**PARTIALLY DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI**

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF THE WORKERS OF THE FIREWORKS FACTORY IN SANTO ANTÔNIO DE JESUS AND THEIR FAMILIES *V.* BRAZIL**

**JUDGMENT OF JULY 15, 2020**

**(Preliminary objections, merits, reparations and costs).**

1. **INTRODUCTION**
2. This partially dissenting opinion is issued[[1]](#footnote-1) in relation to the judgment in reference,[[2]](#footnote-2) in order to explain the reasons why I disagree, in the first place, with its operative paragraphs 2[[3]](#footnote-3) and 6.[[4]](#footnote-4) Based on the provisions of Article 26 of the American Convention on Human Rights,[[5]](#footnote-5) the former rejects the objection filed by the State regarding the lack of jurisdiction of the Inter-American Court of Human Rights[[6]](#footnote-6) to examine violations of the rights referred to in the said article and the latter declares the violation of those rights, thus making them justiciable before the Court. However, this opinion is also issued because I disagree with operative paragraph 6, owing to the reference it makes to Article 24 of the Convention concerning equality before the law.
3. That said, in order to explain the position held in this text adequately, it is necessary, first, to reiterate some general considerations within which this opinion is inserted, and then refer to the said Articles 26 and 24, in addition to placing on record a consideration relating to operative paragraph 4 of the judgment on the right to life.[[7]](#footnote-7)
4. **GENERAL PRELIMINARY CONSIDERATIONS**

1. Evidently, this opinion is issued respecting the decisions taken in this case.
2. That said, this opinion is based on the principle of public law, the domain to which public international law belongs and, consequently, international human rights law also, as a component of the latter. Consequently, it is only possible to do what the norm permits; therefore, whatever is not regulated falls within the internal or domestic jurisdiction or the reserved domain of the States.[[8]](#footnote-8) This principle thus differs from the one that governs private law; namely, that it is possible to do everything that the law does not forbid.
3. This text is also based on the value of law, including its procedural rules that, especially in the area of human rights, are as essential as the substantive rules because respect for the former allows the latter to be truly effective. Thus, the form is indissolubly linked to the substance. And, to a great extent, the procedural rules – at times considered mere formalities and, consequently, susceptible to being disregarded in order to give precedence to the substantive rules – condition the applicability of the latter. Consequently, if an international judicial instance overlooks the procedural rules, it could be encouraging the whole of international society and, even national society, to act in the same way and this could have a devastating effect on the real exercise of international human rights law.
4. In this regard, I consider that legal norms are, undoubtedly, the result of agreements between their authors, the legislators in the domestic sphere and the States in the international domain, who reach agreement on them by conciliating their positions in order to put in practice principles, doctrines and ideology, safeguard their own or third party interests, consolidate or increase positions of power, and obtain economic benefits, etc. Therefore, it should be taken into account that, in general, the said consensus relates not only to the rationale for the respective norm, but also to what it states.
5. Regarding the matter in hand, this consensus constitutes, above all – bearing in mind considerations made in relation to the Universal Declaration of Human Rights – a practical pact with regard to what was agreed, although not its rationale. Given the structure of international society, which is basically still composed of sovereign States, this has been the method that has permitted progress in the area of human rights, even though this has evidently been uneven according to the continent and the countries concerned.
6. This opinion also takes into account that the law is the only instrument available to the individual to confront the immense and overwhelming power held by the State, particularly on the international scene. The relationship between the two is abysmally unequal. In the situation before us, without the support of international human rights law and its institutions, the individual would be almost defenseless in the international sphere or, at least, in a situation of evident inequality or helplessness.
7. It should also be added that this opinion is supported by the function inherent in the Court as a judicial entity, which is to interpret and apply the Convention,[[9]](#footnote-9) pursuant to the rules of interpretation established in the Vienna Convention on the Law of Treaties,[[10]](#footnote-10) which are addressed at determining the meaning and scope of what the Convention establishes and not to seek in it what the interpreter would like it to convey.[[11]](#footnote-11)
8. Consequently, the interpretation and application of the Convention signifies that the function of the Court is to impart justice in the area of human rights using the law and, even more specifically, in keeping with what the law establishes, a function that differs from the one assigned to the Inter-American Commission on Human Rights,[[12]](#footnote-12) which consists in promoting respect for and the defense of human rights, including before itself.[[13]](#footnote-13)
9. Therefore, the Court’s jurisdictional function imposes on it the need to proceed in accordance with the dignity stemming from the fact that it is a court and, also, that it is autonomous; thus, in exercise of its prerogatives, it cannot be monitored or controlled by any other entity while, at the same time, it is unable to ensure that its rulings are executed by the use of coercive measures. The gravitas inherent in the judicial function that has been entrusted to the Court entails the obligation to proceed adhering fully to the limits to its exclusive powers that have been established so that its decisions are obeyed, above all, because they are considered just owing, *inter alia*, to is moral authority and its strict adherence to what was effectively agreed by the States in the Convention.
10. **ARTICLE 26**
11. In order to provide a clearer explanation of my reflections with regard to Article 26 of the Convention, it is essential to include some specific preliminary considerations on this provision, and then refer to the interpretation of both this article of the Convention and the Charter of the Organization of American States[[14]](#footnote-14) to which this provision refers, as well as to the Protocol of San Salvador which corroborates what I expound in this brief.
12. **Specific preliminary considerations on Article 26**
13. First, it is necessary to indicate that I reiterate the considerations included in my other separate opinions[[15]](#footnote-15) regarding the citing of this article of the Convention in the corresponding judgments, including the preliminary and general considerations made in those opinions.
14. It is also essential to indicate, at once, that this text does not refer to the existence of the right to just and favorable conditions that ensure safety, health and hygiene in the workplace or to the other economic, social and cultural rights. The existence of those rights is not the purpose of this brief. Instead, this text merely affirms that the Court, contrary to the considerations in the judgment, lacks jurisdiction – based on the provisions of Article 26 of the Convention[[16]](#footnote-16) – to examine violations of those rights; in other words, that presumed violations of those rights are not justiciable before the Court.
15. This does not mean, however, that violations of those rights are not justiciable before the corresponding domestic jurisdictions. This will depend on the provisions of the respective domestic laws, a matter that does not concern the purpose of this text and that falls within the domestic, internal or exclusive jurisdiction of the States Parties to the Convention.[[17]](#footnote-17)
16. This opinion affirms that it is necessary to distinguish between human rights in general that, in all circumstances, must be respected owing to the provisions of international law, and those that, in addition, are justiciable before an international jurisdiction. In this regard, it is worth calling attention to the fact that there are only three international human rights courts; namely, the Inter-American Court of Human Rights, the European Court of Human Rights and the African Court of Human and Peoples’ Rights. However, not all the States of the respective regions have accepted the jurisdiction of the corresponding court. Furthermore, not all the regions of the world have an international human rights jurisdiction, nor has a universal human rights court been created.
17. Thus, the fact that a State has not accepted to be subject to an international human rights jurisdictional instance does not mean that such rights do not exist and that they cannot eventually be violated. The State must necessarily respect them even though there is no international court to which recourse can be had if it violates them and, especially, if they are established in a treaty to which that State is a party. In that eventuality, international society can use diplomatic or political measures to achieve the re-establishment of respect for the rights concerned. Thus, the international enshrinement of human rights is one issue, and the international instrument used to achieve the re-establishment of their exercise in the situation in which they are violated is another.
18. **The interpretation of Article 26**
19. In light of the fact that the Convention is a treaty between States and, consequently, governed by public international law,[[18]](#footnote-18) the reasons that support this discrepancy are based, mainly, on how Article 26 should be interpreted, pursuant to the means for the interpretation of treaties established in the Vienna Convention. These means, which must be congruent and harmonious without any one prevailing over the others, relate to good faith, the ordinary meaning to be given to the terms of the treaty in their context, and in light of its object and purpose.[[19]](#footnote-19)
20. Therefore, it is a question of using these means to interpret Article 26, which establishes:

“Progressive Development. The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, subject to available resources, by legislation or other appropriate means, the full realization of the rights derived from the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.”

1. **Good faith**
2. The method supported by good faith signifies that what was agreed by the States Parties to the treaty in question should be understood on the basis of what they effectively intended to agree, so that this would truly be applied or for it to have a practical effect. Thus, good faith is closely related to the “*pacta sunt servanda*” principle established in Article26 of the Vienna Convention.[[20]](#footnote-20)
3. From this perspective, it is very evident that the practical effect of this norm is that the States Parties to the Convention really adopted the article in order to achieve progressively the full realization of the rights derived from the OAS norms and, in particular, according to the resources available. The State obligation established in Article 26 is, therefore, that of taking measures to make the said rights effective and not that they really are effective. The obligation is of conduct, and not of result.
4. In this regard, it is necessary to call attention to the fact that what Article 26 establishes is similar to the provisions of Article 2 of the Convention; that is, the States are obliged to adopt measures, in the latter, if the exercise of the rights established in Article 1of the Convention are not ensured,[[21]](#footnote-21) and, in the former, measures in order to achieve progressively the full realization of the rights derived from the OAS norms that it mentions, although the two provisions differ in that the latter conditions compliance with its provisions on the availability of the necessary resources.
5. Bearing in mind the foregoing, it is important to ask ourselves why the States Parties agreed to Article 26 and, therefore, why they did not address the rights to which it refers in the same way as the civil and political rights. Based on good faith, the response can only be that the Convention established that both types of human rights, although closely interrelated due to the ideal to which they aspire – which, according to its Preamble, is to create the conditions that allow their “enjoyment”[[22]](#footnote-22) – are, however, different and, particularly, unequally developed in the sphere of public international law, so that they should be treated differently, which is precisely what the Convention does as also indicated in its Preamble.[[23]](#footnote-23)
6. Consequently, and pursuant to the principle of good faith, it is necessary to underline that, it cannot be understood – as the judgment does – that the practical effect of Article 26 is that the violation of the rights to which it refers are justiciable before the Court based on the fact that the Preamble to the Convention states that individuals should enjoy their economic, social and cultural rights, as well as their civil and political rights; but rather that the States should take the pertinent steps to make those rights progressively effective.
7. Furthermore, it is essential to note that it is surprising that the judgment has not referred anywhere to good faith as an element that is as essential as the other elements established in Art. 31(1) of the Vienna Convention for the interpretation of treaties, all of which should be employed simultaneously and harmoniously without preferring or downplaying one or other. Similarly, it is also strange that it does not provide any explanation of the inclusion of Article 26 in a different chapter to the political and civil rights and, in particular, the reason and the practical effect. The judgment provides no answer with regard to the reason for the existence of Article 26 as a provisions that differs from those established for the civil and political rights.
8. In short, good faith leads to considering Article 26 on its own merits, which means that it should be interpreted not as recognizing rights that it does not list or develop, as the judgment does, but rather as a referral – in order to understand them – to norms other than those of the Convention, such as the norms of the OAS Charter. Consequently, the specific practical effect is, I reiterate, that the States Parties to the Convention should take steps to make the rights that are derived from those norms effective progressively, and this in accordance with available resources.
9. **Ordinary meaning**
10. When interpreting Article 26 in light of its ordinary or literal meaning, it can be concluded that this article:
11. Is the only provision in Chapter III entitled “Economic, Social and Cultural Rights,”[[24]](#footnote-24) of Part I, entitled “State Obligations and Right Protected,” which includes Chapter I “General Obligations” and Chapter II “Civil and Political Rights”; consequently, this means that the Convention itself makes a clear distinction between the civil and political rights and the economic, social and cultural rights, giving each of these categories of rights special and different consideration;
12. Does not list or describe or specify the rights to which it alludes; it merely identifies them as “derived[[25]](#footnote-25) from the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States; in other words, rights that are revealed or may be inferred[[26]](#footnote-26) from the latter’s provisions;
13. It does not order respect for the rights to which it refers or ensure respect for them, and it does not recognize or establish them;
14. It does not make those rights effective or enforceable because, if this had been the intention, it would have been indicated explicitly and without any ambiguity; in other words, contrary to what the judgment states, it does not “make a direct referral to the economic, social, educational, scientific and cultural norms contained in the OAS Charter,”[[27]](#footnote-27) but rather merely contemplates, according to its wording, an “implicit recognition in” the Charter;[[28]](#footnote-28)
15. To the contrary, it establishes an obligation of conduct, and not of result, in that the States Parties to the Convention must “adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, […] the full recognition of the rights” to which it alludes;
16. It indicates that the obligation of conduct that it establishes should be complied with “subject to available resources, by legislation or other appropriate means,” thereby not only reinforcing the lack of effectiveness of the said rights, but also conditioning the possibility of fulfilling them to the existence of the resources available to the respective State for this purpose, and
17. It makes the adoption of the measures in question depend not only on the unilateral will of the corresponding State, but also on the agreements that it may reach with other States -that are also sovereign – and international cooperation organizations.
18. It can also be concluded that the rights in question are not, in the terms used by the Convention, “recognized,”[[29]](#footnote-29) “set forth,”[[30]](#footnote-30) “guaranteed,”[[31]](#footnote-31) “enshrined”[[32]](#footnote-32) or “protected”[[33]](#footnote-33) in it or by it, and in relation to the right to just and favorable conditions that ensure health and safety in the workplace, and this is not as the judgment indicates, “a right protected byArticle 26 of the Convention”[[34]](#footnote-34) or “aright recognized” by “Article 26,”[[35]](#footnote-35) rather it is a right that derives from the economic, social, educational, scientific and cultural standards contained in the OAS Charter; in other words, a rights that originates from the latter and not from the Convention.
19. In short, the Convention does not, as the judgment states “make a direct referral to the economic, social, educational, scientific and cultural norms contained in the OAS Charter,” but rather, as it textually indicates, the rights in question “can be derived by interpretation from Article 26,” from which, also, their “existence and implicit recognition in the OAS Charter” can be inferred.[[36]](#footnote-36) In order to determine those rights and consider them to be “recognized,” “established,” “guaranteed,” “enshrined” or “protected” by the Convention, it would be necessary to interpret the said norms of the OAS Charter, derive from them the corresponding rights, and consequently, consider them recognized, although not expressly but only implicitly, by that treaty; an intellectual exercise that is too abstruse in relation to the clear and direct language of the Convention in relation to the rights to which it refers.
20. Evidently, I cannot share the position adopted in the judgment. In particular because Article 26 does not recognize any right, but merely refers to the norms of the OAS that it indicates, from which rights would then be derived, and also because, in view of what the judgment indicates, this differs totally from what the norm explicitly establishes, without providing any justification, but only explanations that appear designed to interpret it in a way that is completely contrary to what it textually and clearly indicates.
21. By adopting this approach, the judgment plainly disregards the literal meaning of Article 26 and, consequently, does not apply the provisions of Article 31(1) of the Vienna Convention to it harmoniously or, strictly, make an interpretation of it. It appears that, for the judgment, the literal meaning of what was agreed has no relevance whatsoever and, therefore, it considers it a mere formulism, which allows it to attribute to this provision a meaning and scope that is far from that expressly established by the States, as if they really meant to establish something else, which is evidently illogical.
22. To the contrary, there are grounds for affirming that, based on its literal meaning and the principle of good faith, Article 26 does not suggest various possibilities for its application; in other words, raise doubts about its meaning and scope that, consequently, would justify the interpretation that ostensibly differs from what was agreed and, furthermore, it does not establish any human right and, especially, one that is enforceable before the Court, but rather alludes to obligations of conduct rather than of result assumed by the States Parties to the Convention.
23. Ultimately, it is possible to conclude, contrary to what the judgment indicates, that “in accordance with the ordinary meaning to be given to the terms of the treaty,” Article 26 does not constitute sufficient grounds to have recourse to the Court to safeguard the rights that “derive” from the OAS Charter and that, consequently, are not “recognized,” “established,” “enshrined” or “protected” in or by the Convention, the only ones that, if they are violated, are justiciable before the inter-American jurisdictional instance.
24. **Subjective method**
25. When attempting to understand the intention of the States Parties to the Convention with regard to Article 26, it is necessary to refer, always pursuant to the provisions of the Vienna Convention, to the context of the terms; thus, it is necessary to refer to the system established in the Convention in which this article is inserted. This means that:
26. This system is made up of the rights and obligations that it establishes, the organs responsible for ensuring their respect and requiring their fulfillment, and provisions concerning the Convention;[[37]](#footnote-37)
27. With regard to the obligations, these are two-fold, namely: the “Obligation to Respect Rights”[[38]](#footnote-38) and the obligation to adopt “Domestic Legal Effects”[[39]](#footnote-39) and, regarding the rights, they are the “Civil and Political Rights” and the “Economic, Social and Cultural Rights*,*”[[40]](#footnote-40) and
28. Regarding the organs, these are the Commission, the Court[[41]](#footnote-41) and the OAS General Assembly, corresponding to the first the promotion and defense of human rights;[[42]](#footnote-42) to the second, the interpretation and application of the Convention,[[43]](#footnote-43) and to the third, the adoption of the necessary measures to ensure compliance with the respective ruling.[[44]](#footnote-44)
29. Based on the harmonious interpretation of these norms, it is possible to understand that, in the case of the States that have accepted the contentious jurisdiction of the Court, all that can be required of them, in relation to a case that has been submitted to the Court’s consideration, is due respect for the civil and political rights “recognized,” “established,” “enshrined” or “protected” by the Convention as well as, if this becomes necessary, the adoption “in accordance with [the] constitutional processes [of the corresponding State] and the provisions of this Convention, [of] such legislative or other measures as may be necessary to give effect to those rights or freedoms.”
30. In contrast, with regard to the rights “derived from the economic, social, educational, scientific and cultural standards set forth in the Charter of the” OAS, the States can only be required to adopt, “by legislation or other appropriate means,” “measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, […] the full realization” of those rights, and this, “subject to available resources.”
31. That said, it is necessary to place on record, for the purposes of the application of this method of interpretation that, according to paragraph 5 of the Preamble to the Convention, the OAS Charter incorporated “broader standards with respect to economic, social, and educational rights” and that the Convention determined “the structure, competence, and procedure of the organs responsible for these matters.”
32. In other words, it was the Convention itself that, in compliance with this mandate and as already indicated, gave the civil and political rights a differentiated treatment from the economic, social and cultural rights, and – as already noted – established the former in Chapter II of Part I of the Convention and the latter in Chapter III of the same part and instrument. Thus, the indivisibility of the civil and political rights and the economic, social and cultural rights referred to in the Preamble to the Convention, is in relation to the “enjoyment” of both types of human rights and not that they should be subject to the same rules for their exercise and international oversight.
33. In addition, it should be recalled that, regarding what Article 31(2) of the Vienna Convention considers to be context, there is “no agreement relating to the treaty which was made between all the parties in connection with the conclusion of the” Convention, nor “any instrument which was made by one or more parties in connection with the conclusion of the [Convention] and accepted by the other parties as an instrument related to” it.
34. Moreover, as established in Article 31(3) of the Vienna Convention, “together with the context,” there is no “subsequent agreement between the parties regarding the interpretation of the [Convention] or the application of its provisions,*”* or “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,” with the exception of the Protocol of San Salvador, which will be referred to below.
35. Consequently, it is unacceptable that, in the absence of what is known as the “authentic interpretation”[[45]](#footnote-45) of the Convention, its meaning and scope are determined by the Court outside and even in contradiction to what was agreed by its States Parties. The Convention, as a treaty, does not exist outside what was expressly agreed to by the latter.
36. Furthermore, in an attempt to justify the judicialization before the Court of the right to just and favorable conditions that ensure safety, health and hygiene in the workplace, and based on Article 31(3)(c) of the Vienna Convention, the judgment has recourse to treaties ratified by Brazil as – consequently – autonomous sources of international law; that is, that create rights. However, these sources only allude to the existence of the said right which, as indicated, was not the purpose of this case and, consequently, is not addressed in this text, and makes absolutely no mention of the judicialization of eventual violations of the right.
37. In this way, the judgment refers to the International Covenant on Economic, Social and Cultural Rights,[[46]](#footnote-46) the Convention on the Elimination of All Forms of Discrimination against Women,[[47]](#footnote-47) the Constitution[[48]](#footnote-48) of the International Labour Organization,[[49]](#footnote-49) ILO Convention No. 81 of 1947 on Labour Inspection,[[50]](#footnote-50) and ILO Convention No. 155 of 1981 on occupational safety and health,[[51]](#footnote-51) legal instruments that, it should be repeated, do not establish the possibility of resorting to the Court or another international court owing to an eventual violation of the right to work.
38. However, the judgment does not have recourse to subsidiary sources of international law; in other words, sources that help to determine the rules of law applicable, such as jurisprudence, doctrine or the resolutions of international organizations establishing customary law.[[52]](#footnote-52) It merely refers either to its own case law, which is useful basically to reveal coherence in its conduct, but not necessarily to determine the applicable rules of law, or to resolutions of international organisations that are not binding for the States – in other words, mere recommendations – and that neither interpret the Convention nor are supposed to.
39. This is the case of General Comments Nos. 14,[[53]](#footnote-53) 18[[54]](#footnote-54) and 23[[55]](#footnote-55) of the Committee on Economic, Social and Cultural Rights of the United Nations Economic and Social Council. However, these instruments, rather than interpreting a treaty-based provision and, in particular of the Convention, constitute the expression of legitimate aspirations for change or for the development of international law in relation to the issue to which they each refer. Moreover, it should not be overlooked that they do not even emanate from an international official or organ of the inter-American system of human rights.
40. In the case of the Universal Declaration of Human Rights[[56]](#footnote-56) and the American Declaration of the Rights and Duties of Man[[57]](#footnote-57) referred to in the judgment, although it is true that they are resolutions establishing customary law because they express general principles of law applicable to the corresponding subject-matter, also recognized by the Convention as “the essential rights of man [… that] are based upon attributes of the human personality” and that they are “principles […] set forth in” it,[[58]](#footnote-58) it is no less true that these declarations do not establish or refer to any mechanism of control with regard to the said principles. It is worth adding that since the American Declaration preceded the Convention it does not interpret it; rather, more precisely, the latter was concluded owing to the specific mandate included in the former to establish control mechanisms.[[59]](#footnote-59)
41. Regarding the reference that the judgement makes to Article 29 of the Convention,[[60]](#footnote-60) known as the *pro personae* principle, it should be recalled that this article relates to the interpretation of the rights recognized in this instrument and not to the control mechanisms established in it. Also, it should not be disregarded that this article concerns the interpretation of the Convention, and mandates that, the meaning and scope of this interpretation cannot entail a restriction of the human right in question, as recognized by the Convention or by the other legal instruments it indicates. Consequently, the purpose of the said article was not to grant the Court authority to rule on the judicialization of presumed violations of human rights, but rather, it established conditions for the interpretation of the Convention. Moreover, it did not establish the authority of the Court to interpret other international treaties or legal instruments, unless as necessary to determine whether they established a broader meaning and scope than the one determined by the human right guaranteed in the Convention.
42. It also appears necessary to include some brief comments on the mention made in the judgment that “human rights treaties are living instruments, the interpretation of which should evolve over time and in keeping with current circumstances.”[[61]](#footnote-61) The first comment is that this is envisaged in Article 31(3)(a) and (b) of the Vienna Convention, when it establishes that “there shall be taken into account, together with the context,” any agreements and practice of the States regarding the interpretation of the treaty in question. Thus, the evolutive nature relates more to the applicable law than to the case law issued in relation to the treaty.
43. The second comment is that, consequently, the interpretation must take into account that, in order to determine “the evolution over time and the current circumstances,” a general assertion by non-state entities, at times without any scientific support, is not sufficient; rather, it must be shared by international society and, in the case of the Convention, by inter-American society, both of which still consist, mainly, of sovereign States. Otherwise, the Court would be conferring on such private entities the authority to determine the said evolution and current circumstances, which not only could lead to arbitrary assertions, but could also prejudice the participation of the individual, through the democratic State, in international affairs.
44. In short, bearing in mind that the above-mentioned instruments are cited in the judgment in order to substantiate its position that the Court has jurisdiction to examine and decide eventual violations of the right to just and favorable conditions that ensure safety, health and hygiene in the workplace, it can be categorically affirmed that, at best, the truth is that those instruments could be considered as a recognition of the existence of those rights, but not of the said jurisdiction. Thus, it is irrefutable that none of them, I repeat, none, relate to or establish that presumed violations of the said rights may be submitted to the Court for it to rule on them.
45. Moreover, it should be added that neither do the references made in the judgment to the domestic laws of the State[[62]](#footnote-62) justify its thesis that they allow recourse to the Court for violations of the said rights. The Court’s jurisdiction is derived from the authority accorded to it by the Convention and not by a provision of the domestic law of the State concerned although, evidently, this law should be taken into account, as indicated in Article 29 cited above, when interpreting the Convention to ensure that this does not limit the enjoyment and exercise of a right recognized by domestic law.
46. In this regard, it should be emphasized that the judgment itself indicates that it relates to determination of the meaning and scope of the right to just and favorable conditions that ensure safety, health and hygiene in the workplace[[63]](#footnote-63) and, on this basis, concludes “that there is a reference with a sufficient degree of specificity to the right to just and favorable conditions of work to derive its existence and implicit recognition in the OAS Charter.”[[64]](#footnote-64) Therefore, this does not refer to judicialization before the Court.
47. Furthermore, it should be noted that, in other judgments of the Court, a similar result to that sought in this case has been achieved merely by applying provisions of the Convention that refer to rights that the Convention recognizes and, logically, within the limits of these provisions, without needing to resort to Article 26. Consequently, I do not understand the reason for the insistence in indicating the said article as grounds for affirming that violations of the human rights “derived” from the OAS Charter can be examined by the Court, when it is evident that this is superfluous.
48. This is even more evident when it is noted that the judgment, when declaring – based on Article 26 – the violation of the right to just and favorable conditions that ensure safety, health and hygiene in the workplace, does so while also declaring that Article 19 on the rights of the child has been violated, thereby depriving the latter of the strength that it enjoys, *per se,* and establishing a precedent that, in future, it cannot be cited as the only grounds for declaring its eventual violation. A regrettable retrogression in this area.
49. Based on the foregoing, it can therefore be concluded that the application of the subjective means of interpretation of treaties leads to the result indicated previously; namely – and contrary to the considerations in the judgment – that at no time were the economic, social and cultural rights “*derived*” from the standards of the OAS Charter, including the right to just and favorable conditions that ensure safety, health and hygiene in the workplace, included in the protection regime established in the Convention.
50. **Functional or teleological method**
51. When attempting to define the object and purpose of the article of the Convention in question, it can be affirmed that:
52. The purpose of the States on signing the Convention was “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man”;[[65]](#footnote-65)
53. To this end, as indicated above,[[66]](#footnote-66) *“*the Third Special Inter‑American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an Inter‑American Convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters”;
54. Thus, it is evident that the decision taken during the said Conference was implemented, as regards the economic, social and educational rights with the Protocol of Buenos Aires and as regards the structure, jurisdiction and procedures of the organs responsible for these matters, with the Convention, and
55. It was, therefore, in compliance with that mandate that Article 26 was included in the Convention in a separate chapter from the one on civil and political rights and, also, establishing a special obligation for the States Parties to the Convention, that did not exist with regard to the recently mentioned rights; namely, that of adopting “measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively […], the full realization of the rights” referred to, and this “subject to available resources, by legislation or other appropriate means.”
56. In other words, the object and purpose of Article 26 is that the measures it indicates be taken to achieve the realization of the rights that it indicates and not that they are enforceable immediately, and least of all, that they may be justiciable before the Court as the judgment asserts.[[67]](#footnote-67) In this regard, it should be recalled that the very name of the provision is “Progressive Development,” and that the title of Chapter III, of which it is the only article, is “Economic, Social and Cultural Rights,” from which it can be understood that what is established in that article – its object and purpose – is that measures be adopted to achieve, progressively, the realization of the rights it refers to and not that they have been realized.
57. If it is accepted that, in order to interpret a specific provision of the Convention, it would be sufficient to cite its general object and purpose mentioned above, which is extremely vague and imprecise, this would impair the legal security and certainty that should characterize every ruling of the Court, because it would leave it with a broad margin of discretion to determine the rights that derive from the said standards of the OAS Charter; therefore, the States Parties to the Convention would not know what those rights are prior to the corresponding litigation.
58. This is why I am unable to share the opinion set forth in the judgment that, based on the provisions of Articles 1 and 2 of the Convention, Article 26 distinguishes between “aspects that are enforceable immediately” and “others of a progressive nature,”[[68]](#footnote-68) because this strays ostensibly from the content of those articles, which establish that the rights to which they refer are only those “recognized,” “established,” “guaranteed” or “protected” by the Convention, which is not the case of those referred to in Article 26. In addition, this distinction made in the judgment is confusing and even contradictory because, on the one hand, it is not possible to know in advance which aspects or more exactly which rights referred to in Article 26 would be enforceable immediately and which would need to be developed progressively for that purpose and, on the other hand, the former would not require the adoption of measures to make them enforceable, while the others could not be enforced until measures had been adopted.
59. Moreover, an approach such as the one mentioned would result in the Court assuming an international normative function that, in the case of the Convention, corresponds only to its States Parties.[[69]](#footnote-69) And, this is because, in the absence of a specification of the rights derived from the standards of the OAS Charter, the Court could establish rights that are not expressly established in the said standards and decide that these are justiciable before it.
60. In conclusion, dissenting with the judgment, I can affirm that the application of the functional or teleological means of interpretation of treaties with regard to Article 26 of the Convention leads to the same conclusions reached by using the other means of interpretation of treaties; in other words, that the purpose of this article is not to establish human rights of any kind, but merely to establish the obligation of the States Parties to adopt measures towards the realization of the economic, social and cultural rights “derived” from the OAS Charter.
61. **Supplementary means**

1. With regard to the supplementary means of interpretation of treaties, it should be emphasized that, during the 1969 Inter-American Specialized Conference on Human Rights at which the final text of the Convention was adopted, two articles on this issue were proposed. One was Article 26 which appears in the Convention; this article was adopted.[[70]](#footnote-70)
2. The other proposed article, 27, stated:

“Monitoring Compliance with the Obligations. The States Parties shall transmit to the Inter-American Commission of Human Rights a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture, in their respective fields, so that the Commission can verify their compliance with the obligations determined previously, which are the essential basis for the exercise of other rights enshrined in this Convention.”

1. It should be noted that this draft article 27, which was not adopted,[[71]](#footnote-71) refers to “reports and studies” for the Commission to verify whether the said obligations were being complied with and, therefore, distinguished between, on the one hand “the obligations determined previously,” obviously in Article 26 – in other words, those relating to the rights “derived from the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires” and, on the other hand, “other rights enshrined in this Convention”; that is, “the civil and political rights.”
2. Thus, the adoption of Article 26 was not intended to incorporate the economic, social and cultural rights into the protection regime established in the Convention. The only proposal in this regard was that compliance with the obligations relating to those rights should be submitted to examination by OAS organs, considering that such compliance was the basis for the realization of the civil and political rights. And, as indicated, that proposal was not accepted. This confirms that the States Parties to the Convention did not have any intention of including the economic, social and cultural rights in the protection regime that, to the contrary, it does establish for the civil and political rights.[[72]](#footnote-72)
3. **The OAS Charter**
4. That said, considering that Article 26 makes a referral to “the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires,” it is essential, in order to understand its scope, to refer to the content of the said standards and, in particular, those cited in the judgment.
5. Regarding the right to just and favorable conditions that ensure safety, health and hygiene in the workplace, the judgment cites Articles 45(b) and (c),[[73]](#footnote-73) 46[[74]](#footnote-74) and 34(g)[[75]](#footnote-75) of the OAS Charter.[[76]](#footnote-76)
6. On the basis of those articles, the judgment asserts that “the Court considers that there is a reference with a sufficient degree of specificity to the right to just and favorable conditions of work to derive its existence and implicit recognition in the OAS Charter.”[[77]](#footnote-77) However, it is sufficient to merely read the said provisions to conclude, clearly and without the least doubt, that they establish obligations of conduct or action, expressed in the “every effort” that the States undertake to make for the application of “principles and mechanisms” or to facilitate the process of Latin American integration, the harmonization of labor laws and the protection of the rights of workers, or to achieve the “basic objective” consisting in “fair wages, employment opportunities acceptable working conditions for all.” It should not be forgotten that all the provisions cited are to be found in Chapter VII of the Charter, entitled “Integral Development.” Consequently, those provisions do not establish obligations of result; in other words, they do not establish that the human rights derived from the said standards be respected, but rather that every effort be made to achieve the principles, mechanisms and goals they indicate.
7. In this context, the range of possibilities from which the interpreter could “derive” human rights that are not explicitly established in any international norm would be enormous, and even unlimited. If the Court continues with this tendency and takes it to its extreme, all the States Parties to the Convention that have accepted its jurisdiction could eventually be brought before it because they had not fully achieved the “principles,” “goals,” or “mechanisms” established in the OAS Charter from which the judgment derives rights and, evidently, this would appear to be very far from what the States Parties intended when they signed the Convention or, at least, from the logic implicit in it; especially, owing to the way in which the said Chapter VII is worded.
8. Thus, it is evident that, from “the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires” to which Article 26 refers, contrary to the considerations in the judgment, it is not possible to infer the Court’s jurisdiction to hear and decide eventual violations of the rights derived from them.
9. **The Protocol of San Salvador**
10. It is also necessary to refer to the “Addition Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,” which is also cited in the judgment to support its interpretation of Article 26.[[78]](#footnote-78) However, I consider that, to the contrary, its signature and validity support this opinion.
11. This instrument[[79]](#footnote-79) was adopted considering the provisions of Articles 31, 76 and 77[[80]](#footnote-80) of the Convention, and as its Preamble itself expressed, when indicating that:

*“*Bearing in mind that, although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic representative form of government as well as the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources; and [c]onsidering that the American Convention on Human Rights provides that draft additional protocols to that Convention may be submitted for consideration to the States Parties, meeting together on the occasion of the General Assembly of the Organization of American States, for the purpose of gradually incorporating other rights and freedoms into the protective system thereof.”

1. The foregoing reveals, consequently, that it is an agreement “additional to the Convention,” whose specific purpose is to reaffirm, develop and perfect the economic, social and cultural rights and to progressively include them in its protection regime and achieve their full realization.
2. In other words, the Protocol was adopted because, when it was signed, the economic, social and cultural rights had not been reaffirmed, developed, perfected and protected or included under the Convention’s protection system, and this means that they had not been fully realized under Article 26. Otherwise, it is not possible to understand the need for, or the purpose of, the Protocol.
3. In this regard, the Protocol recognizes,[[81]](#footnote-81) establishes,[[82]](#footnote-82) sets forth[[83]](#footnote-83) or enshrines[[84]](#footnote-84) the following rights: the right to work (Art. 6), the right to just, equitable, and satisfactory conditions of work (Art. 7), trade union rights (Art. 8), the right to social security (Art. 9), the right to health (Art. 10), the right to a healthy environment (Art. 11), the right to food (Art. 12), the right to education (Art. 13), the right to the benefits of culture (Art. 14), the right to the formation and the protection of families (Art. 15), the rights of children (Art. 16), the protection of the elderly (Art. 17) and the protection of the handicapped (Art. 18). It should be recalled that, to the contrary, Article 26 does not establish or set forth any right, it merely refers to those “derived” from the OAS Charter.
4. And, with regard to the rights recognized by the Protocol, the States Parties undertook to adopt, progressively, measures to guarantee their full realization (Arts. 6(2), 10(2), 11(2) and 12(2)). This coincides with the provisions of Article 26; that is, that both the Protocol and Article 26 refer to rights that have not been realized or, at least, not fully.
5. The Protocol also includes a provision, Article 19, concerning the measures to protect the above-mentioned rights. These measures consist of the reports that States Parties must present to the OAS General Assembly “on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol”; of how the OAS Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture should respond to those reports, and of the opinion that the Commission may eventually provide.[[85]](#footnote-85) It should be noted that this provisions is similar to the proposed article 27 of the Convention, which was rejected by the corresponding Conference.
6. The foregoing signifies, first, that for the States Parties to the Protocol, the realization of the economic, social and cultural rightsis progressive in nature; that is, *a contrario sensu,* those rights have not been realized or, at least, fully realized.
7. Second and consequently, this means that, for the said States, the provisions of Article 26 signify that the said rights are not included among those to which the protection system established in the Convention applies or that they are in effect because, to the contrary, it would not have been necessary to adopt the Protocol.
8. It should also be recalled that the OAS has created the Working Group to Examine the National Reports Envisioned in the Protocol,[[86]](#footnote-86) as a mechanism to monitor compliance with the undertakings made in that instrument in this regard. This confirm that, undoubtedly, the intention of the said States was to create a non-jurisdictional mechanism for the international supervision of compliance with the Protocol.
9. The only exception to this system is established in paragraph 6 of Article 19:

Any instance in which the rights established in paragraph (a) of Article 8*[[87]](#footnote-87)* and in Article 13*[[88]](#footnote-88)* are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

1. This means that it is only if the rights relating to trade unions and to education are violated that the pertinent cases are justiciable before the Court. To the contrary, with regard to the violation of the other rights, including the right to just and favorable conditions that ensure safety, health and hygiene in the workplace, there is merely the system of reports established in Article 19 of the Protocol.
2. Thus, the Protocol is an amendment to the Convention. This is revealed by its text, which considers that it is a protocol, a mechanism that is explicitly established in the Convention.[[89]](#footnote-89) It should also be noted that its Preamble indicates that it is adopted considering that the Convention establishes this possibility.[[90]](#footnote-90) Thus, it is an “additional protocol” to the Convention, signed “for the purpose of gradually incorporating other rights and freedoms into the protective system thereof,” which, therefore, the system does not include.
3. Consequently, this instrument, by establishing in its Article 19 the competence of the Court to examine eventual violations of the rights relating to trade unions and to education, is not limiting its competence, but rather expanding it. If the Protocol did not exist, the Court could not even examine the violation of those rights.
4. Thus, the foregoing proves categorically that, for the States Parties to the Protocol, the provisions of Article 26 of the Convention cannot be interpreted to establish or to recognize economic, social or cultural rights, or that it authorizes submitting a case to the Court based on their violation. Let me repeat, that if Article 26 had established this, it is evident that the States would not have adopted the Protocol. Consequently, it was for that reason that it was necessary to adopt it. Its signature cannot be explained in any other way.
5. Based on the above, it can be concluded that the Protocol is clear evidence that the provisions of Article 26 do not establish any human right or, in particular, as maintained in the judgment, provide legitimacy to litigate before the Court for the violation of the economic, social and cultural rights to which it refers.
6. **Conclusions with regard to Article 26.**
7. It is therefore for the above reasons that I dissent partially from the judgment; that is, from the provisions of its operative paragraphs 2[[91]](#footnote-91) and 6.[[92]](#footnote-92)
8. In this regard, I must insist, once again, that this brief does not relate to the existence of the right to just and favorable conditions that ensure safety, health and hygiene in the workplace. This is not its purpose. I merely maintain that its possible violation cannot be submitted to the Court’s consideration and decision.
9. Furthermore, it is necessary to point out that this opinion should not be seen to indicate that I am not in favor of violations of the economic, social and cultural rights eventually being submitted to the consideration of the Court. In this regard, I consider that if this occurs, it must be decided by the entity that holds the international normative function. It does not appear appropriate that the organ that holds the inter-American judicial function should assume the international normative function, especially when the States concerned are democratic and, in this regard, governed by the Inter-American Democratic Charter,[[93]](#footnote-93) which establishes the separation of powers and citizen participation in public affairs; and evidently the Court must respect this, particularly in the case of those norms that are more directly related to the intervention of the citizenry.
10. From this perspective, it is worth insisting that interpretation does not consist in determining the meaning and scope of a norm so that it expresses the interpreter’s preference, but rather what it objectively establishes and, in the case of the Convention, it is a question of defining how the text agreed by its States Parties may be applied at the time and under the circumstances in which the respective dispute is submitted; in other words, how to make the “*pacta sunt servanda*” principle applicable at the time and in the circumstances in which the dispute occurs. Thus, the issue is how to ensure that human rights treaties are, *per se,* truly living instruments; that is, that they are susceptible to understanding or being applicable to the new realities and not that that it is their interpretation – as if it was a separate entity – that evolves with the times and current circumstances, changing what they have established.
11. Lastly, it is essential to repeat that, if the Court continues on the course adopted by the judgment, the inter-American system of human rights[[94]](#footnote-94) as a whole could be seriously restricted. This is because, very probably it would not encourage – but rather discourage – the accession of other States to the Convention, or the acceptance of the Court’s contentious jurisdiction by those who have not yet accepted this and, furthermore, the tendency of the States Parties to the Convention not to comply fully and promptly with its rulings could recommence or even increase. In short, it would undermine the principle of legal security or certainty that, in the case of human rights also benefits the victims of their violation, by ensuring compliance with the Court’s judgments because these are solidly based on the sovereign undertakings made by the States.
12. In this regard, it should not be overlooked that, in the practice and over and above any theoretical consideration, the function of the Court is, after all, to deliver judgments that re-establish, as soon as possible, respect for the human rights violated. It is not sure that this is achieved in relation to the violations of human rights that the Convention did not consider to be justiciable before the Court.
13. **ARTICLE 24**
14. As indicated initially, this opinion is presented because I also disagree with the declaration in operative paragraph 6 of the judgment[[95]](#footnote-95) that Article 24 of the Convention[[96]](#footnote-96) was violated, as I consider this inappropriate.
15. The said article indicates that:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

1. In order to explain my discrepancy as simply as possible, the reasons that support it will be set out in similar terms to those used previously for the interpretation of Article 26; that is, pursuant to the provisions of Article 31 of the Vienna Convention.[[97]](#footnote-97)
2. **Good faith**
3. Interpreting this article in accordance with good faith means that it should be understood in the sense that its practical effect is that everyone has the right to be treated by the law in the same way; therefore, the law protects everyone without discrimination.
4. Accordingly, an eventual violation of this right would be committed by the law itself and not because the free and full exercise of any other right recognized in the Convention has not been guaranteed. In other words, the practical effect of this right is that it is considered, in itself, a human right. The unequal treatment it might establish, or the discrimination it might reveal as regards the protection it provides, would be the cause that gives rise to the international responsibility of the State.
5. Thus, the rule of good faith leads us to consider that what is established by the provisions of Article 24 of the Convention is clearly different from the content of Article 1(1) of this instrument, which establishes a conditional obligation of the States to ensure the free and full exercise of all the rights recognized therein including, evidently, the one that relates to equality before the law.
6. Consequently, it is incomprehensible that the judgment declares that the said Article 24 was violated without indicating the specific law that committed this internationally wrongful act. The judgment indicates a generic situation as the cause of this wrongful act; namely the structural situation of discrimination based on poverty, or the condition of being a woman or an Afro-descendant,[[98]](#footnote-98) without making any specific reference to the law as the cause of this. It should be recalled that Article 24 explicitly establishes that it is the law that must grant equality among human beings and provide the corresponding protection, without discrimination.
7. **Ordinary meaning**
8. Regarding the ordinary or literal meaning of the terms, it should be recalled that the Convention does not give the term “law” a special meaning,*[[99]](#footnote-99)* so that its ordinary meaning should be used, which is “*precepto dictado por la autoridad competente, en que manda o prohíbe algo en consonancia con la justicia and para el bien de los gobernados*”[[100]](#footnote-100) [precept issued by the competent authority that orders or prohibits something in accordance with justice and for the good of those who are governed].
9. This concept coincides, broadly speaking, with what was indicated in Advisory Opinion OC-6/86 of May 9, 1986; namely “that the word ‘laws’ in Article 30 of the Convention[[101]](#footnote-101) means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.”
10. It should be pointed out that, on that occasion, the Court recalled that “[i]t is, therefore, not a question of giving an answer that can be applied to each case where the Convention uses such terms as ‘laws,’ ‘law,’ ‘legislative provisions,’ ‘legal effects,’ ‘legislative measures,’ ‘legal restrictions’ or ‘domestic laws,’ rather “[o]n each occasion that such expressions are used, their meaning must be specifically determined.”[[102]](#footnote-102) And, it was precisely this that Advisory Opinion OC-12/91 of December 6, 1991,did when it indicated, for the effects of Article 64(2) of the Convention,[[103]](#footnote-103) “that, in certain circumstances and pursuant to the powers conferred on it by Article 64(2), the Court may render advisory opinions regarding the compatibility of ‘draft legislation’ with the Convention.”
11. Consequently, it can be asserted that, in the absence of an explicit indication in the Convention and of a more general ruling by the Court, the concept of law provided by the Court, for the purpose of Article 30 of the Convention, is also applicable to the provisions of its Article 24, including in it the Constitution and regulations, resolutions or instructions of a general nature.
12. Thus, the method of the literal interpretation of the terms leads to the same results as those achieved with the method of good faith; which is that it is the law that must consider all persons as equal and accord all of them due protection without discrimination and, if it does not, the human right of equality before the law is violated. The cause of that violation is, therefore, the law and, for the corresponding purposes, it is necessary to specify which law, and this did not occur in the judgment.
13. **The subjective method**
14. Regarding the application to this matter of the subjective method that tries to determine the intention of the parties to the Convention based on its context, attention should be called to the fact that the said Article 24 is situated among the articles that refer to each of the human rights recognized by the Convention, so that, the provisions of Articles 1 and 2 of the Convention are applicable to it – in the same way as they are to the other human rights – and, consequently, both the Commission and the Court may determine whether it is respected.
15. The said Article 24 is located in Chapter II of the Convention entitled “Civil and Political Rights,” and this is in Part I of the Convention entitled “State Obligations and Rights Protected,” which also includes Chapter I entitled “General Obligations,” from which it can be inferred that the latter concerns the State obligations that are applicable to all the human rights recognized by the Convention; in other words, those established in the said Chapter II, including the one set forth in Article 24.
16. In this regard, I do not agree with the judgment when it indicates that, “if a State discriminates with regard to the respect and guarantee of a Convention right, it would be in non-compliance with the obligation established in Article 1(1) and the substantive right in question. To the contrary, if the discrimination refers to an unequal protection by domestic law or its application, the fact must be examined in light of Article 24 of the American Convention.”[[104]](#footnote-104)
17. And I cannot agree with this reasoning because Article 24 does not refer only to the right to equal protect of the law but, above all, to the right to equality before the law. Second, I disagree with the judgment that, whereas the provisions of Article 1(1) of the Convention concern the obligation of the States to respect and ensure all the rights recognized therein, Article 24 relates only to one of the rights that the Convention recognizes – that is, the right to equality before the law. Third, I disagree with the position taken in the judgment because, while Article 1(1) does not indicate the reason for the discrimination, Article 24 identifies this as the law.
18. To affirm what the judgment indicates would entail considering Article 24 to be redundant or unnecessary because, for all practical effects, Article 1 of the Convention also establishes the possibility that, the violation of any of the Convention rights, for any cause, entails discrimination.
19. In this regard, it can be concluded that the rule of interpretation concerning the determination of the intention of the parties to the Convention in keeping with its context leads us to the same conclusion as the two preceding methods; namely, that to determine the violation of the provisions of the said Article 24, it is essential to specify the law that does not consider everyone equal or that does not provide due protection without discrimination and, as already indicated, the judgment did not do this.
20. **Functional or teleological method**
21. Regarding the specific object and purpose of the provisions of the said Article 24, it should be pointed out that this article plays a similar role to that of Articles 8 and 25 of the Convention. This is that, while Articles 3 to 7 and 9 to 23 of the Convention establish human rights, the provisions of Articles 8 and 25 guarantee that, if the organs of the executive and legislative functions of the State fail to repair or redress eventual violations of the said rights, the judicial organ must do so in all circumstances and, to this end, recourse to this organ is established, *per se*, as a human right.
22. The same is true of the provisions of Article 24, which, when establishing equality before the law and the corresponding protection that the law should provide as a human right, *per se*, makes it possible that States can be found responsible for the acts or omissions of its organ that exercises the normative function. In this way, the inter-American system of human rights and, in particular, the Convention leave no space for the State to evade responsibility for an internationally wrongful act.
23. Moreover, to ensure this, it is essential that individuals are able to lodge petitions before the Commission and, in this way, initiate the corresponding procedure;[[105]](#footnote-105) in other words, they must have *locus standi*, which, in the case of the said Article 24, means that a law has denied a person equality before it or has not provided this person with the pertinent protection, discriminating against them, and they file a claim, substantiating that they have the corresponding interest in the matter.
24. Consequently, the object and purpose of Article 24 is also to stress that the cause of violations involving inequality among individuals and the failure to protect equality among them, must be related to the law.
25. **Conclusion on Article 24.**
26. In conclusion, I dissent from operative paragraph 6 of the judgment because, on the one hand, it omits any reference to the law that violates the right to equality before the law and to equal protection of the law, established in Article 24 and, on the other, it merely substantiates its position on the basis of a structural situation of poverty or discrimination for reasons of race or sex to declare its violation, which may be useful to determine the context in which this occurred, but is insufficient to be the only consideration taken into account in this regard.

**V.** **FINAL CONCLUSIONS**

1. Taking advantage of this opportunity, I wish to place on record two additional consideration with regard to this judgment.
2. First, that since operative paragraph 6 includes a reference to Article 19[[106]](#footnote-106) together with Articles 26 and 24, all of the Convention, I was obliged to vote against its adoption, but this should not be understood as a denial of the fact that this article was violated.
3. And second, that since operative paragraph 4 of the judgment[[107]](#footnote-107) refers to Article 4(1) of the Convention,[[108]](#footnote-108) and as it had been established as a fact that “[f]our of the women who died [in the event in question] were also pregnant,”[[109]](#footnote-109) it would have been desirable to apply the said article of the Convention in relation to the unborn children or *nasciturus*, as indicated in other opinions I have issued.[[110]](#footnote-110) However, this was not possible because, on the one hand, the issue was not raised in this case and, on the other, the Court had no information on the stage of these women’s pregnancies.

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|  | Eduardo Vio Grossi  J Judge |
| Pablo Saavedra Alessandri  Secretary |  |

1. Art. 66(2) of the Convention: “If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.”

   Art. 24(3) of the Court’s Statute: “The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate.”

   Art. 65(2) of the Court’s Rules of Procedure: “Any judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the President so that the other judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment,”

   Hereafter, each time that a provisions is cited without indicating the legal instrument to which it corresponds, it shall be understood that it is part of the American Convention on Human Rights. [↑](#footnote-ref-1)
2. Hereinafter, the judgment. [↑](#footnote-ref-2)
3. “To reject the preliminary objection concerning the alleged lack of jurisdiction *ratione materiae* regarding the supposed violations of the right to work, pursuant to paragraph 23 of this judgment.*”* [↑](#footnote-ref-3)
4. *“*The State is responsible for the violation of the rights of the child, to equal protection of the law, to the prohibition of discrimination, and to work contained in Articles 19, 24 and 26, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of the sixty persons who died in, and the six survivors of, the explosion of the fireworks factory of Santo Antônio de Jesus on December 11, 1998, referred to in paragraph 204 of this judgment, who included 23 children, according to paragraphs 148 to 204 of this judgment.” [↑](#footnote-ref-4)
5. Hereinafter, the Convention. [↑](#footnote-ref-5)
6. Hereinafter, the Court. [↑](#footnote-ref-6)
7. *“*The State is responsible for the violation of the rights to life and of the child contained Articles 4(1) and 19, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of the sixty persons who died in the explosion of the fireworks factory of Santo Antônio de Jesus on December 11, 1998, referred to in paragraph 139 of this judgment, who included twenty children, according to paragraphs 115 to 139 of this judgment*.*” [↑](#footnote-ref-7)
8. “The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain.” Permanent Court of International Justice, Advisory Opinion on Nationality Decrees issued in Tunis and Morocco (French zone), Series B No. 4, p. 24.

   Protocol No. 15 amending the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 1: “At the end of the preamble to the Convention, a new recital shall be added, which shall read as follows: Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention.” [↑](#footnote-ref-8)
9. Art. 62(3) of the Convention: *“*The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement. [↑](#footnote-ref-9)
10. Hereinafter, the Vienna Convention. [↑](#footnote-ref-10)
11. Art. 31 of the Vienna Convention: “General rule of interpretation*.* 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

    2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

    (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

    (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

    3. There shall be taken into account, together with the context:

    (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

    (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

    (c) any relevant rules of international law applicable in the relations between the parties.

    4. A special meaning shall be given to a term if it is established that the parties so intended.”

    Art. 32 of the Vienna Convention: “Supplementary means of interpretation. 1. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

    (a) leaves the meaning ambiguous or obscure; or

    (b) leads to a result which is manifestly absurd or unreasonable.” [↑](#footnote-ref-11)
12. Hereinafter, the Commission. [↑](#footnote-ref-12)
13. Art. 41: The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

    a. to develop an awareness of human rights among the peoples of America;

    b. to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

    c. to prepare such studies or reports as it considers advisable in the performance of its duties;

    d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

    e. to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

    f. to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

    g. to submit an annual report to the General Assembly of the Organization of American States.” [↑](#footnote-ref-13)
14. Hereinafter, the OAS. [↑](#footnote-ref-14)
15. Partially dissenting opinion of Judge Eduardo Vio Grossi to the judgment of November 22, 2019, Inter-American Court of Human Rights,***Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs;*** Partially dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Muelle Flores v. Peru, Judgment of March 6, 2019 (Preliminary objections, merits, reparations and costs);* Partially dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of San Miguel Sosa et al. v. Venezuela, Judgment of February 8, 2018 (Merits, reparations and costs);* Partially dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, *Case of Lagos del Campo v. Peru, Judgment of August 31, 2017 (Preliminary objections, merits, reparations and costs), and Separate Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the Dismissed Workers of PetroPeru et al. v. Peru, Judgment of November 23, 2017 (Preliminary objections, merits, reparations and costs).* [↑](#footnote-ref-15)
16. Hereinafter, Article 26. [↑](#footnote-ref-16)
17. *Supra*, footnote 8. [↑](#footnote-ref-17)
18. Art. 2 of the Vienna Convention: “Use of terms. 1. For the purposes of this Convention: (a) “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” [↑](#footnote-ref-18)
19. *Supra,* footnote 11. [↑](#footnote-ref-19)
20. “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” [↑](#footnote-ref-20)
21. Art. 2:“Domestic Legal Effects. Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.” [↑](#footnote-ref-21)
22. Para. 4 of the Preamble to the Convention: Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights.” [↑](#footnote-ref-22)
23. Para 5 of the Preamble: “[…]the Third Special Inter‑American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter‑American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters.” [↑](#footnote-ref-23)
24. Chapter IV of Part I is entitled “Suspension of Guarantees, Interpretation and Application” and Chapter V is entitled “Personal Responsibilities.” [↑](#footnote-ref-24)
25. “*Derivar: Dicho de una cosa: Traer su origen de otra.”* *Cf.* Diccionario de la Lengua Española, Real Academia Española, 2018 [Derive: obtain something from, OED]. [↑](#footnote-ref-25)
26. “*Inferir: Deducir algo o sacarlo como conclusión de otra cosa,*” *idem* [Infer: deduce from evidence, OED]. [↑](#footnote-ref-26)
27. Para. 155 of the judgment. [↑](#footnote-ref-27)
28. *Idem*. [↑](#footnote-ref-28)
29. Art. 1(1): “Obligation to Respect Rights, 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.”

    Art. 22.(4): “Freedom of Movement and Residence. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

    Art. 25(1)*:* “Right to Judicial Protection. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

    Art. 29(a*):* “Restrictions Regarding Interpretation. No provision of this Convention shall be interpreted as: (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.”

    Art. 30: “Scope of Restrictions. The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.”

    Art. 31: “Recognition of Other Rights. Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.”

    Art. 48(1)(f): “1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows: […] it shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” [↑](#footnote-ref-29)
30. Art. 45(1): “Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.” [↑](#footnote-ref-30)
31. Art. 47(b): “The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: [… it] does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” [↑](#footnote-ref-31)
32. *Supra*, Art. 48.1.f), *cit.* footnote 29. [↑](#footnote-ref-32)
33. Art. 4(1): “Right to Life. 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. No one shall be arbitrarily deprived of his life.”

    Art. 63(1): “If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.” [↑](#footnote-ref-33)
34. Para. 155. [↑](#footnote-ref-34)
35. Paras. 156 and 157. [↑](#footnote-ref-35)
36. *Idem,* footnote 34. [↑](#footnote-ref-36)
37. “Part III. “General and Transitory Provisions.” [↑](#footnote-ref-37)
38. *Supra*, footnote 29, Art. 1(1). [↑](#footnote-ref-38)
39. Supra, footnote 21. [↑](#footnote-ref-39)
40. Part I, Chapter II, Arts. 3 to 25. Right to Recognition of Juridical Personality (Art. 3), Right to Life (Art. 4), Right to Humane Treatment (Art. 5), Freedom from Slavery (Art. 6), Right to Personal Liberty (Art. 7), Right to a Fair Trial (Art. 8), Freedom from Ex-Post Facto Laws (Art. 9), Right to Compensation (Art. 10), Right to Privacy (Art. 11), Freedom of Conscience and Religion (Art. 12), Freedom of Thought and Expression (Art. 13), Right of Reply (Art. 14), Right of Assembly (Art. 15), Freedom of Association (Art. 16), Rights of the Family (Art. 17), Right to a Name (Art. 18), Rights of the Child (Art. 19), Right to Nationality (Art. 20), Right to Property (Art. 21), Freedom of Movement and Residence (Art. 22), Right to Participate in Government (Art. 23), Right to Equal Protection (Art. 24) and Right to Judicial Protection (Art. 25).

    Art.26, *cit.* [↑](#footnote-ref-40)
41. “Part II Means of Protection. Art. 33: “The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

    a) the Inter-American Commission on Human Rights, referred to as “The Commission,” and

    b) the Inter-American Court of Human Rights, referred to as “the Court.” [↑](#footnote-ref-41)
42. *Supra*, footnote 13. [↑](#footnote-ref-42)
43. *Supra*, footnote 9, Art. 62.3. [↑](#footnote-ref-43)
44. Art. 65: “To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.” [↑](#footnote-ref-44)
45. Name given by doctrine. [↑](#footnote-ref-45)
46. Para. 162 of the judgment. [↑](#footnote-ref-46)
47. Para. 163. [↑](#footnote-ref-47)
48. Para. 164. [↑](#footnote-ref-48)
49. Hereinafter, the ILO. [↑](#footnote-ref-49)
50. Para. 164. [↑](#footnote-ref-50)
51. Para. 165. [↑](#footnote-ref-51)
52. Article 38 of the Statute of the International Court of Justice: “1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states: (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto. [↑](#footnote-ref-52)
53. Para. 166 of the judgment. [↑](#footnote-ref-53)
54. *Idem*. [↑](#footnote-ref-54)
55. Art. 167. [↑](#footnote-ref-55)
56. Para. 162. [↑](#footnote-ref-56)
57. Para. 161. [↑](#footnote-ref-57)
58. Paras. 2 and 3 of the Preamble. *“*Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

    Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope.” [↑](#footnote-ref-58)
59. *Supra*, footnote 23. [↑](#footnote-ref-59)
60. “Restrictions regarding interpretation. No provision of this Convention shall be interpreted as:

    1. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.
    2. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
    3. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
    4. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.”

    [↑](#footnote-ref-60)
61. Para. 158. [↑](#footnote-ref-61)
62. Paras. 150, 151 and 152. [↑](#footnote-ref-62)
63. Para. 156. [↑](#footnote-ref-63)
64. Para. 155. [↑](#footnote-ref-64)
65. Para. 1 of the Preamble [↑](#footnote-ref-65)
66. *Supra,* footnote 23. [↑](#footnote-ref-66)
67. Para. 172. [↑](#footnote-ref-67)
68. *Idem.* [↑](#footnote-ref-68)
69. Art. 31: “Recognition of Other Rights. Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.”

    Art. 76: “1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

    2. Las Amendments shall enter into force for the States ratifying them on the date when two‑thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.*”*

    Art. 77: *“*1.In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.

    2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.” [↑](#footnote-ref-69)
70. *Cf.* Proceedings of the Inter-American Specialized Conference on Human Rights, November 7 to 22, 1969, OEA/Ser.K/XVI/1.2, p. 318. [↑](#footnote-ref-70)
71. *Cf.* Proceedings of the Inter-American Specialized Conference on Human Rights, November 7 to 22, 1969, OEA/Ser.K/XVI/1.2, p. 448. [↑](#footnote-ref-71)
72. *Cf.* Concurring opinion of Alberto Pérez Pérez, *Case of Gonzales Lluy et al. v. Ecuador.* Preliminary objections, merits, reparations and costs. Judgment of September 1, 2015 [↑](#footnote-ref-72)
73. Article 45 of the OAS Charter: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: […] (b)) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; (c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws. [↑](#footnote-ref-73)
74. Article 46 of the OAS Charter: “The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal. [↑](#footnote-ref-74)
75. Article 34(g) of the OAS Charter: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals*: […] (g)* Fair wages, employment opportunities, and acceptable working conditions for all.” [↑](#footnote-ref-75)
76. Para. 155. [↑](#footnote-ref-76)
77. *Idem*. [↑](#footnote-ref-77)
78. Para. 161. [↑](#footnote-ref-78)
79. Hereinafter, the Protocol. [↑](#footnote-ref-79)
80. *Supra*, footnote 69. [↑](#footnote-ref-80)
81. Art. 1: “Obligation to Adopt Measures. The States Parties to this Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this Protocol.”

    Art. 4: “Inadmissibility of Restrictions. A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.” [↑](#footnote-ref-81)
82. Art. 2: “Obligation to Enact Domestic Legislation. If the exercise of the rights set forth in this Protocol is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Protocol, such legislative or other measures as may be necessary for making those rights a reality.”

    Art. 5: “Scope of Restrictions and Limitations. The State Parties may establish restrictions and limitations on the enjoyment and exercise of the rights established herein by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights.”

    Art. 19(6): “Means of Protection. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.” [↑](#footnote-ref-82)
83. Art. 3: “Obligation of non-discrimination. The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.” [↑](#footnote-ref-83)
84. Art. 19(1): “Means of Protection. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.” [↑](#footnote-ref-84)
85. Art. 19: “Means of Protection. 1. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.”

    2. All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights.

    3. The Secretary General of the Organization of American States shall also transmit to the specialized organizations of the inter-American system of which the States Parties to the present Protocol are members, copies or pertinent portions of the reports submitted, insofar as they relate to matters within the purview of those organizations, as established by their constituent instruments.

    4. The specialized organizations of the inter-American system may submit reports to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture relative to compliance with the provisions of the present Protocol in their fields of activity.

    5. The annual reports submitted to the General Assembly by the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture shall contain a summary of the information received from the States Parties to the present Protocol and the specialized organizations concerning the progressive measures adopted in order to ensure respect for the rights acknowledged in the Protocol itself and the general recommendations they consider to be appropriate in this respect.

    6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

    7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.

    8. The Councils and the Inter-American Commission on Human Rights, in discharging the functions conferred upon them in this article, shall take into account the progressive nature of the observance of the rights subject to protection by this Protocol.” [↑](#footnote-ref-85)
86. *Cf.* AG/RES. 2262 (XXXVII-O/07) of 05/06/2007. [↑](#footnote-ref-86)
87. Art. 8: “Trade Union Rights. 1. The States Parties shall ensure: (a) The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely.” [↑](#footnote-ref-87)
88. Art. 13: “Right to Education. 1 Everyone has the right to education.

    2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

    3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:

    a. Primary education should be compulsory and accessible to all without cost;

    b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

    c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;

    d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction;

    e. Programs of special education should be established for the handicapped, so as to provide special instruction and training to persons with physical disabilities or mental deficiencies.

    4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.

    5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties. [↑](#footnote-ref-88)
89. Supra, footnote 69. [↑](#footnote-ref-89)
90. *Supra*, Para. 73. [↑](#footnote-ref-90)
91. *Supra*, footnote 3. [↑](#footnote-ref-91)
92. *Supra*, footnote 4. [↑](#footnote-ref-92)
93. Adopted at the twenty-eight special session of the OAS General Assembly held in Lima, Peru, September 11, 2001. [↑](#footnote-ref-93)
94. Hereinafter, ISHR. [↑](#footnote-ref-94)
95. Supra, footnote 3. [↑](#footnote-ref-95)
96. Hereinafter, Article 24. [↑](#footnote-ref-96)
97. *Supra*, footnote 11. [↑](#footnote-ref-97)
98. Paras. 185 to 200. [↑](#footnote-ref-98)
99. Art. 31(4) of the Vienna Convention: “A special meaning shall be given to a term if it is established that the parties so intended.” [↑](#footnote-ref-99)
100. *Cf.* Diccionario de la Lengua Española, Real Academia Española, 2020. [↑](#footnote-ref-100)
101. “Scope of Restrictions. The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.” [↑](#footnote-ref-101)
102. Para. 16 of OC-6/86. [↑](#footnote-ref-102)
103. “The Court, at the request of a member state of the Organization, may provide that State with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.” [↑](#footnote-ref-103)
104. Para. 182. [↑](#footnote-ref-104)
105. Art. 44: ***“***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*.”* [↑](#footnote-ref-105)
106. “Rights of the Child. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” [↑](#footnote-ref-106)
107. *“*The State is responsible for the violation of the rights to life and of the child contained Articles 4(1) and 19, in relation to Article 1(1) of the American Convention on Human Rights, to the detriment of the sixty persons who died in the explosion of the fireworks factory of Santo Antônio de Jesus on December 11, 1998, referred to in paragraph 139 of this judgment, who included twenty children, according to paragraphs 115 to 139 of this judgment*.*” [↑](#footnote-ref-107)
108. “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. No one shall be arbitrarily deprived of his life. [↑](#footnote-ref-108)
109. Para. 75. [↑](#footnote-ref-109)
110. *Cf.* Concurring opinion of Judge Eduardo Vio Grossi, *Case of the Massacres of El Mozote and neighboring places v. El Salvador,* Judgment of October 25, 2012 *(Merits, reparations and costs),* Inter-American Court of Human Rights*,* and Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights*, Case of Artavia Murillo et al. (In Vitro fertilization) v. Costa Rica,* Judgment of November 28, 2012 *(Preliminary objections, merits, reparations and costs).* [↑](#footnote-ref-110)