

REQUEST FOR AN ADVISORY OPINION
BY THE GOVERNMENT OF THE REPUBLIC OF PANAMA

Panamá, April 28, 2014

The President
Inter-American Court of Human Rights
San José

The Government of the Republic of Panama, as a Member State of the Organization of American States and exercising the powers granted by Article 64 of the American Convention on Human Rights, respectfully addresses your Chambers in order to request an Advisory Opinion of the Inter-American Court of Human Rights on the interpretation and scope of Article 1(2) (paragraph 2 of Article 1) of the Convention, in relation to Articles 1(1) (Obligation to Respect Rights), Article 8 (Right to a Fair Trial – judicial guarantees), Article 11(2) (Right to Privacy), Article 13 (Freedom of Thought and Expression), Article 16 (Freedom of Association), Article 21 (Right to Property), Article 24 (Right to Equal Protection), Article 25 (Right to Judicial Protection), Article 29(b) (Restrictions regarding Interpretation – prohibition to restrict any right or freedom recognized by law or by international conventions), Article 30 (Scope of Restrictions), Article 44 (Right of persons or non-governmental entities to lodge petitions), Article 46 (Exhaustion of domestic remedies), and Article 62(3) (competence of the Court to interpret and to apply the Convention), all of the American Convention on Human Rights.

Pursuant to the provisions of Article 64 of the American Convention on Human Rights, the Government of the Republic of Panama conveys its request for an advisory opinion as follows:

I. PROVISIONS TO BE INTERPRETED

The main provision whose interpretation is requested is, specifically, the phrase in the second paragraph of Article 1 of the American Convention on Human Rights, which states:

“... 2. For the purposes of this Convention, “person” means every human being.”

Regarding this paragraph, the Advisory Opinion of the Court is required concerning:

- a) The scope and the protection of natural persons through legal entities or “legally-recognized non-governmental entities,” both for the exhaustion of domestic proceedings and for the lodging of complaints before the Inter-American Commission on Human Rights concerning the violation of human rights;
- b) The scope and the protection of the rights of legal entities or “legally-recognized non-governmental entities,” as such, given that they are instruments used by natural persons to achieve their legitimate purposes.

The Government of the Republic of Panama would also like to know whether or not Article 16 of the Convention, which recognizes the right of individuals to associate, is limited by this restriction disallowing the protection of associations that have been freely created by

natural persons as “legally-recognized non-governmental entities” in order to protect their rights expressed and implemented by means of legal entities created under the aegis of the right to associate.

The relevant part of Article 16 of the Convention establishes:

“1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”

Furthermore, an Advisory Opinion is requested on the interpretation of Article 1(2) of the Convention in light of Article 29 of the Convention which states:

“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;
- (b) 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;
- (c) Precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- (d) 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.”

An Advisory Opinion is also requested on the interpretation of Article 1(2) of the Convention in light of Article 30 of the Convention, which stipulates:

“Article 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.”

In light of these considerations, an Advisory Opinion is also requested on the protection of the human rights of natural persons through non-governmental organizations or legal entities, in relation to the following rights:

- a) To judicial protection and due process, under Article 8 of the Convention;
- b) To privacy under Article 11 of the Convention;
- c) To freedom of expression under Article 13 of the Convention;
- d) To property recognized by Article 21 of the Convention;
- e) To equality and non-discrimination under Articles 1(1) and 24 of the Convention.
- f) To the right to strike and to form federations and confederations under Article 8 of the Protocol of San Salvador of the American Convention on Human Rights.

II. CONSIDERATIONS THAT GIVE RISE TO THE REQUEST

The State cites the practice of the Inter-American Commission regarding the interpretation of Article 1(2) of the Convention and cites the two following passages, among others, taken from the pronouncements of the Commission:

[...] that the Preamble to the American Convention on Human Rights, as well as the provisions of Article 1(2) provide that “for the purposes of this Convention, ‘person’ means every human being,” and that, consequently, the system of natural persons [*sic*] and does not include legal entities [...]. Consequently, in the inter-American system, the right to property is a personal right. The Commission is empowered to vindicate the rights of an individual whose property is confiscated, but is not empowered with jurisdiction over the rights of legal entities, such as corporations or, as in this case, banking institutions (Report No. 10/91 of 22.II.1991, Banco de Lima – Peru considering paragraphs 1 and 2).

[...] in accordance with the second paragraph of the above norm [Article 1], the person protected by the Convention is ‘every human being’ [...]. Consequently, the Commission considers that the Convention grants its protection to physical or natural persons, excluding legal entities or juridical persons from its field of application, inasmuch as the latter are legal fictions and do not enjoy real existence in material terms (Report No. 39/99 of 11.III.1999, Mevopal, S.A.-Argentina, para. 17).

These two paragraphs appear to signify that, since legal entities are legal fictions, they are not eligible to have rights of their own, but rather the rights belong to the persons who are members of the constituent bodies of the legal entity.

Since this is an issue that has given rise to concerns among the States and that, to date, the only reference is the opinion of the Commission, the Panamanian State considers that the time has come to consult the position of the Inter-American Court of Human Right on the issue.

III. SPECIFIC QUESTIONS ON WHICH THE OPINION OF THE COURT IS SOUGHT

The State hereby formally requests the Inter-American Court to respond to the following specific questions in an Advisory Opinion:

1. Does the second paragraph of Article 1 of the American Convention on Human Rights restrict the inter-American protection of human rights to natural persons and exclude legal entities from the Convention’s sphere of protection?
2. Can Article 1(2) of the Convention also protect the rights of legal entities such as cooperatives, trade unions, associations and companies, inasmuch as they are composed of natural persons associated in these entities?
3. Are legal entities able to have recourse to the proceedings of the domestic jurisdiction and exhaust the remedies of the domestic jurisdiction in defense of the rights of the natural persons who are members of those legal entities?
4. Which human rights can be recognized to legal or collective (non-governmental) entities under the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and its Protocols, and complementary international instruments?
5. Under the American Convention, in addition to natural persons, do legal entities composed of human beings have the rights to freedom of association of Article 16, to privacy of Article 11, to freedom of expression of Article 13, to property of Article 21, to judicial guarantees, due process, and the protection of their rights of Articles 8

and 25, and to equality and non-discrimination of Articles 1 and 24, all of the American Convention?

6. Is a corporation or private company, a cooperative, a civil society organization or commercial company, a trade union (legal entity), a communications medium (legal entity), or an indigenous organization (legal entity), in defense of its rights and/or of its members, able to exhaust the remedies of the domestic jurisdiction and have recourse to the Inter-American Commission on Human Rights on behalf of its members (natural persons associated in, or owners of, the entity or corporation), or must each member or shareholder do so in his or her capacity as a natural person?
7. If a legal entity, in defense of its rights and of the rights of its members (natural persons associated in, or shareholders of, the entity), has recourse to the domestic jurisdiction and exhausts its jurisdictional proceedings, are its members or shareholders able to resort directly to the international jurisdiction of the Inter-American Commission in defense of their rights as natural persons that have been infringed?
8. Under the American Convention on Human Rights, must natural persons exhaust the remedies of the domestic jurisdiction themselves in order to have recourse to the Inter-American Commission on Human Rights in defense of their human rights, or can the legal entities in which they participate do on their behalf?