



The Approach of the Inter-American Court of Human Rights Regarding Abortion: A Violation of the Right to Life or an Exception to It

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Abstract

All human beings, simply by being human, inherently enjoy certain rights known as "human rights," with the "right to life" being the most fundamental of these and forming the basis for the realization of other human rights. In practice, various factors such as executions, the use of force, and abortion, either directly or indirectly, lead to the deprivation, violation, or threat of this right. Some of these actions have even caused disputes and controversies in the judicial practices of different legal systems. Among these, abortion, which has a direct relationship with the right to life, has drawn serious attention from international legal experts. This is especially significant due to the lack of precise and clear delineation of the scope of protection afforded by the right to life, the challenge of determining the starting point of life, and the unresolved question of when (from the moment of conception or afterward) this right should be protected. Such ambiguities have led legal systems to face uncertainty regarding the violation or observance of the right to life of both the fetus and the mother.

It is worth mentioning that regional human rights systems have not been immune to these challenges and doubts surrounding abortion and the right to life. They have consistently grappled with fundamental questions such as whether abortion constitutes a violation of the right to life and is therefore prohibited, or whether it can be regarded as an exception to this right and permitted in certain cases. Does the fetus have a right to life? Is the mother's right to life and her right to privacy more important than the fetus's right to life? While in general, the laws of states in the Americas region have institutionalized fundamental human rights and individualistic principles, following the adoption of the American Convention on Human Rights in 1969, Article 4, Paragraph 1 of this document recognizes and protects every person's right to life by law "from the moment of conception." However, paradigm gaps among the members of this convention have led each to adopt different views on abortion. Abortion continues to be a contentious issue with both opponents and proponents, each group, based on diverse religious, ideological, and political reasons, striving to dominate the discourse. This contention has significantly influenced the policies and decisions of decision-making



bodies in this field.

In addition to the views of the national legal systems of American countries, the approach of the Inter-American human rights system as a regional framework is significant and warrants examination. Although many countries' domestic laws are structured to prevent abortion, the ongoing disagreement over permitting or prohibiting abortion due to its connection with the right to life has reached the level of judicial practice and the "Inter-American Court of Human Rights." This court has issued rulings on the matter, but its proceedings have faced challenges, and at times it has encountered dilemmas in deciding between preserving or violating the right to life.

Given the above, this article, through an analysis of the American Convention on Human Rights and some national systems in the Americas region regarding abortion and its conflict with the right to life, seeks to answer this critical question: What is the perspective of the Inter-American Court of Human Rights regarding the permissibility or impermissibility of abortion?

The article concludes that the Court does not have a clear stance on recognizing abortion as a violation of the right to life or an exception to it. The Court's perspective up until 2013, particularly based on the case of *Artavia Murillo et al. v. Costa Rica*, due to reasons such as not recognizing the fetus as a person and not protecting it from the moment of conception, on the one hand, and prioritizing the mother's right to life and her right to privacy, on the other, has leaned toward the permissibility of abortion under certain conditions. However, from that year onward, in light of cases such as *Beatriz v. El Salvador* and *Manuela et al. v. El Salvador*, a shift in the Court's approach toward protecting the life of the fetus can be observed; this is reflected in its indirect support for the prohibition of abortion except in cases of medical necessity or danger to the mother's life, likely aimed at not losing the support of member states. Nevertheless, the Court's overall approach still tends to favor the protection of the mother's right to life more than that of the fetus, thereby allowing for the possibility of violating the fetus's right to life.

Keywords: Abortion, Right to Life, Right to Privacy, American Convention on Human Rights, Inter-American Court of Human Rights.

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