **Tibi v. Ecuador**, 7 September 2004, Series C No. 114. **Gómez-Paquiyauri Brothers v. Peru**, 8 July 2004, Series C No. 110. **'Street Children' (Villagrán-Morales et al.) v. Guatemala**, 19 November 1999, Series C No. 63. **The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law, Advisory Opinion** OC-16/99 of 1 Oct. 1999, Series A No. 16	Judge Pinto de Albuquerque (dissenting): Footnote 16: "The Convention must be interpreted taking into account not only other human rights treaties, but also hard and soft law instruments related to it and especially the system of human rights protection of the Council of Europe within which it fits, as Article 31 para. 3 c) of the Vienna Convention on the Law of Treaties provides (for a clear example, see *Loizidou v. Turkey*, 18 December 1996, § 43, Reports of Judgments and Decisions 1996-VI). The same interpretation method has been used by the Inter-American Court of Human Rights in numerous judgments and opinions (for example, see ***Yakye Axa Indigenous Community v. Paraguay***, 17 June 2005, Series C No. 125, paragraph 126; ***Tibi v. Ecuador***, 7 September 2004, Series C No. 114, paragraph 144; ***Gómez-Paquiyauri Brothers v. Peru***, 8 July 2004, Series C No. 110, paragraph 164; ***'Street Children' (Villagrán-Morales et al.) v. Guatemala***, 19 November 1999, Series C No. 63, paragraphs 192–193; and **The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law, Advisory Opinion** OC-16/99 of 1 Oct. 1999, Series A No. 16, paragraph 113) …" **Relevance: interpretation of the Convention in the light of other hard and soft law instruments**
27.	***De Souza Ribeiro v. France*, no. 22689/07, 13/12/12 Grand Chamber**	**Juridical Condition and Rights of the Undocumented Migrants.** Advisory Opinion OC-18/03. September 17, 2003. Series A No. 18. **Case of Haitians and Dominicans of Haitian origin expelled from the Dominican Republic,** Inter-American Court Orders of 18 August 2000, 12 November 2000 and 26 May	Judge Pinto de Albuquerque, joined by Judge Vučinić (concurring): "In the American human rights protection system, the Inter-American Court of Human Rights took a position of principle in its **Advisory Opinion OC-18-03 on the juridical condition and rights of undocumented migrants**, of 17 September 2003. There, it affirmed the fundamental principle that "non-discrimination and the right of equality are jus cogens applicable to all residents regardless of immigration status". Thus, the right to due process of law should be recognised as one of the minimum guarantees that should be offered to any migrant, irrespective of his or her migratory status. The broad scope of the preservation of due process encompasses all matters and all persons, without any discrimination. The migratory status of a person cannot constitute a justification in depriving him or her of the enjoyment and exercise of his or her human rights, and upon taking up a work-related role the migrant acquires rights by virtue of being a worker that should be recognised and guaranteed independently of his or her regular or irregular situation in the State of employment [22]. In addition, the Inter-American Court acknowledged that neither the text nor the

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		2001. **Inter-American Commission on Human Rights:** **Raghda Habbal and son v. Argentina**, report no. 64/08, case 11.691, 25 July 2008. **Riebe Star and Others v. Mexico**, report no. 49/99, case 11.160, 13 April 1999. **Juan Ramón Chamorro Quiroz v. Costa Rica**, report no. 89/00, case 11.495, 5 October 2000. **José Sánchez Guner Espinales and others v. Costa Rica**, report no. 37/01, case 11.529, 22 February 2001.	spirit of the American Convention established a restriction as to whether the irreparable damage should be against life or physical integrity, and consequently other rights should be subjected to protection similar to that afforded to life and personal integrity. In other words, the risk of irreparable damage to a migrant's right to family life, for instance, should be assessed with the same guarantees of due process as any other risk of irreparable damage to a Convention right [with footnote to the Inter-American Court Orders of 18 August 2000, 12 November 2000 and 26 May 2001, proferred in the case of Haitians and Dominicans of Haitian origin expelled from the Dominican Republic.]" Footnote 22: "Advisory Opinion on Undocumented Migrants, paragraphs 124-27; and in the same vein, *Raghda Habbal and son v. Argentina*, report no. 64/08, case 11.691, 25 July 2008, paragraph 54; *Riebe Star and Others v. Mexico*, report no. 49/99, case 11.160, 13 April 1999, paragraph 71; *Juan Ramón Chamorro Quiroz v. Costa Rica*, report no. 89/00, case 11.495, 5 October 2000, paragraphs 34-36; and *José Sánchez Guner Espinales and others v. Costa Rica*, report no. 37/01, case 11.529, 22 February 2001, paragraphs 43-45; the report on Terrorism and Human Rights, OAS Doc. OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, paragraphs 401 and 409; the Annual Report of the Commission on Human Rights 2001, 16 April 2001, OAS Doc. OEA/Ser./L/V/II.114, Third Progress Report of the rapporteurship on migrant workers and their families, paragraph 77; and the Report of the Commission on the situation of human rights in the Dominican Republic, 7 October 1999, OAS Doc. OEA/Ser.L/V/II.104, paragraphs 325-34, 350-62 and 366." "For the sake of a consistent interpretation of the Convention, the instant case should be resolved in the light of these same principles on the necessary automaticity of the remedy against any expulsion, deportation or removal order whose execution would cause irreversible damage. In addition, the Court has many times affirmed that the separation of the members of a family may cause irreversible damage to them, involving a possible violation of Article 8, which should be avoided through a Rule 39 measure." Footnote 36: " … The very same line of reasoning has been upheld by the Inter-American Court of Human Rights in regard to provisional measures to safeguard the right to family life in the Haitian migrants' case mentioned above." **Relevance: risk of irreparable damage to a migrant's right to family life**
28.	***El-Masri v. the former Yugoslav Republic of Macedonia*, no. 39630/09, 13/12/2012 Grand Chamber**	**Case of Velásquez Rodríguez v. Honduras** Merits. Judgment of July 29, 1988. Series C No. 4.	Judges Tulkens, Spielmann, Sicilianos and Keller (concurring): "8. Today, the right to the truth is widely recognised by international and European human rights law. … 9. The same is true at regional level. In the context of the American Convention on Human Rights, the right to the truth has been expressly acknowledged in the decisions of the Inter-American Court on Human Rights in **Velásquez Rodríguez v. Honduras** (29 July 1988) and **Contreras et al. v. El Salvador** (31 August 2011) …"

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Contreras et al. v. El Salvador Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232.	**Relevance: the right to the truth**
29.	***Oleksandr Volkov v. Ukraine*, no. 21722/11, 09/01/13 (rectified on 09/04/13), Fifth Section**	**Baena-Ricardo and others v. Panama** Merits, Reparations and Costs. Judgement of February 2, 2001. Series C No. 72. **Loayza Tamayo Case (art. 63(1) American Convention on Human Rights)** Reparations. Judgment of November 27, 1998. Series C No. 42.	Judge Yudkivska (concurring): "For the first time the Court has ordered the reinstatement of a person whose dismissal was found to be contrary to the guarantees of the Convention. Such a remedy is not new or unknown to other international jurisdictions. For instance, the Inter-American Court of Human Rights has ordered it on several occasions" Footnote 19: "For example, in the case of ***Baena-Ricardo and others v. Panama*** (IACtHR, 2 February 2001), concerning the arbitrary dismissal of 270 public officials, the court ordered the State to reassign the workers to their previous positions and pay them their unpaid salaries. Another example is the ***Loayza Tamayo*** case, Reparations (Article 63(1) of the American Convention on Human Rights), Judgment of 27 November 1998, IACtHR, (Ser. C) No. 42 (1998). It is to be noted, however, that unlike Article 41 of the ECHR, Article 63 of the ACHR clearly provides that *'If the Court finds that there has been a violation of a right or freedom protected by this Convention ... It shall ... rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied ...'*." **Relevance: reinstatement of a person whose dismissal was incompatible with the Convention as a remedy**
30.	***Fabris v. France*, no. 16574/08, 07/02/13, Grand Chamber**	**Ricardo Canese v. Paraguay** Merits, Reparations and Costs. Judgement of August 31, 2004. Series C No. 111	Judge Pinto de Albuquerque (concurring): "Human rights treaties should be interpreted in a way which is most protective of the rights and freedoms they forsee." Footnote 12: "*Wemhoff v. Germany*, 27 June 1968, § 8, Series A no. 7, and following a long tradition of the Inter-American Court, ***Ricardo Canese v. Paraguay***, 31 August 2004, Series C No. 111, para. 181. This principle is based on Article 31 of the Vienna Convention on the Law of Treaties, which provides for a teleological interpretation of international law." **Relevance: interpretation of human rights treaties**
31.	***Valiulienė v. Lithuania*, no. 33234/07, 26/03/13, Second Section**	**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women** **Maria da Penha Maia Fernandes (Brazil), Inter-American Commission on**	Judge Pinto de Albuquerque (concurring): "… For the very first time, an international instrument referred to violence against women as a human rights violation and formally enshrined the due diligence clause as the applicable standard for the prevention and protection of the right of women to physical integrity and psychological well-being. In the same year, the General Assembly of the Organization of American States adopted the **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women** (the Belém do Pará Convention), which sets out States' duties relating to the eradication of gender-based violence." Footnote 3: "In **Maria da Penha Maia Fernandes v. Brazil**, Case 12.051, Report no. 54/01, 16 April

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Human Rights, April 16, 2001. Case 12.051, Report no. 54/01. **Jessica Lenahan (Gonzales) et al. v. United States, Inter-American Commission on Human Rights,** July 21, 2011. Case 12.626, Report no. 80/11. **Gonzales et al. ("Cotton Field") v. Mexico** Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 16, 2009. Series C No. 205 **Case of the Pueblo Bello Massacre v. Colombia** Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140 **Case of Velásquez-Rodríguez v. Honduras** Merits Judgment of July 29, 1988. Series C No. 4.	2001, the Inter-American Commission of Human Rights found that the Brazilian State had failed to exercise due diligence to prevent and investigate a domestic violence complaint, this failure warranting a finding of State responsibility under the American Convention and the Belém do Pará Convention. More recently, in **Jessica Lenahan (Gonzales) et al. v. United States**, Case 12.626, Report no. 80/11, 21 July 2011, the Commission held the US responsible for the systematic violation of its international obligation to protect individuals from domestic violence. The Inter-American Court also found, in **Gonzales et al. ("Cotton Field") v. Mexico**, 16 November 2009, that the Mexican authorities had failed to prevent and investigate the rape and murder of circa 600 women in Ciudad Juarez." "One of the most problematic aspects of the State's positive obligation is the definition of the exact ambit of its duty to prevent and protect. The Court has developed the so-called Osman test, which normally assesses if the authorities knew, or ought to have known at the time, of the existence of real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Put simply, the State answers for the wrongful conduct of non-State actors when their conduct was foreseeable and avoidable by the exercise of State powers …" Footnote 20: *Osman v. the United Kingdom*, 28 October 1998, § 116, Reports 1998-VIII. The Court has applied this standard in domestic violence cases (see for instance, *Opuz*, cited above, § 130, and *Hajduova*, cited above, § 50). The exact same criterion has been adopted on the other side of the Atlantic by the Inter-American Court (see the **Cotton Field case**, cited above, para. 282, and the **Case of the Massacre of Pueblo Bello** judgment, 31 January 2006, para. 152). **Relevance: State responsibility for preventing violence against women** Judge Jočienė (dissenting): "4. In the case of *Bevacqua and S. v. Bulgaria* (no. 71127/01, §§ 53, 66, 77-84, 12 June 2008) the Court also relied on the position taken by the Commission on Human Rights of the UN Economic and Social Council (E/CN.4/2006/61; 20 January 2006), where the Special Rapporteur on violence against women considered that there is a rule of customary international law that "obliges States to prevent and respond to acts of violence against women with due diligence". This conclusion was based mainly on analysis of developments in the case-law of several international bodies, including our Court (reference to Osman v. the United Kingdom, judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII), the Inter-American Court of Human Rights (reference to the case of **Velasquez Rodriguez v. Honduras**), the Inter-American Commission of Human Rights (reference to Report no. 54/01, Case 12.051, Maria da Penha Maia Fernandes (Brazil)) and the committee monitoring the UN Convention on the Elimination of All Forms of Discrimination against Women (reference to the case of A.T. v Hungary – 2005)."

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
32.	***Savriddin Dzhurayev v. Russia*,** **no. 71386/10, 25/04/13,** **First Section**	**American Convention on Human Rights** Article 63 § 2 ***Aleman-Lacayo case***, Order of 2 February 1996	(FACTS: IV. COUNCIL OF EUROPE TEXTS ON THE DUTY TO COOPERATE WITH THE COURT, THE RIGHT TO INDIVIDUAL PETITION AND INTERIM MEASURES): "108. In Resolution 1571 (2007) on member States' duty to cooperate with the Court, adopted on 2 October 2007, the Parliamentary Assembly stated, inter alia: "13. The Court has also used the instrument of interim measures (Article 39 of the Rules of the Court) in order to prevent irreparable damage. The Assembly commends the Court for finding that such interim measures are binding on states parties. It considers that this instrument may have still wider potential uses for protecting applicants and their lawyers who are exposed to undue pressure. The Court may find it useful in this respect to examine the practice of the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, which have used interim measures to enjoin the authorities to place applicants under special police protection in order to shield them from criminal acts by certain non-state actors." 109. The explanatory memorandum adopted by the Assembly's Committee of Legal Affairs and Human Rights (Doc. 11183 of 9 February 2007, § 48) referred in this connection to the practice developed under Article 63 § 2 of the **American Convention on Human Rights**, which empowers the Inter-American Court of Human Rights to order positive action by states. For example, in the *Aleman-Lacayo* case, the Inter-American Commission of Human Rights asked the Court to adopt a measure requesting that the Government of Nicaragua adopt effective security measures to protect the life and personal integrity of Dr Aleman-Lacayo, including providing him and his relatives with the "name and telephone number of a person in a position of authority" who would be responsible for providing them with protection. The Court granted the Commission's request and called upon the Nicaraguan Government to adopt "such measures as are necessary to protect the life and personal integrity of Dr Aleman-Lacayo" (see *Aleman-Lacayo case*, Inter-American Court of Human Rights, Order of 2 February 1996)." **Relevance: interim measures to place applicants under special protection**
33.	***Sabanchiyeva and Others v. Russia*,** **no. 38450/05, 06/06/13,** **First Section** **(see also *Maskhadova and Others v. Russia*,** **no. 18071/05, 06/06/13** **First Section, §§ 148-150)**	**Moiwana Village v. Suriname** Preliminary Objections, Merits, Reparations and Costs. Judgement of June 15, 2005. Series C No. 145.	(FACTS: OTHER RELEVANT SOURCES): "94. The applicants also relied on the judgment of the Inter-American Court of Human Rights of 15 June 2005 in the case of ***Moiwana Village v. Suriname*** (Inter-Am Ct. H.R., (Ser. C) No. 145 (2005). In that case State agents attacked Moiwana village in 1986, killing thirty-nine members of the N'djuka clan (paragraph 86 (15)). The authorities also prevented the survivors from recovering the bodies. It was further reported that some of the corpses were cremated. The Court gave a detailed account of the specific funeral rituals of the N'djuka, having noted that: *'86(7). The N'djuka have specific rituals that must be precisely followed upon the death of a community member. A series of religious ceremonies must be performed, which require between six months and one year to be completed; these rituals demand the participation of more community members and the use of more resources than any other ceremonial event of N'djuka society.* *86(8). It is extremely important to have possession of the physical remains of the deceased, as the corpse must be*

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			treated in a specific manner during the N'djuka death rituals and must be placed in the burial ground of the appropriate descent group. Only those who have been deemed evil do not receive an honourable burial. Furthermore, in all Maroon societies, the idea of cremation is considered very offensive. *86(9). If the various death rituals are not performed according to N'djuka tradition, it is considered a moral transgression, which will not only anger the spirit of the individual who died, but may also offend other ancestors of the community. This leads to a number of 'spiritually-caused illnesses' that become manifest as actual physical maladies and can potentially affect the entire natural lineage. The N'djuka understand that such illnesses are not cured on their own, but rather must be resolved through cultural and ceremonial means; if not, the conditions will persist through generations.'* 95. The Inter-American Court held in paragraph 100 of its judgment that the applicants had suffered inhuman treatment, contrary to Article 5 of the American Convention on Human Rights, because: *'... one of the greatest sources of suffering for the Moiwana community members is that they do not know what has happened to the remains of their loved ones, and, as a result, they cannot honor and bury them in accordance with fundamental norms of N'djuka culture. The Court notes that it is understandable, then, that community members have been distressed by reports indicating that some of the corpses were burned ...'.* 96. As part of the just satisfaction award (paragraph 208 of the judgment) the Government of Suriname was ordered: *"... to recover promptly the remains of the Moiwana community members killed during the 1986 attack. If such remains are found by the State, it shall deliver them as soon as possible thereafter to the surviving community members so that the deceased may be honoured according to the rituals of N'djuka culture".*" **Relevance: right to respect for private and family life with regard to the refusal to return the bodies of deceased relatives**
34.	***Maktouf and Damjanović v. Bosnia and Herzegovina*, nos. 2312/08 and 34179/08, 18/07/13, Grand Chamber**	**American Convention on Human Rights** Article 9 **Castillo Petruzzi et al.** Merits, Reparations and Costs. Judgement May 30, 1999. Series C No. 52.	Judge Pinto de Albuquerque, joined by Judge Vučinić (concurriung): "3. The universal acceptance of the principle of non-retroactivity of penal law with regard to criminalisation and sentencing in times of peace is evidenced by … Article 9 of the **American Convention on Human Rights** (ACHR) …". Footnote 31: "… See, with regard to this principle, ***Castillo Petruzzi et al. v. Peru***, Inter-American Court of Human Rights judgment of 30 May 1999, § 121." **Relevance: principle of non-retroactivity of penal law**
35.	***Vallianatos and Others v. Greece*, nos. 29381/09 and 32684/09, 07/11/13,**	**The Effect of Reservations on the Entry into Force of the American Convention of Human Rights**	Judge Pinto de Albuquerque (partly dissenting and partly concurring): "Being more than just a multilateral agreement on reciprocal obligations of States Parties, the Convention creates obligations for States Parties towards all individuals within their jurisdiction, with a view to the practical implementation of the protected rights and freedoms in the domestic legal order of the States Parties."

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
	Grand Chamber	**Advisory Opinion OC-2/82** September 24, 1982. Series A No. 2	Footnote 17: "The International Court of Justice explicitly excluded the notion of reciprocal obligations with regard to human rights treaties (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, ICJ Reports 1951, p. 23, followed by *Barcelona Traction, Light and Power Company, Limited*, Judgment, ICJ Reports 1964, p. 32, and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Preliminary Objections, Judgment, ICJ Reports 1996, p. 20), after the Permanent Court of International Justice had conceded that *"the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption by the Parties of some definite rules creating individual rights and obligations and enforceable by the national courts"* (Jurisdiction of the Courts of Danzig, Advisory Opinion, 1928, PCIJ, Series B, No. 15, 3 March 1928, p. 17). The Inter-American Court of Human Rights (**Advisory Opinion No. OC-2/82**, 24 September 1982, on the effect of reservations on the entry into force of the American Convention on Human Rights, § 29) and the Human Rights Committee (CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, § 17) have expressed the same opinion …" **Relevance: exclusion of the notion of reciprocal obligations with regard to human rights treaties**
36.	***X v. Latvia*, no. 27853/09, 26/11/13, Grand Chamber**	**Inter-American Convention on the International Return of Children** Article 34. **Case 11.676 (X and Z v. Argentina) Inter-American Commission on Human Rights** Report No. 71/00 October 3, 2000.	Judge Pinto de Albuquerque (concurring): "Thus, in the event of contradictory evaluations of the child's situation, resulting from the confrontation between a restrictive interpretation of the Hague Convention and a purposive and evolutive interpretation of the same text in the light of the Convention, the latter should prevail over the former. Although in virtually all cases the Convention and the Hague Convention march hand in hand, when they do not, it is up to the Convention to guide the way …" Footnote 32: "This is not an oddity of the European human rights protection system (see Article 34 of the **Inter-American Convention on the International Return of Children**, 1989)." "In this context, the fact that the Court is competent to ascertain whether in applying the Hague Convention the domestic courts secured the human rights set forth in the Convention diminishes the risk of divergent case-law …". Footnote 35: "The same applies obviously in the Inter-American human rights system, where the Inter-American Commission has already found that the making of a return order pending an appeal does not breach the American Convention on Human Rights and thus reviewed the Argentine court's decision in return proceedings under a supranational standard (report no. 71/00, ***X and Z v. Argentina***, 3 October 2000, §§ 38, 51 and 56)." "… Thus, progress in the protection of the child's rights, comity among States and cooperation in cross-border child abduction is furthered by the uniform application of the Hague Convention obligations

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			interpreted in the light of the Convention, at least among the Contracting Parties to the Convention." Footnote 36: "It is also not irrelevant to refer to the persuasive force of the Court's case-law, which may play a role in the way non-European countries apply the Hague Convention. Conversely, the case-law of the Inter-American and African human rights systems could also influence the way in which the European courts and the Court apply the Hague Convention. A rich dialogue could emerge among international courts, which would promote the development of universal legal standards and further the progress of children's rights." "It is established that the Latvian courts omitted to consider properly the psychological situation of the child, the child's welfare situation in Australia, and the future relationship between the mother and the child were the child to be returned to Australia …" Footnote 38: "In the ***X and Z v. Argentina*** case, cited above, § 60, the Inter-American Commission found that the evaluations of the child conducted by a psychologist and a court-appointed social worker, who interviewed both parents and the child, did not breach the right to fair, impartial and rapid proceedings." **Relevance: prevalence of the European Convention in case of contradiction with the Hague Convention on Child Abduction. Competence of the Court to ascertain whether domestic courts secured human rights when applying the Hague Convention on Child Abduction.** **Need to evaluate the psychological situation of the child.**
37.	***Öcalan v. Turkey (No. 2)*, nos. 24069/03, 197/04, 6201/06 and 10464/07, 18/03/14** **Second Section**	**Inter-American Convention on extradition** Article 9. **American Convention on Human Rights** Article 5 (6).	Judge Pinto de Albuquerque (partly dissenting): "4. In *Vinter*, the Grand Chamber held that a 'whole life order' (i.e. an irreducible life sentence) irretrievably breaches Article 3 of the Convention, because it contradicts the resocialisation purpose. In fact, an irreducible life sentence is per se incompatible with international law, insofar as it disregards the clear prohibition set out in Article 37 (a) of the United Nations Convention on the Rights of the Child and **Article 9 of the Inter-American Convention on extradition**, and the international obligation of resocialisation of offenders sentenced to prison terms laid down in Article 10 (3) of the International Covenant on Civil and Political Rights, **Article 5 (6) of the American Convention on Human Rights**, and Article 40 (1) of the United Nations Convention on the Rights of the Child. As the US Supreme Court once put it, 'a sentence of life imprisonment without parole, however, cannot be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to re-enter the community, the State makes an irrevocable judgment about that person's value and place in society.' In blunt terms, an irreducible life sentence is akin to inhuman treatment because of the desocialising and therefore dehumanising effects of long-term imprisonment. In fact, this also holds true for any kind of open-ended, indeterminate sentence, any fixed-term sentence which exceeds a normal life span, or any extremely long fixed-term. Human dignity is incompatible with these forms of punishment. Restricted access to, or even denial of, drug

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			treatment and vocational and educational programmes for life prisoners only aggravates the inherent inhumanity of the penalty." **Relevance: Irreducible life sentences**
38.	***Laqutin and Others v. Russia*, nos. 6228/09, 19123/09, 19678/07, 52340/08 and 7451/09, 24/04/14, First Section**	**Inter-American Drug Abuse Control Commission (CICAD) Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses** (1992).	Judge Pinto de Albuquerque, joined by Judge Dedov (concurring): "2. On the basis of the current international law standards in general and the Court's case-law in particular, as well as comparative-law research into the relevant legal framework in some European countries, it can be affirmed that an international consensus has emerged as to the minimum content of human rights-compatible legislation on special investigation techniques. This consensus has been reflected worldwide in … and **Article 5 of the Inter-American Drug Abuse Control Commission (CICAD) Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Other Serious Offenses** (1992, last amended in 2005)." **Relevance: Human rights-compatible legislation on special investigation techniques**
39.	***Cyprus v. Turkey*, no. 25781/94, 12/05/14, Grand Chamber**	**Velásquez Rodríguez v. Honduras** Reparations and Costs. Judgment July 21, 1989. Series C No. 7. **Godinez Cruz v. Honduras** Reparations and Costs. Judgment July 21, 1989. Series C No. 8. **Garrido and Baigorria v. Argentina** Reparations and Costs. Judgment August 27, 1998. Series C No. 39. **Myrna Mack Chang v. Guatemala** Merits, Reparations and Costs. Judgment November 25, 2003.	Judge Pinto de Albuquerque, joined by Judge Vučinić (concurring) "17. In the Council of Europe, the Committee of Ministers noted that *'the setting up of a merely compensatory or acceleratory remedy may not suffice to ensure rapid and full compliance with obligations under the Convention, and ... further avenues must be explored, e.g. through the combined pressure of various domestic remedies (punitive damages, default interest, adequate possibility of seizure of state assets, etc.), provided that their accessibility, sufficiency and effectiveness in practice are convincingly established'*. This clear stance in favour of punitive damages taken by the highest political body of the Council of Europe was not an isolated case. In the Inter-American human rights protection system opinions are still divided. While the Inter-American Commission expressed itself in favour of punitive damages or at least of a punitive aim to compensation, the Inter-American Court initially had a more reserved position [with footnote to ***Velazquez Rodriguez***; ***Godinez Cruz***; and ***Garrido and Baigorria***]. More recently, in the ***Myrna Mack Chang*** case, the Inter-American Court came close to the Commission's position by ordering the payment of aggravated damages based on the extreme seriousness of the respondent State agents' conduct [with footnote to ***Myrna Mack Chang*** and the separate opinion of Judge Cançado Trindade]." **Relevance: Punitive damages**

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Series C No. 101.	
40.	***Marguš v. Croatia*, no. 4455/10, 27/05/14, Grand Chamber**	**American Convention on Human Rights** Art. 1 **Case 10.287 (El Salvador) Inter-American Commission on Human Rights** Report No. 26/92. September 24, 1992. **Report on the situation of human rights in El Salvador Inter-American Commission on Human Rights** OEA/Ser.L/V/II.85 Doc. 28 rev. February 11, 1994. **Case 10.480 (El Salvador) Inter-American Commission on Human Rights** Report No. 1/99. January 27, 1999. **Case of Barrios Altos v. Peru** Merits. Judgment March 14, 2001. Series C No. 75. **Almonacid-Arellano et al. v. Chile** Preliminary objections, Merits,	(FACTS: RELEVANT INTERNATIONAL LAW MATERIALS): "O. **American Convention on Human Rights**. 56. The relevant part of this Convention reads as follows: Article 1. Obligation to Respect Rights *'1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.* *2. For the purposes of this Convention, 'person' means every human being.'* P. Inter-American Commission on Human Rights 1. ***Case 10.287 (El Salvador)***, Report No. 26/92 of 24 September 1992 57. In 1992, in a report on a case with respect to the Las Hojas massacres in El Salvador in 1983 during which about seventy-four persons were allegedly killed by members of the Salvadoran armed forces with the participation of members of the Civil Defence, and which had led to a petition before the Inter-American Commission on Human Rights, the latter held that: *'... The application of [El Salvador's 1987 Law on Amnesty to Achieve National Reconciliation] constitutes a clear violation of the obligation of the Salvadoran Government to investigate and punish the violations of the rights of the Las Hojas victims, and to provide compensation for damages resulting from the violations* *... The present amnesty law, as applied in these cases, by foreclosing the possibility of judicial relief in cases of murder, inhumane treatment and absence of judicial guarantees, denies the fundamental nature of the most basic human rights. It eliminates perhaps the single most effective means of enforcing such rights, the trial and punishment of offenders.'* 2. **Report on the situation of human rights in El Salvador**, OEA/Ser.L/V/II.85 Doc. 28 rev. (11 February 1994) 58. In 1994, in a report on the situation of human rights in El Salvador, the Inter-American Commission on Human Rights stated, with regard to El Salvador's General Amnesty Law for Consolidation of Peace, as follows: *'... regardless of any necessity that the peace negotiations might pose and irrespective of purely political considerations, the very sweeping General Amnesty Law [for Consolidation of Peace] passed by El Salvador's Legislative Assembly constitutes a violation of the international obligations it undertook when it ratified the American Convention on Human Rights, because it makes possible a 'reciprocal amnesty' without first acknowledging responsibility ...; because it applies to crimes against humanity, and because it eliminates any possibility of obtaining adequate pecuniary compensation, primarily for victims.'* 3. ***Case 10.480 (El Salvador)***, Report No. 1/99 of 27 January 1999

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Reparations and Costs. Judgment September 26, 2006. Series C No. 154. **La Cantuta v. Peru** Merits, Reparations and Costs. Judgment November 29, 2006. Series C No. 162. **Anzualdo Castro v. Peru** Preliminary Objection, Merits, Reparations and Costs Judgment September 22, 2009. Series C No. 202. **Gelman v. Uruguay** Merits and Reparations. Judgment February 24, 2011. Series C No. 221. **Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil** Preliminary Objections, Merits, Reparations and Costs. Judgment November 24, 2010. Series C No. 219. **The Massacres of El Mozote and Nearby Places v. El Salvador** Merits, Reparations and Costs. Judgment October 25, 2012. Series C No. 252.	59. In 1999, in a report on a case concerning El Salvador's 1993 General Amnesty Law for Consolidation of Peace, the Inter-American Commission on Human Rights stated: [transcribes textually §§ 113, 115, 123, 129]. In its conclusions, the Inter-American Commission on Human Rights stated that El Salvador 'ha[d] also violated, with respect to the same persons, common Article 3 of the Four Geneva Conventions of 1949 and Article 4 of the [1977 Additional] Protocol I''. Moreover, in order to safeguard the rights of the victims, it recommended that El Salvador should 'if need be, ... annul that law *ex-tunc*'. Q. Inter-American Court of Human Rights 60. In its judgment in ***Barrios Altos v. Peru*** ((merits), judgment of 14 March 2001, Series C No. 75) involving the question of the legality of Peruvian amnesty laws, the Inter-American Court of Human Rights stated: [transcribes textually §§ 41-44]: '41. This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law … 44. Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible …' In his concurring opinion, Judge Antônio A. Cançado Trindade added [transcribes textually § 13] 61. In ***Almonacid-Arellano et al. v. Chile*** (preliminary objections, merits, reparations and costs), judgment of 26 September 2006, Series C No. 154, the Inter-American Court of Human Rights noted: [transcribes textually §§ 154-155] 62. The same approach was followed in ***La Cantuta v. Peru*** (merits, reparations and costs), judgment of 29 November 2006, Series C No. 162, the relevant part of which reads as follows: [transcribes §§ 151-154]. 63. In ***Anzualdo Castro v. Peru*** (preliminary objection, merits, reparations and costs), judgment of 22 September 2009, Series C No. 202, the Inter-American Court of Human Rights reiterated that: [transcribes textually §§ 182] 64. In ***Gelman v. Uruguay*** ((merits and reparations), judgment of 24 February 2011, Series C No. 221), the Inter-American Court analysed at length the position under international law with regard to amnesties granted for grave breaches of fundamental human rights. In so far as relevant, the judgment reads as follows: [transcribes textually §§ 184, 189-191, 195-206, 209-214, 225-229, 240]. 65. In ***Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*** ((preliminary objections, merits,

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			reparations and costs), judgment of 24 November 2010, Series C No. 219) the Inter-American Court again strongly opposed the granting of amnesties for grave breaches of fundamental human rights. After relying on the same international law standard as in the above-cited *Gelman* case, it held, in so far as relevant, as follows: [transcribes textually §§ 171, 172, 175, 176] 66. More recently, in the case of ***The Massacres of El Mozote and Nearby Places v. El Salvador*** ((merits, reparations and costs), judgment of 25 October 2012, Series C No. 252) the Inter-American Court, in so far as relevant for the present case, held as follows (footnotes omitted): [transcribes textually §§ 283-286]
			Relevance: inadmissibility of amnesties in respect of grave breaches of fundamental human rights (LAW) "131. It should be observed that so far no international treaty explicitly prohibits the granting of amnesty in respect of grave breaches of fundamental human rights. While Article 6 § 5 of the second Additional Protocol to the Geneva Conventions, relating to the protection of victims of non-international conflicts, provides that '[a]t the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict ...', the interpretation of the Inter-American Court of Human Rights of that provision excludes its application in respect of the perpetrators of war crimes and crimes against humanity (see paragraph 66 above, judgment in ***The Massacres of El Mozote and Nearby Places***, § 286). The basis for such a conclusion, according to the Inter-American Court of Human Rights, is found in the obligations of the States under international law to investigate and prosecute war crimes. The Inter-American Court found that therefore 'persons suspected or accused of having committed war crimes cannot be covered by an amnesty'. The same obligation to investigate and prosecute exists as regards grave breaches of fundamental human rights and therefore the amnesties envisaged under Article 6 § 5 of the second Additional Protocol to the Geneva Conventions are likewise not applicable to such acts. … 138. The Court also notes the jurisprudence of the Inter-American Court of Human Rights, notably the above-cited cases of ***Barrios Altos, Gomes Lund et al., Gelman*** and ***The Massacres of El Mozote and Nearby Places***, where that court took a firmer stance and, relying on its previous findings, as well as those of the Inter-American Commission on Human Rights, the organs of the United Nations and other universal and regional organs for the protection of human rights, found that no amnesties were acceptable in connection with grave breaches of fundamental human rights since any such amnesty would seriously undermine the States' duty to investigate and punish the perpetrators of such acts (see *Gelman*, § 195, and *Gomes Lund et al.*, § 171, both cited above). It emphasised that such amnesties contravene irrevocable

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			rights recognised by international human rights law (see *Gomes Lund* et al., § 171)." Judges Ziemele, Berro-Lefèvre and Karakaş (concurring): "5. The practice of the Inter-American Court in the cases of ***Almonacid Arellano et al. v. Chile*** and ***La Cantuta v. Peru*** is also instructive. In these cases it was found that the *ne bis in idem* principle was not applicable where the dismissal of a case was designed to shield the accused from criminal responsibility or the proceedings were not conducted independently or impartially, or where there was no real intent to bring those responsible to justice. A domestic judgment rendered in such circumstances produced an 'apparent' or 'fraudulent' *res judicata* case, according to the Inter-American Court. … One could sum up by saying that today, under international law, amnesty may still be considered legitimate and therefore used so long as it is not designed to shield the individual concerned from accountability for gross human rights violations or serious violations of international humanitarian law. The next step might be an absolute prohibition of amnesty in relation to such violations. The Court's decision in the case at hand may be read as already taking the approach proposed during the drafting of the ICC Statute, to the effect that where proceedings concerning gross human rights violations result in an amnesty and are followed by a second set of proceedings culminating in a conviction, the *ne bis in idem* issue as such does not arise." Judges Šikuta, Wojtyczek and Vehabović (concurring): "7. … it should be borne in mind that most of the decisions by international courts or other international bodies cited in the judgment were issued after 1997 and, in many cases, after 2007. Only three of the documents relied on pre-date 1997: the report of the Inter-American Commission on Human Rights of 24 September 1992 in ***Case 10.287 (El Salvador)***, the report of the same Commission dated 11 February 1994 on the situation of human rights in El Salvador (Doc. OEA/Ser.L/V/II.85) … It should also be noted that the first two of these documents were prepared in the context of the inter-American human rights protection system, which has a number of distinctive features. The solutions adopted under that system are not necessarily transposable to other regional human rights protection systems. … Furthermore, none of the international materials cited clearly articulates a rule of international law requiring States unconditionally to annul retroactively the effects of amnesty laws enacted and applied in the past."
41.	***Primov And Others v. Russia*****, no. 17391/06, 12/06/14, First Section**	**Second Report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights** OEA/Ser.L/V/II, Doc. 66.	Judge Pinto de Albuquerque and Turković (partly concurring and partly dissenting): Footnote 14: "Paragraph 150 of the judgment is not a good example of clarity, in so far as the 'demonstrated risk of insecurity' standard is not sufficiently determinate, leaving the Court in the dark when assessing the 'scale' of the risk. Instead, this opinion refers to the 'clear and imminent danger' test which is applicable to freedom of assembly cases (see … the **Inter-American Commission of Human Rights, Second**

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		December 31, 2011. **Report on the Situation of Human Rights Defenders in the Americas** OEA/Ser.L/V/II.124, Doc. 5 rev. 1. March 7, 2006. **Report of the Office of the Special Rapporteur for Freedom of Expression** OEA/Ser. L/V/II. 117, Doc. 5 rev. 1.	**Report on the situation of human rights defenders in the Americas**, 31 December 2011, OEA/Ser.L/V/II, Doc. 66, paragraph 139, **Report on the Situation of Human Rights Defenders in the Americas**, 7 March 2006, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, para. 58, and Chapter IV, Annual Report 2002, Vol. III **"Report of the Office of the Special Rapporteur for Freedom of Expression,"** OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, paragraph 34…". **Relevance: clear and imminent danger test in freedom of assembly cases**
42.	***Centre For Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47848/08, 17/07/14, Grand Chamber**	**American Convention on Human Rights** Article 44 **Rules of Procedure of the Inter-American Commission on Human Rights** Article 23 **Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil** Report no. 33/01. March 6, 2001. **Teodoro Cabrera Garcia and Rodolfo Montiel Flores v. Mexico** Report no. 11/04. February 27, 2004.	(FACTS: III. RELEVANT INTERNATIONAL LAW MATERIAL) "A. The issue of *locus standi* 70. Article 44 of the **American Convention on Human Rights** gives the Inter-American Commission on Human Rights the competence to receive petitions from any person or group of persons, or any non-governmental entity legally recognised in one or more member states of the Organization of American States (OAS). It provides: 'Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.' Article 23 of the **Rules of Procedure of the Inter-American Commission on Human Rights** states that such petitions may be brought on behalf of third parties. It reads as follows: 'Any person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights 'Pact of San José, Costa Rica' ..., in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The petitioner may designate an attorney or other person to represent him or her before the Commission, either in the petition itself or in a separate document.' 71. The Inter-American Commission has examined cases brought by NGOs on behalf of direct victims, including disappeared or deceased persons. For instance, in the case of ***Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*** (report no. 33/01), the petitioner was the Center for Justice and International

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Escher et al. v. Brazil Report no. 18/06. April 19, 2006. **Las Dos Erres Massacre v. Guatemala** Preliminary Objections, Merits, and Costs. November 24, 2009. Series C No. 211. **The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law**, **Advisory Opinion OC-16/99**. October 1, 1999. Series A No. 16. **Case of the "Street Children" (Villagrán Morales et al.)** Judgement November 19, 1999. Series C no. 63. **Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights) Advisory Opinion OC-5/85**. November 13, 1985. Series A No. 5.	Law, acting in the name of disappeared persons and their next-of-kin. Regarding its competence *ratione personae*, the Commission acknowledged that the petitioning entity could lodge petitions on behalf of the direct victims in the case, in accordance with Article 44 of the American Convention on Human Rights. In ***Teodoro Cabrera Garcia and Rodolfo Montiel Flores v. Mexico*** (report no. 11/04), the Commission affirmed its jurisdiction *ratione personae* to examine claims brought by different organisations and individuals alleging that two other individuals had been illegally detained and tortured, and imprisoned following an unfair trial. In ***Escher et al. v. Brazil*** (report no. 18/06), the Commission affirmed its jurisdiction *ratione personae* to examine a petition brought by two associations (the National Popular Lawyers' Network and the Center for Global Justice) alleging violations of the rights to due legal process, to respect for personal honour and dignity, and to recourse to the courts, to the detriment of members of two cooperatives associated with the Landless Workers' Movement, through the illegal tapping and monitoring of their telephone lines. 72. Cases initially brought by non-governmental organisations (NGOs) may subsequently be submitted by the Commission to the Inter-American Court of Human Rights, after the adoption of the Commission's report on the merits (see, for instance, Case of the ***"Las Dos Erres" Massacre v. Guatemala***, brought by the Office of Human Rights of the Archdiocese of Guatemala and the Center for Justice and International Law; see also *Escher et al. v. Brazil*)." **Relevance: Competence to receive petitions from any person or group of persons, or any non-governmental entity legally recognised in one or more member states, on behalf of third parties** <u>Judge Pinto de Albuquerque (concurring):</u> "7. … What I regret most is the fact that, by treating this case on the basis of the "exceptional circumstances", the majority have in fact assumed that the Convention is not a living instrument and does not have to adapt to other new circumstances where the applicability of a concept of de facto representation might be called for. Footnote 2: "Evolutive interpretation of human rights treaty law has been the position adopted by the Court since *Tyrer v. the United Kingdom* (25 April 1978, § 31, Series A no. 26), as well as by the Inter-American Court of Human Rights since ***The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law***, Series A no. 16, **Advisory Opinion OC–16/99**, 1 October 1999, paragraph 114, and ***Case of the "Street Children" (Villagrán Morales et al.)***, Series C no. 63, judgment of 19 November 1999, paragraph 193 …" "8. Instead of relying on the "exceptional circumstances" of the case, and basing the purported legal solution on case-specific reasoning, I would have preferred to rise above the specificities of the case, and address the question of principle raised by the case: what are the contours of the concept of representation

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Baena-Ricardo and others v. Panama Merits, Reparations and Costs. Judgement of February 2, 2001. Series C No. 72.	of extremely vulnerable persons before the Court? It seems to me that this question could, and should, have been answered on the basis of the general principle of equality before the law applied in accordance with the traditional instruments for the interpretation of international human rights law. I refer to the theory of interpretation of human rights treaties in a way which not only secures their *effet utile (ut res magis valeat quam pereat)*, but is also the most protective of the rights and freedoms which they enshrine." Footnote 4: "The Court established this principle in *Wemhoff v. Germany*, 27 June 1968, § 8, Series A no. 7. The Inter-American Court of Human Rights did the same in ***Compulsory Membership in an Association prescribed by Law for the Practice of Journalism*** *(Arts. 13 and 29 American Convention on Human Rights)*, Series A No. 5, Advisory Opinion OC-5/85, 13 November 1985, paragraph 52, and ***Baena-Ricardo et al. v. Panama***, Series C No. 72, judgment of 2 February 2001, paragraph 189. There is therefore no *in dubio mitius* presumptive rule that human rights treaties should be interpreted in such a way as to minimise encroachment on State sovereignty." **Relevance: interpretation of human rights treaties**
43.	***Mocanu and Others v. Romania*, nos. 10865/09, 45886/07 and 32431/08, 17/09/14, Grand Chamber**	**Community of Rio Negro of the Maya Indigenous People and its Members v. Guatemala, Inter-American Commission on Human Rights** Report No. 13/08. March 5, 2008 **Las Dos Erres Massacre v. Guatemala** Preliminary Objections, Merits, and Costs. November 24, 2009. Series C No. 211. **García Lucero et al. v. Chile**, Preliminary Objections, Merits and Reparations. August 28, 2013.	(FACTS: II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE) "2. Case-law of the Inter-American Commission of Human Rights and of the Inter-American Court of Human Rights. 191. International case-law provides examples of cases where the alleged victims of mass violations of fundamental rights, such as the right to life and the right not to be subjected to ill-treatment, have been authorised to wait many years before bringing proceedings at national level and subsequently applying to the international courts, although the admissibility criteria for their applications, with regard to exhaustion of domestic remedies and time-limits for submitting complaints, were similar to those provided for by the Convention (see, *inter alia*, Inter-American Commission on Human Rights, ***Community of Rio Negro of the Maya Indigenous People and its Members v. Guatemala***, report no. 13/2008 of 5 March 2008, application no. 844/05; Inter-American Court of Human Rights ("IACtHR"),; ***"Las Dos Erres" Massacre v. Guatemala***, 24 November 2009 and IACtHR, and ***García Lucero et al. v. Chile***, 28 August 2013). 192. The relevant parts of the first case cited above (***Community of Rio Negro of the Maya Indigenous People and its Members***, §§ 88-89) read as follows: 'The rule of a reasonable time for filing petitions with the inter-American human rights system must be analyzed in each case, mindful of the activity of the victims' next-of-kin to seek justice, the conduct of the state, and the situation and context in which the alleged violation occurred. Therefore, in view of the context and characteristics of the instant case, as well as of the fact that several investigations and judicial proceedings are still pending, the Commission considers that the petition was presented within a reasonable time, and that the admissibility requirement referring to the time for submission has been met.'"

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Series C No. 267. **American Convention on Human Rights** Article 5 (6) **Case of Barrios Altos v. Peru** Merits. Judgment March 14, 2001. Series C No. 75. **Rochela Massacre v. Colombia** Merits, Reparations and Costs Judgment May 11, 2007. Series C No. 163 **Case of Ticona Estrada et al. v. Bolivia** Merits, Reparations, and Costs. Judgment November 27, 2008. Series C No. 191. **Anzualdo Castro v. Peru** Preliminary Objections, Merits, Reparations and Costs. Judgment September 22, 2009. Series C No. 202. **Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil** Preliminary Objections, Merits, Reparations and Costs. Judgment November 24, 2010.	**Relevance: reasonable time-limit for submission of petitions in the case of alleged victims of mass violations of fundamental rights** Judge Pinto de Albuquerque, joined by Judge Vučinić (concurring): Footnote 3: "In *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, §§ 113-118, ECHR 2013, the Court endorsed the international consensus on the obligation of resocialisation of offenders sentenced to prison terms, which is based, among other sources, on Article 10 (3) of the International Covenant on Civil and Political Rights, Article 5 (6) of the **American Convention on Human Rights** and Article 40 (1) of the United Nations Convention on the Rights of the Child." "In the European and American legal space, these soft-law instruments have been reinforced by judgments from regional international human-rights courts. Both the Court's judgments and those of the Inter-American Court of Human Rights have reiterated that criminal proceedings and sentencing in torture cases should not be time-barred." Respective footnote 26: "See ***Barrios Altos v. Peru*** Judgment of 14 March 2001, Series C, No. 75, paragraph 41 (referring to serious human-rights violations, such as torture, extrajudicial, summary or arbitrary execution and forced disappearance), reiterated repeatedly in ***Rochela Massacre v. Colombia*** Judgment of 11 May 2007, Series C, No. 163, paragraph 294; ***Case of Ticona Estrada et al. v. Bolivia***.

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Series C No. 219. **Case 10.480 (El Salvador), Inter-American Commission on Human Rights,** Report No. 1/99. January 27, 1999.	Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, paragraph 147; *Los Dos Erres Massacre v. Guatemala*, Judgment (Preliminary Objection, Merits, Reparation and Costs) of 24 November 2009, paragraph 233; Case of ***Anzualdo Castro v. Peru***. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraph 182; and Case ***Gomes Lund et al. ("Guerrilla do Araguaia") v. Brazil***. Preliminary Objections, Merits, Reparations and Costs. Judgment of 24 November 2010, paragraph 172. This position was seconded by the Inter-American Commission on Human Rights (***Case 10480 (El Salvador)***, Report of 27 January 1999, paragraph 113 (referring to torture, summary executions and forced disappearances)." **Relevance: obligation of resocialisation of offenders sentenced to prison terms; imprescriptibility of the crime of torture.**
44.	***Bljakaj and Others v. Croatia*, no. 74448/12, 18/09/14, First Section**	**Various Resolutions by the General Assembly of the OAS**	Judges Lazarova Trajkovska and Pinto de Albuquerque (partly concurring and partly dissenting): "The State is therefore called not only to punish, but also to prevent such acts, and ultimately to take the measures necessary to ensure the lawyer's safety, in order to guarantee the rule of law and the rights to a fair trial and access to justice, as provided by Article 6 of the Convention, in addition to the lawyer's right to life and physical integrity. To reiterate a well-enshrined principle, where the safety of lawyers is threatened as a result of discharging their duties, they must receive appropriate protection from the State authorities." Footnote 17: "See … within the Inter-American system, the General Assembly of the Organization of American States' Resolutions AG/Res. 1671 (XXIX-0/99), 7 June 1999, AG/Res. 1711 (XXX-O/00), 5 June of 2000, and AG/Res. 2412 (XXXVIII-O/08), 3 June 2008." **Relevance: the State's obligation to protect lawyers from work-related violence**
45.	***Hrvatski Liječnički Sindikat v. Croatia*, no. 36701/09, 27/11/14, First Section**	**Charter of the OAS** Article 45 (c) **Inter-American Charter of Social Guarantees** Article 27 **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of El Salvador)**	Judge Pinto de Albuquerque (concurring): "3. The right to strike is explicitly acknowledged in …, Article 45 (c) of the **Charter of the Organization of American States** (COAS), Article 27 of the **Inter-American Charter of Social Guarantees**, Article 8 (1) (b) of the **Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of El Salvador)** …" Respective footnote 7: "Both the COAS and the Charter of Social Guarantees were adopted on 30 April 1948 by the Ninth International Conference of American States, in Bogota. The later document "sets forth the minimum rights workers must enjoy in the American states, without prejudice to the fact that the laws of each state may extend such rights or recognise others that are more favorable". Later on, the first Protocol of Amendment to the COAS, the so-called "Protocol of Buenos Aires", which was adopted on 27 February 1967 and has 31 States parties, established new objectives and standards for the promotion of the economic, social, and cultural development of the peoples of the Hemisphere, including the right to

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Article 8 (1) (b) **Huilca Tecse v. Peru** Merits, Reparations and Costs. March 3, 2005. Series C No. 121.	strike." Respective footnote 8: "The Protocol was adopted on 17 November 1988 and has 16 States Parties. In ***Huilca Tecse v. Peru***, Merits, Reparations and Costs, 3 March 2005, series C, no. 121, paragraph 70, the Inter-American Court of Human Rights left the door open to the acknowledgment of the Court's contentious jurisdiction on the right to strike as an 'appropriate means to exercise' freedom of association under Article 16 of the American Convention, in spite of Article 19 (6) of the Protocol of El Salvador (on this, Laurence Burgorgue-Larsen, "Economic and Social Rights", in Laurence Burgorgue-Larsen and Amaya Ubeda de Torres, The Inter-American Court of Human Rights, Case Law and Commentary, Oxford, Oxford University Press, 2011, p. 624, and Tara Melish, "The Inter-American Court of Human rights, Beyond Progressivity", in Malcolm Langford (ed.), Social Rights Jurisprudence, Cambridge, Cambridge University Press, 2008, p. 398)." **Relevance: the right to strike**
46.	***Navalnyy and Yashin v. Russia*,** **no. 76204/11, 04/12/14,** **First Section**	**Various reports by the Inter-American Commission on Human Rights**	Judge Pinto de Albuquerque (concurring): "12. The protection of freedom of assembly encompasses the freedom to access the place of assembly, as well as the freedom to leave peacefully and without hindrance that same place. It is a fact of life that a crowd heading to or leaving a place of assembly in the public space may cause some degree of social nuisance, and specifically some traffic disruption. This nuisance should be properly accommodated by the police. But freedom of assembly itself may only be restricted by stopping, searching or arresting demonstrators if, when and where there is a "clear and imminent danger" of acts of public disorder, crime or other infringement of the rights of others committed by individuals *en route* to or from the place of assembly, as provided by Article 11 § 2 of the Convention." Footnote 28: "See … the Inter-American Commission of Human Rights, Second Report on the situation of human rights defenders in the Americas, 31 December 2011, OEA/Ser.L/V/II, Doc. 66, paragraph 139; Report on the Situation of Human Rights Defenders in the Americas, 7 March 2006, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, paragraph 58; and Chapter IV, Annual Report 2002, Vol. III "Report of the Office of the Special Rapporteur for Freedom of Expression," OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, paragraph 34…" **Relevance: restrictions on freedom of assembly and the applicable 'clear and imminent danger' test**
47.	***Petropavloskis v. Latvia*,** **no. 44230/06, 13/01/15,** **Fourth Section**	**Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica Advisory Opinion OC-4/84** January 19, 1984.	(FACTS: III. RELEVANT INTERNATIONAL LAW AND PRACTICE): "43. In ***Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica*** (Advisory Opinion OC-4/84, 19 January 1984), the Inter-American Court of Human Rights ruled as follows: [transcribes textually §§ 31-36]. 44. In the ***Case of Girls Yean and Bosico v. Dominican Republic*** (judgment of 8 September 2005), the

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Series A No. 4. **Case of Girls Yean and Bosico v. Dominican Republic** Preliminary Objections, Merits, Reparations and Costs. Judgment September 8, 2005. Series C No. 130. **Expelled Dominicans and Haitians v. Dominican Republic** Preliminary Objections, Merits, Reparations and Costs. Judgment August 28, 2014 Series C No. 282. **American Convention on Human Rights** Article 20	Inter-American Court of Human Rights ruled as follows (footnotes omitted): [transcribes textually §§ 139-142]. 45. The principles emerging from the case-law of the Inter-American Court of Human Rights concerning the right to nationality have been recently confirmed in the case of *Expelled Dominicans and Haitians v. Dominican Republic* (judgment of 28 August 2014, paragraphs 253-264)." **Relevance: Right to nationality** (LAW) "81. In this respect, the applicant advanced two arguments to claim that the State's discretion was not completely unfettered in matters relating to the granting of nationality. First, he referred to the Universal Declaration of Human Rights and to the case-law of the Inter-American Court of Human Rights. However, as the Court has already noted above, under the Convention there is no "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights (see paragraph 73 above). The applicant's reference to the case-law of the Inter-American Court of Human Rights is likewise misguided, since the **American Convention on Human Rights**, which is a regional instrument, explicitly provides for a right to nationality in its Article 20 (see paragraphs 43-45 above)."
48.	***S.J. v. Belgium*, no. 70055/10, 19/03/15, Grand Chamber**	**Andrea Mortlock v. United States, Inter-American Commission on Human Rights, Case 12.534**. Admissibility and Merits. Report No. 63/08 July 25, 2008.	Judge Pinto de Albuquerque (dissenting): "11. Finally, *N.* [*v. United Kingdom*] was rejected in no uncertain terms by the Inter-American Commission of Human Rights ('IACHR') in the case of ***Andrea Mortlock v. the United States***, in which it opposed the expulsion from the US of a Jamaican with AIDS whose state of health was stable but whose removal would have led to a premature death: '... stopping the treatment would lead to a revival of the symptoms and an earlier death. Therefore, even though the risk of death may not be so imminent [as in the ECtHR D. v. UK case] in the case of Ms. Mortlock, the effects of terminating the antiretroviral treatment may well be fatal'. In blunt terms, the European standard of human rights protection is today well below the American one." **Relevance: expulsion of aliens afflicted with serious illnesses**
49.	***Khoroshenko v. Russia*, no. 41418/04, 30/06/15, Grand Chamber**	**X and Y v. Argentina**, **Inter-American Commission on Human Rights, Case 10.506.** Merits.	(FACTS: III. RELEVANT INTERNATIONAL LAW AND PRACTICE): "78. The Inter-American Commission ('IACHR') has constantly held that the State is obliged to facilitate and regulate contact between inmates and their families. In this respect, the IACHR reiterated that family visit to prisoners is a fundamental element of the right to the protection of the family of all parties in this relationship that are affected.

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Report no. 38/96. October 15, 1996. **Oscar Elías Biscet and others v. Cuba, Inter-American Commission on Human Rights, Case 12.476**. Merits. Report no. 67/06. October 1, 2006. **American Declaration of the Rights and Duties of Men** Article VI	79. In the case ***X and Y v. Argentina*** (IACHR, Report no. 38/96, Case 10.506, Merits, 15 October 1996) the IACHR held that, although personal contact visits are not a right, when such visits are allowed the authorities are obliged to regulate them in a manner which respects the human rights and dignity of the persons involved. In particular: [transcribes textually §§ 97-98] 80. In the case ***Oscar Elías Biscet and others v. Cuba*** (IACHR, Report no. 67/06, Case 12.476, Merits, 1 October 2006) the Commission condemned, under Article VI of the **American Declaration of the Rights and Duties of Men**, the restriction of family visits for no apparent reason. In particular: [transcribes textually §§ 237, 239-240]." **Relevance: prisoners' right to an acceptable or reasonably good level of contact with their families** (THE LAW) "143. The Court would refer here to the position of international-law instruments and the practice of international courts and tribunals (see paragraphs 69-80 above), which invariably recognise as a minimum standard for all prisoners, without drawing any distinction between life-sentence and other types of prisoners, the right to an 'acceptable' or 'reasonably good' level of contact with their families (see … the case-law of the Inter-American Court of Human Rights and Inter-American Commission of Human Rights in paragraphs 78-80 above).
50.	***Parillo v. Italy*,** **no. 46470/11, 27/08/15, Grand Chamber**	**Case of Artavia Murillo et al. (in vitro fertilization) v. Costa Rica** Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2012, Series C No. 257. **American Declaration on the Rights and Duties of Man** Article 1 **American Convention of Human Rights** Article 4 **Baby Boy v. United States**	(FACTS: V. RELEVANT INTERNATIONAL LAW MATERIALS): "B. ***Murillo and Others v. Costa Rica*** judgment of the Inter-American Court of Human Rights (28 November 2012) 68. In this case the Inter-American Court gave a ruling on the ban on carrying out in vitro fertilisation in Costa Rica. It held, inter alia, that an embryo could not be regarded as a 'person' within the meaning of Article 4.1 of the American Convention on Human Rights (protecting the right to life), 'conception' occurring only from the moment the embryo was implanted in the uterus." Judge Pinto (concurring): "C. The Inter-American standards. 13. Article 1 of the 1948 **American Declaration on the Rights and Duties of Man** provides that "every human being has the right to life, liberty, and the security of his person." The drafters of the American Declaration specifically rejected a proposal for the declaration to state that the right to life starts at conception. Article 4 of the 1969 **American Convention on Human Rights** states: 'Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception.' However, the Inter-American Commission of Human Rights has examined the preparatory works and determined that the Convention language recognising a right to life, 'in general, from the moment of conception' was not intended to confer an absolute right to life before birth [citing ***Baby Boy***]. In ***Gretel Artavia Murillo v. Costa Rica***, the Inter-American Court of Human Rights (IACHR) decided that the respondent State had based its ban on in vitro fertilisation on an absolute protection of the embryo

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Case 2141/1981, Inter-American Commission on Human Rights, Resolution 23/81. Merits. March 6, 1981.	that, by failing to take other competing rights into account, had involved an arbitrary and excessive interference in private and family life. In contrast, the impact on the protection of prenatal life was very slight because the risk of embryonic loss was present both in IVF and in natural pregnancy. Moreover, the interference had discriminatory effects for those persons whose only possible treatment for infertility was in vitro fertilisation. The Inter-American Court also concluded that the human embryo prior to implantation could not be understood to be a person for the purposes of Article 4(1) of the American Convention on Human Rights." Judge Dedov (concurring): "6. … I regret that I cannot agree with the conclusion of the Inter-American Court of Human Rights in the *Murillo* case (cited in the judgment) that 'conception' occurs only after implantation of the embryo in the uterus. From the point of view of humanity, I prefer the Italian Government's view that, for the sake of preservation of the embryo's potential, it is vital to implant it if another woman would like to become a mother by that method." **Relevance: beginning of life and embryos**
51.	***Bouyid v. Belgium*, no. 23380/09, 28/09/15, Grand Chamber**	**American Convention on Human Rights** Articles 5, 6 and 11	(FACTS: II. INTERNATIONAL TEXTS, INSTRUMENTS AND DOCUMENTS): "47. Several regional human rights texts and instruments also refer to the concept of dignity, including the following: - the **American Convention on Human Rights** of 22 November 1969 (Article 5 § 2, Article 6 § 2 and Article 11 § 1)…" **Relevance: the concept of dignity**
52.	***Dvorski v. Croatia*, no. 25703/11, 20/10/15, Grand Chamber**	**American Convention on Human Rights** Article 8 § 2 (d) **Barreto Leiva v. Venezuela** Merits, Reparations and Costs. Judgment November 17, 2009. Series C No. 206.	Judges Kalaydjieva, Pinto de Albuquerque and Turković (concurring): "3. In comparable international instruments to the Convention, such as the International Covenant on Civil and Political Rights (Article 14 § 3 (b)), the **American Convention on Human Rights** (Article 8 § 2(d)) and the African Charter on Human and People's Rights (Article 7 § 1 (c)), a suspect's right to the assistance of a lawyer of his or her own choosing in pre-trial proceedings has not been expressly set out, but it has been acknowledged in practice. 4. The UN Human Rights Committee (UNHRC) has found in a number of cases that the assignment of a lawyer by the court during the pre-trial investigation (even for one day) contravenes the principle of a fair trial if a qualified lawyer of the accused's own choice is available and willing to represent him or her and if investigative acts are carried out. Furthermore, the UNHRC in its General Comment No. 32 emphasised that the right to communicate with counsel required that the accused be granted prompt access to counsel. In addition, the UNHRC has stated that "all persons who are arrested must immediately have access to counsel". Likewise, this right has consistently been affirmed in the case-law of the Inter-American Court of Human Rights …"

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			Footnote 10: "See for example, ***Barreto Leiva v. Venezuela***, judgment of 17 November 2009 (Merits, Reparations and Costs), paragraphs 58-64, and in particular paragraph 62: 'If the right to defense arises as of the moment in which an investigation into an individual is ordered (supra para. 29), the accused must have access to a legal representation from that moment onwards, especially during the procedure in which his statement is rendered. To prevent the accused from being advised by a counsel means to strictly limit the right to defense, which leads to a procedural unbalance and leaves the individual unprotected before the punishing authority.'" **Relevance: a suspect's right to the assistance of a lawyer of his or her own choosing from the initial stages of the proceedings**
53.	***Szabó and Vissy v. Hungary*, no. 37138/14, 12/06/16, Fourth Section**	**Joint Declaration on surveillance programs and their impact on freedom of expression** UN Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the IACHR	Judge Pinto de Albuquerque (concurring): "3. … Immediately after the Snowden revelations, on 21 June 2013, the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights considered it necessary to highlight a series of international legal principles on the issue and published a 'Joint Declaration on surveillance programs and their impact on freedom of expression'" Respective footnote 5: "Paragraph 9 of the Joint Declaration stated that the law must clearly specify the criteria to be used for determining the cases in which such surveillance is legitimate for national security purposes and that such measures shall be authorised only in the event of a clear risk to protected interests and when the damage that may result would be greater than society's general interest in maintaining the right to privacy and the free circulation of ideas and information. In any event, the collection of this information is to be monitored by an independent oversight body and governed by sufficient due-process guarantees and judicial oversight, within the limitations permissible in a democratic society." **Relevance: mass surveillance for the purpose of national security**
54.	***Aldeguer Tomás v. Spain*, no. 35214/09, 14/06/16, Third Section**	**Atala Riffo and daughters v. Chile** Merits, Reparations and Costs. Judgment February 24, 2012. Series C No. 239. **American Convention on Human Rights** Articles 11, 17 and 24	(FACTS: II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE): "K. The Inter-American system of human rights protection. 52. In the case of ***Atala Riffo and daughters v. Chile*** ((Merits, Reparations and Costs), judgment of 24 February 2012, Series C No. 239), the Inter-American Court of Human Rights considered that the decision of the Chilean courts to remove three children from the custody of their lesbian mother constituted discriminatory treatment against her on the basis of her sexual orientation, in breach of her right to equality (Article 24, in conjunction with Article 1 § 1 of the American Convention on Human Rights) and her right to private and family life (Article 11 § 2 and 17 § 1 of the **American Convention**). 53. With regard to the presumed right of Ms Atala Riffo's children to live in a "normal and traditional" family, an argument used by the Chilean courts, the Inter-American Court of Human Rights observed as

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Case 12.841 ***Angel Alberto Duque v. Colombia*, Inter-American Commission on Human Rights,** Report No. 5/14 Merits. April 2, 2014 **Duque v. Colombia** Preliminary Exceptions, Merits, Reparations and Costs. Judgment February 26, 2016. Series C No. 310.	follows (footnotes omitted): [transcribes textually §§ 142-145] 54. The Inter-American Commission on Human Rights, in its Report No. 5/14 of 2 April 2014 (***Case 12.841 Angel Alberto Duque v. Colombia***), examined a case in which the applicant complained that he had been denied a survivor's pension on account of his sexual orientation. The Inter-American Commission considered as follows (footnotes omitted) [transcribes textually §§ 74-79 and 81] 55. On 21 October 2014, the Inter-American Commission submitted the case to the Inter-American Court. In ***Duque v. Colombia*** ((Preliminary Exceptions, Merits, Reparations and Costs), judgment of 26 February 2016, Series C No. 310), the Inter-American Court concluded that Colombia had breached the principle of equality and non-discrimination, enshrined in Article 24 of the American Convention, read in conjunction with Article 1 § 1 (§§ 89-138). It considered that the exclusion of same sex couples from the right to a survivors' pension under the Colombian legislation applicable at the time of the facts (2002) had been discriminatory on the basis of sexual orientation. The fact that the Constitutional Court had declared that exclusion unconstitutional in 2008 had not remedied the violation, since it was not clear that according to the current legislation the applicant could be granted a survivor's pension with retroactive effects." **Relevance: discrimination based on sexual orientation**
55.	***Ramadan v. Malta*, no. 76136/12, 21/06/16, Fourth Section**	**Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica Advisory Opinion OC-4/84,** January 19, 1984. Series A No. 4. **Castillo Petruzzi et al.** Merits, Reparations and Costs. Judgement May 30, 1999. Series C No. 52. **Baruch Ivcher Bronstein vs. Peru** Merits, Reparations and Costs. Judgement February 6, 2001.	Judge Pinto de Albuquerque (dissenting): (The right to citizenship in international human rights law) "2. … A similar recognition of citizenship as a fundamental right can be found in other universal and regional legal instruments, such as … and at a regional level … Article 20 of the **American Convention on Human Rights** (adopted in 1969 and entered into force in 1978)." Respective footnote 9: The Convention has 22 parties. In its ***Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica***, OC-4/84, the Inter-American Court of Human Rights, held, on 19 January 1984, that there were two aspects to this right which were reflected in Article 20 of the American Convention on Human Rights: "first, the right to a nationality established therein provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question; and, second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all his political rights as well as those civil rights that are tied to the nationality of the individual". See also the Inter-American Court of Human Rights judgments on ***Castillo Petruzzi et al.*** Case, 30 May 1999, § 101 and Ivcher Bronstein Case (***Baruch Ivcher Bronstein vs. Peru***), 6 February 2001, § 88, and particularly, ***Yean and Bosico Girls v. the Dominican Republic***, 8 September 2005,§§ 140-142, 154-158, ***Expelled Dominicans and Haitians***

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Series C No. 84. **Case of Girls Yean and Bosico v. Dominican Republic** Preliminary Objections, Merits, Reparations and Costs. Judgment September 8, 2005. Series C No. 130. **Expelled Dominicans and Haitians v. Dominican Republic** Preliminary Objections, Merits, Reparations and Costs. Judgment August 28, 2014 Series C No. 282. **OAS Resolution of the General Assembly "Prevention and reduction of statelessness and protection of stateless persons in the Americas"** **American Convention on Human Rights** Article 20	***v. Dominican Republic***, 28 August 2014, §§ 253-264, and Organisation of American States **Resolution of the General Assembly**, AG/RES. 2826 (XLIV -O/14), **Prevention and reduction of statelessness and protection of stateless persons in the Americas**, of 4 June 2014". (The right to citizenship in European human rights law) "11. In sum, the now well-established prohibition of arbitrary denial or revocation of citizenship in the Court's case-law presupposes, by logical implication, the existence of a right to citizenship under Article 8 of the Convention, read in conjunction with Article 3 of Protocol No. 4." Footnote 38: "The exact same conclusion was reached by the Inter-American Court of Human Rights which, in its advisory opinion of 1984, proclaimed that the right to nationality is an inherent human right recognised in international law and that the powers of States to regulate matters relating to nationality are circumscribed by their obligations to ensure the full protection of human rights (Re Amendments to the Naturalisation Provisions of the Constitution of Costa Rica, cited above)." "11. … States parties to the Convention have a negative obligation not to decide on the loss of citizenship if the person would thereby become stateless and a positive obligation to provide its citizenship for stateless persons, at least when they were born – or found in the case of a foundling – in their respective territories, or when one of their parents is a citizen." Footnote 41: Obligations to grant nationality to children born in the territory of a State and that would otherwise be stateless are also contained in … Article 20 (2) of the American Convention on Human Rights …" **Relevance: right to citizenship**
56.	***Nait-Liman c. Suisse*, No. 51357/07, 21/06/16, Second Section**	**Case of Barrios Altos v. Peru**, Merits. Judgment of March 14 2001, Series C No. 70	Judges Karakaş, Vučinić and Kūris (dissenting): "2. Tout d'abord, il est incontestable que la prohibition de la torture est une norme impérative du droit international (*jus cogens*). Cela a déjà été reconnu dans la jurisprudence de la Cour (*Al-Adsani c. Royaume-Uni* [GC], no 35763/97, § 60, CEDH 2001-XI). Cette interdiction implique des obligations positives pour les États, y compris celle de fournir un redressement approprié (*Ilhan c. Turquie*, no 22277/93, 27 juin 2000, § 97 ; voir également l'arrêt ***Barrios Altos c. Peru***, 14 mars 2001, § 43, de la Cour interaméricaine des droits de l'homme), ce qui figure aussi à l'Article 14 de la Convention des Nations unies contre la torture." **Relevance : *ius cogens* character of the prohibition of torture and positive obligations for**

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			States
57.	***Al-Dulimi and Montana Management Inc. v. Switzerland*, no. 5809/08, 21/06/16, Grand Chamber**	**Goiburú et al. v. Paraguay** Merits, Reparations and Costs. Judgment September 22, 2006 **Habeas corpus in emergency situations** **Advisory Opinion OC-8/87** January 30, 1987. **Judicial guarantees in states of emergency** **Advisory Opinion OC-9/87** October 6, 1987. **"The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile** Reparations and Costs. Judgment February 5, 2001. Series C No. 73. **American Convention on Human Rights** Article 27 § 2	Judge Pinto de Albuquerque, joined by Judges Hajiyev, Pejchal and Dedov (concurring): (The right of access to a court in international law) "30. It has been argued that certain human rights obligations bear the nature of peremptory norms of international law. According to the Human Rights Committee, States parties to the ICCPR may in no circumstances invoke its Article 4 as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by deviating from fundamental principles of fair trial, including the presumption of innocence." Footnote 62: "… See also Article 27 § 2 of the **American Convention on Human Rights** …; also Inter-American Court of Human Rights, ***Goiburú et al. v. Paraguay***, Judgment (Merits, Reparations and Costs), 22 September 2006, § 131, ***Habeas corpus in emergency situations***, Advisory Opinion OC-8/87, 30 January 1987, §§ 17-43, and ***Judicial guarantees in states of emergency***, Advisory Opinion OC-9/87, 6 October 1987, §§ 18-34." (The constitutional nature of the European Convention) "59. … With more than 217 treaties, the legal order of this international organisation has at its top an international treaty, the European Convention on Human Rights, that has direct, supra-constitutional effect on the domestic legal orders of the member States of the Council of Europe …" Footnote 112: "… Similar principles have been ascertained under the American Convention on Human Rights by the Inter-American Court of Human Rights, especially since ***"The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile***, *Merits, Reparations, and Costs*, Judgment, 5 February 2001 (see Mac-Gregor, "The Constitutionalization of International law in Latin America, Conventionality Control, The New doctrine of the Inter-American Court of Human Rights", in *AJIL Unbound*, 11 November 2015, and the case-law referred to therein)." **Relevance: the right of access to a court in international law; principles of primacy and direct effect of the Convention.**
58.	***Baka v. Hungary*, no. 20261/12, 23/06/16, Grand Chamber**	**Supreme Court of Justice (Quintana Coello et al.) v. Ecuador** Preliminary Objection, Merits, Reparations and Costs. Judgement August 23, 2013. Series C No. 266.	(FACTS: INTERNATIONAL AND COUNCIL OF EUROPE MATERIALS ON THE INDEPENDENCE OF THE JUDICIARY AND THE IRREMOVABILITY OF JUDGES) "84. The Inter-American Court of Human Rights, in its case-law concerning the removal of judges, has referred to the UN Basic Principles on the Independence of the Judiciary and to the General Comment No. 32 of the UN Human Rights Committee. In the case of the ***Supreme Court of Justice (Quintana Coello et al.) v. Ecuador***, judgment of 23 August 2013, concerning the removal of 27 judges of the Supreme Court of Justice of Ecuador through a parliamentary resolution, the Inter-American Court found that the State had violated Article 8 § 1 (right to a fair trial), in conjunction with Article 1 § 1 (obligation to respect rights)

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Constitutional Tribunal (Camba Campos et al.) v. Ecuador Preliminary Objections, Merits, Reparations and Costs. Judgement August 28, 2013. Series C No. 266. **López Lone et al. v. Honduras** Preliminary Objections, Merits, Reparations and Costs. Judgement October 5, 2015. Series C No. 302. **"The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile** Reparations and Costs. Judgment February 5, 2001. Series C No. 73. **Case of Barrios Altos v. Peru**, Reparations and Costs. Judgment of November 30 2001, Series C No. 87 **Gelman v. Uruguay** Merits and Reparations. Judgment February 24, 2011. Series C No. 221. **Almonacid-Arellano et al. v. Chile**	of the American Convention, to the detriment of the victims, because they had been dismissed from office by a body without jurisdiction, which moreover had not granted them an opportunity to be heard. Furthermore, the Court found a violation of Article 8 § 1 in conjunction with Article 23 § 1 (c) (right to have access, under general conditions of equality, to the public service of his country) and Article 1 § 1 of the American Convention, given the arbitrary effects on the tenure in office of the judiciary and the consequent effects on judicial independence, to the detriment of the 27 victims. It noted as follows as regards the general standards on judicial independence [citation of §§144-155]. 85. The Inter-American Court reiterated the same principles and reached a similar conclusion in the cases of the ***Constitutional Tribunal (Camba Campos et al.) v. Ecuador***, judgment of 28 August 2013, §§ 188-199, and of ***López Lone et al. v. Honduras***, judgment of 5 October 2015, §§ 190-202 and 239-240." **Relevance: standards on the independence of the judiciary and the procedural safeguards applicable in cases of removal of judges** (LAW): "114. … On the contrary, domestic law expressly provided for the right to a court in those limited circumstances in which the dismissal of a court executive was permissible: the dismissed court executive was indeed entitled to contest his or her dismissal before the Service Tribunal (see paragraph 43 above). In this respect, judicial protection was available under domestic law for cases of dismissal, in line with the international and Council of Europe standards on the independence of the judiciary and the procedural safeguards applicable in cases of removal of judges (see … the case-law of the Inter-American Court of Human Rights in paragraph 84 above). 121. In the present case, the premature termination of the applicant's mandate as President of the Supreme Court was not reviewed, nor was it open to review, by an ordinary tribunal or other body exercising judicial powers. … the Court cannot but note the growing importance which international and Council of Europe instruments, as well as the case-law of international courts and the practice of other international bodies are attaching to procedural fairness in cases involving the removal or dismissal of judges, including the intervention of an authority independent of the executive and legislative powers in respect of every decision affecting the termination of office of a judge (see paragraphs … and 84 above). 172. Furthermore, although the applicant remained in office as judge and president of a civil division of the new Kúria, he was removed from the office of President of the Supreme Court three and a half years before the end of the fixed term applicable under the legislation in force at the time of his election. This can hardly be reconciled with the particular consideration to be given to the nature of the judicial function as an independent branch of State power and to the principle of the irremovability of judges, which – according to the Court's case-law and international and Council of Europe instruments – is a key element for the maintenance of judicial independence (see … the international and Council of Europe materials in

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
		Preliminary objections, Merits, Reparations and Costs. Judgment September 26, 2006. Series C No. 154. **American Convention on Human Rights** Article 8	paragraphs 72-79 and 81-85 above …). Judges Pinto De Albuquerque and Dedov (concurring): "23. … With its transformational role emphatically proclaimed in the Preamble as an instrument for building a closer union of European States and developing human rights on a pan-European wide basis, the Convention is subordinated neither to domestic constitutional rules, nor to allegedly higher rules of international law, since it is the supreme law of the European continent". Footnote 36: "… Similar principles have been ascertained under the American Convention on Human Rights by the Inter-American Court of Human Rights, especially since ***"The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile***, Merits, Reparations, and Costs, Judgment, 5 February 2001 (see Mac-Gregor, "The Constitutionalization of International law in Latin America, Conventionality Control, The New doctrine of the Inter-American Court of Human Rights", in AJIL Unbound, 1 November 2015, and the case-law referred to therein). Footnote 38: "The Inter-American Court of Human Rights has consistently emphasised both the personal-subjective and the institutional-objective aspects of the independence of the judiciary, establishing an intimate relationship between the latter and "essential aspects of the rule of law and the democratic order itself" (*Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *Inter-Am. Ct. H.R.* (ser. C.) No. 266, para. 154, 23 August 2013)." "23. … The memorable paragraph 118 of the judgment, read in the light of paragraph 110, determines that Article 11 (2) of the Transitional Provisions of the Fundamental Law and section 185 of Act CLXI of 2011 on the Organisation and Administration of the Courts Act lacked legal effect in the domestic order. Since these provisions are null and void ab initio and devoid of any legal effects within the domestic legal order, the respondent State is obliged to act as if they have never been enacted. With this finding, the Court is not entering unchartered waters, but merely following the standard set long ago by ***Barrios Altos*** for domestic laws which violate the "block of conventionality." Footnote 39: "*Barrios Altos Case*, judgment of 30 November 2001, Inter-Am Ct. H.R. (Ser. C) No. 87, para. 44 (2001), followed by, inter alia, ***Case of Almonacid Arellano et al v. Chile***, ***del Rosario Gómez Olivares and others (on behalf of Almonacid Arellano) v. Chile***, Preliminary Objections, Merits, Reparations and Costs, IACHR Series C No 154, para. 119, (2006)." "25. … On the basis of the Convention, the Council of Europe may put forward a strong European constitutional claim, if need be, against any contradicting domestic constitutional claim, regardless of the size of the supporting political majority …" Footnote 41: As the Inter-American Court of Human Rights has quite rightly pointed out, breaches of

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			human-rights law may not be whitewashed by a vote of the political majority, even if the vote is democratic and the majority large (***Gelman v. Uruguay***, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 221, paras. 238-239, 24 February 2011). **Relevance: hierarchy of the Convention; independence of the judiciary; lack of legal effect of domestic legal provisions which violate the Convention.**
			Judge Sicilianos (concurring): "8. Beyond these non-binding texts and opinions, the interpretation of conventions and agreements containing similar or even identical wording to that of Article 6 of the Convention with regard to the right to an 'independent tribunal' is of even greater importance. It should be noted that … Article 8 § 1 of the **American Convention on Human Rights** also contains a similar provision: 'Every person has the right to a hearing, with due guarantees ... by a competent, independent, and impartial tribunal, previously established by law...' In other words, the wording of these two binding instruments, like that of the Convention, approaches the issue of judicial independence in terms of the rights of persons involved in court proceedings, and not from the perspective of the judge's subjective right to have his or her own independence guaranteed and respected by the State (including within the judiciary)." "11. Similar observations apply, *mutatis mutandis*, with regard to the recent case-law of the Inter-American Court of Human Rights on the same subject, quoted in paragraphs 84 and 85 of the present judgment. In this connection, it is significant that the Inter-American Court in its *Supreme Court of Justice (Quintana Coello et al.) v. Ecuador* judgment of 23 August 2013, on the removal by parliamentary resolution of 27 judges of the Supreme Court of Justice of Ecuador, built on its earlier case-law on the right to an independent judge, guaranteed by Article 8 § 1 of the American Convention in terms, as we have seen, that are practically identical to those used in Article 6 § 1 of the Convention. The following extract from the relevant judgment is particularly enlightening in this regard: 'The foregoing serves to clarify some aspects of the Court's jurisprudence. Indeed, in the case of *Reverón Trujillo v. Venezuela*, the Court concluded that the right to be heard by an independent tribunal, enshrined in Article 8(1) of the Convention, only implied that a citizen has a right to be judged by an independent judge. However, it is important to point out that judicial independence should not only be analyzed in relation to justiciable matters, given that the judge must have a series of guarantees that allow for judicial independence. The Court considers it pertinent to specify that the violation of the guarantee of judicial independence, as it relates to a judge's tenure and stability in his position, must be examined in light of the conventional rights of a judge who is affected by a State decision that arbitrarily affects the term of his appointment. In that sense, the institutional guarantee of judicial independence is directly related to a judge's right to remain in his post, as a consequence of the guarantee of tenure in office (§ 153 of the

	European Court's Judgment	Inter-American Court's Judgment/American Convention/Other Inter-American Instruments	Relevance
			Supreme Court of Justice (Quintana Coello et al.) v. Ecuador judgment, quoted in paragraph 84 of the present judgment). 12. This case-law was confirmed in the *Constitutional Tribunal (Camba Campos et al.) v. Ecuador* (28 August 2013) and *López Lone et al. v. Honduras* (5 October 2015) judgments. Thus, in the view of the Inter-American Court, it now appears established that Article 8 § 1 of the American Convention recognises not only the right of persons appearing before a court to an independent judge, but also the right of judges themselves to have their independence safeguarded and respected by the State." "15. … In my opinion, a subjective right of this sort for judges is inherent in the safeguards of the first paragraph of Article 6, and in the concept of a fair hearing. I believe that this approach is borne out by the above-mentioned case-law of the Human Rights Committee and the Inter-American Court of Human Rights." **Relevance: the judge's subjective right to independence**
59.	***Muršić v. Croatia*, no. 7334/13, 20/10/16, Grand Chamber**	**Inter-American Commission on Human Rights Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 13 March 2008**	Judge Pinto de Albuquerque (partly dissenting): "34. No international organisation or body has done as much for the development of prison law as the Council of Europe and particularly its Committee of Ministers and its Committee for the Prevention of Torture … 38. This effort has been emulated at regional level, with … the 2008 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas." Footnote 79: OEA/Ser/L/V/II.131 doc. 26. **Inter-American Commission on Human Rights Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, 13 March 2008**, No. 1/08. **Relevance: hardening of prison law in Europe and worldwide**