

The case "Artavia Murillo v. Costa Rica" on the conventionality control theory. Debate on the legalization of abortion in Argentina¹

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Summary: I. Introduction.- II. Possible implications of the case "Artavia Murillo vs. Costa Rica" .- III. The scope of conventionality control.- IV. The control of conventionality, the case "Artavia Murillo", and the debate on the legalization of abortion in Argentina.- V. Conclusions.

I. Introduction

Recently, Argentina was the protagonist of a profound debate on the possible legalization of abortion. Different arguments were developed in the National Congress, following a bill presented in the Chamber of Deputies³. This bill sought to legalize abortion until week 14th of gestation⁴, and included extensive grounds of origin beyond that week ⁵. The proposal obtained a half sanction in the Chamber of Deputies, but was later rejected by the Chamber of Senators. Had it prospered, it would have substantially modified the protection of the right to life that is currently in force in Argentine legislation. There are numerous approaches from which to contribute to this debate; however, in this article we will analyse one in particular: the scope and implications of the jurisprudence of the Inter-American Court of Human Rights, in particular of the case "Artavia Murillo vs. Costa Rica"⁶, in light of the conventionality control theory.

II. Possible implications of the case "Artavia Murillo vs. Costa Rica"

In 2012, the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court") issued an opinion on the scope of art. 4.1 of the American Convention on Human Rights (hereinafter "ACHR" or the "Convention"), in resolving a case related to the practice of In Vitro Fertilization (hereinafter IVF). In the case of "Artavia Murillo v. Costa Rica", the Inter-American Court decided to condemn the State of Costa Rica for prohibiting IVF. Costa Rica had based this prohibition mainly on the very high rate of destruction and loss of

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³ The project dealt with file 230-D-2018

⁴ Art. 1st of the project proposes: "Every woman has the right to decide voluntarily the interruption of her pregnancy during the first fourteen weeks of the gestational process".

⁵ Beyond the term of week 14, abortion is legalized as "right" in the following cases: "1. If the pregnancy was the product of a violation, with the only requirement and the sworn statement of the person before the Intervening health professional 2. If life or physical, mental or social health of the woman is at risk, considered in the terms of integral health as a human right 3. If there are serious fetal malformations".

⁶ I / A Court HR, "Case of Artavia Murillo et al. (In vitro fertilization) vs. Costa Rica, Preliminary Exceptions, Merits, Reparations and Costs", Judgment of November 28, 2012. Series C no. 257. http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf.

human embryos that that kind of procedures imply⁷, since its national legislation recognized the human embryo as a person, holder of the right to life from the moment of the conception⁸. Coincidentally, the ACHR also recognizes that the protection of the right to life begins at that moment, since art. 4.1 provides: "Everyone 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 may be arbitrarily deprived of life." However, the Inter-American Court, when interpreting art. 4.1 concluded that the embryo cannot be understood as a person; that the conception begins with the implantation of the embryo in the maternal uterus (not at the time of fertilization of the human ovum); and that the words "in general" would allow exceptions to the life of the unborn, since the protection of the right to life would not be an absolute duty, but a gradual and incremental duty according to their level of development⁹. In this way, the Inter-American Court ordered Costa Rica to legalize in vitro reproduction and to include it in its public health programs and treatments.¹⁰

III. The scope of control of conventionality

Without prejudice of the analysis that can be made in relation to the material content of the judgment of the Inter-American Court, its arguments and its conclusions, here we will evaluate the influence that this ruling could have on the debate on the legalization of abortion in Argentina, and, if appropriate, its eventual binding force. This objective necessarily leads to a brief analysis of the so-called control of conventionality and its development in our country, since it is precisely that doctrine that seeks to establish what is the scope that should be given to the jurisprudence of the Inter-American Court.

III.1. Control of conventionality in the Inter-American Court of Human Rights:

Control of conventionality could be defined as that examination of compatibility between domestic legal norms and the American Convention on Human Rights. Following Ferrer Mac-Gregor, there are two types of conventionality control: one of a concentrated nature, exercised by the Inter-American Court in international headquarters, and another of

⁷ IACHR, Report no. 25/04, Petition 12.361 (Admissibility), Ana Victoria Sánchez Villalobos et al. Costa Rica, March 11 (2004), para. 2^o, 17 and 30.

⁸ Code of Children and Adolescents of Costa Rica, art. 2^o "For the purposes of this Code, a child shall be considered a person from the time of conception up to twelve years of age (...), and article 12." The minor has the right to life from the moment of conception."

⁹ I / A Court HR, " Caso Artavia ... ", paragraph 264.

¹⁰ According to operative paragraphs 2 and 4 of the Judgment that provide: (2) " The State must adopt, as quickly as possible, the appropriate measures to render the prohibition of practicing IVF ineffective and for people who wish to use this technique of assisted reproduction to do so without encountering obstacles to the exercise of the rights that were found violated in This Judgment" [4] "The State must include the availability of IVF within its programs and treatment of infertility in its health care, in accordance with the duty of guarantee with respect to the principle of non-discrimination". I / A Court HR, "Caso Artavia", para. 264.

a diffuse nature, exercised by national judges in internal headquarters.¹¹ The first arises from a power expressly recognized by the ACHR to the Inter-American Court in its art. 62.3 which provides "The Court has jurisdiction to hear any case relating to the interpretation and application of the provisions of this Convention submitted to it, provided that the State Parties in the case have recognized or recognized such power (...)" That is to say, the Inter-American Court has, by conventional mandate, the faculty to make an analysis of the compatibility of norms, acts or omissions, that could have violated rights recognized by the ACHR, and that have not been properly repaired domestically, making the State internationally liable. In this sense, Sergio García Ramírez affirmed that "if the constitutional courts control the 'constitutionality', the international human rights tribunal decides on the 'conventionality' of these acts".¹² The second type of conventionality control, the diffusive control, does not arise from the ACHR text, but is a judicial creation of the IHR Court, which was mentioned for the first time in the case "Almonacid Arellano v. Chile": "The Court is aware that internal judges and courts are subject to the rule of law and, therefore, are obliged to apply the provisions in force of the legal system, but when a State has ratified an international treaty such as the American Convention, their judges, as part of the State apparatus, are also subject to it, which obliges them to ensure that the effects of the provisions of the Convention are not diminished by the application of laws contrary to their object and purpose, and that from the beginning, they lack of legal effects, in other words, the Judicial Branch must exercise a kind of 'conventionality control' between the internal legal norms applicable in the specific case and the American Convention on Human Rights ... ". They also stated that: "*In this task, the Judiciary must take into account not only the treaty, but also the interpretation that the Inter-American Court, the ultimate interpreter of the American Convention, has made*".¹³ As can be seen from the transcribed quote, the IDH Court not only gives the control of conventionality a different scope, urging national judges to exercise a kind of diffuse control of conventionality, but also understands that said control of the rules must be carried out both in relation to the text of the Convention and in relation to the interpretation of said texts made by the Inter-American Court.

This would imply, as Ferrer Mac-Gregor puts it, to grant a "regulatory force of a conventional type, which extends to the case law criteria issued by the international body that interprets the rules".¹⁴ This interpretation of the IACHR Court has led to numerous discussions regarding the binding force that the judgments of this international tribunal would have for those countries that have not been part of the specific case. In the case of the Argentine Republic, this discussion has acquired its own nuances, provided mainly by the

¹¹ FERRER MC. GREGOR, Eduardo, "The diffuse Control of Conventionality in the Constitutional State", Virtual Legal Library of the Institute of Legal Research of the UNAM, p. 173 [www.juridicas.unam.mx].

¹² GARCÍA RAMÍREZ, Sergio. Concurring opinion in the "Tibi vs. Ecuador case", Judgment of September 7, 2004, para. 3^o.

¹³ I / A Court HR, "Case of Almonacid Arellano et al. V. Chile". Judgment of September 26, 2006 (Preliminary Objections, Merits, Reparations, and Costs), para. 124.

¹⁴ FERRER MC. GREGOR, Eduardo, "The Diffuse Control of Conventionality in the Constitutional State", Virtual Legal Library of the Institute of Legal Research of the UNAM, p. 176 [www.juridicas.unam.mx].

interpretation that has been given to art. 75, inc. 22 of the CN, which incorporates several international human rights treaties, including the ACHR, with a constitutional hierarchy.

III.2. Control of conventionality in the Argentine Republic:

The constitutional reform of 1994 recognized the constitutional hierarchy of some human rights treaties, among which is the ACHR, clarifying that said treaties "in the conditions of their validity, have a constitutional hierarchy, do not abolish any article of the first part of this Constitution and must be understood as complementary to the rights and guarantees recognized by it ". This incorporation of international treaties with constitutional hierarchy make up what Bidart Campos called "federal constitutional block",¹⁵ which involved a modification of the so-called constitutional control, since it considerably broadened the range of clauses and rights against which domestic legislation should be adapted. It could be said, in this sense, that the control of conventionality that the IACHR Court began asking of local judges in 2006 with the case "Almonacid Arellano and others vs. Chile", existed already in Argentina by a constitutional mandate as of 1994. This is because the control of constitutionality necessarily implies the consideration of those international treaties with constitutional hierarchy. However, although it is clear that when the constitutional review is carried out, the content of the treaties with a constitutional hierarchy must be considered, it does not follow that the interpretation of these treaties by the international control bodies should be considered, like the IACHR.

The international human rights treaties with constitutional hierarchy are in force "in the conditions of their validity". This meant, for some, that only the reservations and interpretative declarations that make up the treaty are fulfilled¹⁶, and for others, that interpretations that have the same names for¹⁷ are also included. It also discusses "this last case" if the interpretations are made in the case of an Argentine State when dealing with a specific case, or if the general jurisprudence of the international body in question is taken into account¹⁸. It is an international treaty that has been signed and ratified by virtue of the principle *pacta sunt servanda*¹⁹, but in the case of the Argentine State, before entering into force, the treaty must go through different stages that guarantee that the State will bind

¹⁵ BIDART CAMPOS, Germán J., "Compendium of Constitutional Law", Ed. Ediar, Buenos Aires, 2004, p. 25.

¹⁶ BADENI, Gregorio, "The 'Simon Case' and constitutional supremacy", LA LEY, 2005-D-639.

¹⁷ The Supreme Court of Justice of the Nation in the case "Girolodi" (1995) maintained that the phrase "in the conditions of its validity" refers to "as the aforementioned Convention (ACHR) effectively governs in the international arena. and particularly considering its effective jurisprudential application by the competent international tribunals for its interpretation and application "(SC, Judgment of April 7, 1995, paragraph 11, Judgment 318: 554). This position has been accompanied in the local doctrine by EKMEKDJIAN, Miguel A., "Treaty of Constitutional Law", Ed. Depalma, Buenos Aires, 1997, t. IV, p. 623; and PIZZOLO, Calogero "Legal Validity in the Argentine Legal System, the Federal Constitutionality Block", LA LAY 2006-D, 1023, among others.

¹⁸ ÁBALOS, María Gabriela, "The role of the Supreme Court of Justice of Argentina in relation to the control of conventionality and its impact on domestic law", Ibero-American Journal of Constitutional Procedural Law, no. 19, January-June 2013, p. 253.

¹⁹ Recepted by the Vienna Convention on the Law of Treaties in its art. 26, which provides that "Every treaty in force binds the parties and must be fulfilled by them in good faith."

itself under the terms of said instrument (negotiation, signature and ratification). In this sense, the text expressed in the ACHR, with its reservations and interpretative declarations has a constitutional hierarchy, and domestic law cannot be invoked as a justification for its non-compliance²⁰. However, regarding the value of case law of the Inter-American Court, it is necessary to make certain distinctions. III.2.a. Ruings in which Argentina has been a party: Argentina has enabled the Inter-American Court to hear in any case related to the interpretation and application of the provisions of the ACHR (Article 62.3)²¹, and committed to comply with the decision of the Court (Article 68.1)²². This means, without a doubt, that it has been part of a process. This has been confirmed by the Supreme Court of Argentina (CS) over the last few years²³, specifying recently the scope of this obligation in the case "Fontevicchia"²⁴, where the expression "in principle" is used to compulsory rule. There, it expressly stated: "the judgments of the Inter-American Court, issued in the contentious proceedings against the Argentine State, in principle, are of mandatory compliance (Article 68.1, ACHR)"²⁵. The Court reaches this conclusion based on a harmonious interpretation of art. 75, subsection 22 and of art. 27 of the CN.

As already stated, art. 75, subsection 22 incorporates with the constitutional hierarchy the ACHR. This article also states that the treaties complement and do not abolish the first part of the National Constitution. Art. 27--which is part of said first part of the National Constitution--provides that the treaties concluded by Argentina must be in conformity with "the principles of public law established in the National Constitution"²⁶. Based on the interpretation of these provisions, the CS raises the following arguments in the aforementioned ruling: (i) the 1994 constituent could only give constitutional supremacy to some international treaties without being able to repeal any article of the first 35 - within which is the art. 27 that establishes a supremacy of the Constitution - therefore, the only way to interpret international treaties is in a complementary way, and in case of eventual conflict, the Constitution prevails²⁷; (ii) the constituent would have enshrined in art. 27 a

²⁰ According to art. 27 Vienna Convention on the Law of Treaties 1969.

²¹ Art. 62.3. The Court has jurisdiction to hear any case relating to the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties in the case have recognized or recognized such competence or by special declaration as indicated in subsections previous pray by special convention.

²² Art. 68.1. The States Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties.

²³ The first sentence that the Argentine State received from the IDH Court fell to "Cantos" of 2002, however, the Argentine Court decided not to comply with the provisions of the Inter-American Court based on internal regulations. In "Esposito, Miguel A.", of the year 2004, it changes its criteria, stating that the decisions of the international tribunal are binding for the Argentine State. In the case "Right, René Jesús" of 2011, it confirms the obligatory nature of the rulings issued by the IHR Court when Argentina has been a party. It is observed, then, that according to the majority position of the Supreme Court, when the inter-American tribunal resolves a specific case where Argentina has been a party, its decision is binding. ÁBALOS, María Gabriela, "Control of constitutionality and conventionality on an inter-American decision", Supplement of Constitutional Law, LAW, March 2017.

²⁴ "Ministry of Foreign Affairs and **Worship s / report (?)** sentence handed down in the case 'Fontevicchia y D'Amico vs. Argentina' for the Inter-American Court of Human Rights. "

²⁵ Ibidem, consid. 6th.

²⁶ Ibidem, concurring vote Judge Rosatti, consid. 5th

²⁷ Ibidem, consid. 19.

sphere of sovereign reserve, delimited by the principles of public law established by the Constitution, to which international treaties must be adjusted and with which they must comply²⁸; (iii) it would be possible to carry out, at the national level, a "constitutional control" of the actions of international bodies and tribunals, since, pursuant to the provisions of art. 27 of the CN, no sentence of an international tribunal can contradict the principles of public law established by said Constitution²⁹; (iv) the treaties bind Argentina in the exact terms in which it made its commitment, so that, if the international agencies subsequently create new obligations that were not assumed at the time of signing the treaty, the Argentine State has no obligation of compliance³⁰. In this way, it can be concluded that the rulings of the Inter-American Court are only binding when (i) Argentina has been part of the process, (ii) the judgments of the international tribunal comply with the commitments expressly assumed in international treaties, and (iii) are in accordance with the principles of public law established in the CN.

III.2.b. Rulings in which Argentina has not been part of:

In those cases, in which Argentina has not been part of the specific case, the strength of the precedent jurisprudential seems to be further diluted. As mentioned above, art. 68.1 of the ACHR provides that "The States Parties to the Convention undertake to comply with the decision of the Court in any case in which they are parties." *A contrario sensu* from the text of the Convention, it follows that there is no commitment by the State to comply with those decisions of the Inter-American Court when it was not a party, that is, with respect to the general case law of the Inter-American Court³¹. However, the CS has recognized the case law of the Inter-American Court as very important as a guide for interpretation.

In 1995, the "Giroldi" case was decided, in which the Court ruled that the ACHR is in force effectively in the international sphere and particularly considers its effective application by the competent international tribunals for its interpretation and application, and that the case law of international tribunals (...) should serve as a guide for the interpretation of conventional precepts.³² Although it would seem that the SC would be inclined towards a doctrine that recognizes the binding force of international case law, it should be noted that the language used by the Court is not imperative. The highest court in Argentina says that the case law of international tribunals should be "interpretation guide", not a binding mandate. Similar language continued to be used by the CS, later, in the cases "Mazzeo", and "Videla". In "Mazzeo" the Court cites what was said by the Inter-American Court in the case "Almonacid" when saying that "the Judicial Power must take into account not only the treaty, but also the interpretation that the Inter-American Court has made as the ultimate

²⁸ Ibidem, consid. 16.

²⁹ In his concurring vote, Judge Rosatti argued that it is not possible to automatically prevail, without scrutiny, international law -be it a normative or jurisprudential source- on the constitutional order. Ibidem, consid. 5th

³⁰ Ibidem, consid. 6th, 7th, 11th and 12th.

³¹ ÁBALOS, María Gabriela, "The role of the Supreme Court of Justice of Argentina in relation to the control of conventionality and its impact on domestic law," Ibero-American Journal of Constitutional Procedural Law, 19, January-June 2013, p. 262.

³² CS, judgment of April 7, 1995, consid. 11, Judgments 318: 554.

interpreter of the American Convention.³³ In addition, in the case "Videla" (2010) the Court states that "for the purpose of safeguarding the obligations assumed by the Argentine State in the inter-American system for the protection of human rights, the case law of the Inter-American Court is an unavoidable guideline of interpretation for Argentine constituted powers within their jurisdiction".³⁴ It is clear that the general case law of the IACHR Court constitutes, in the opinion of the Argentine Court, a pattern of interpretation of fundamental importance, but it lacks binding force, so that a departure from the criteria that arise from it should not imply international liability.

III.3. Brief conclusions on the control of conventionality:

After this brief review, it can be concluded that: 1. The Argentine State is obliged to comply with the express provisions of the American Convention on Human Rights. 2. The Argentine State is obliged to comply with the judgments of the Inter-American Court when it has been a party of the procedure, as long as the ruling is in accordance with the commitments expressly assumed in international treaties and does not contradict the principles of public law established by the Constitution. 3. The Argentine State is not obliged to follow the case law of the Inter-American Court when it has not been part of the specific case, without prejudice of the fact that said case law constitutes a valuable guideline for interpretation.

IV. The control of conventionality, the case "Artavia Murillo", and the debate on the legalization of abortion in Argentina

Considering the scope of the case law of the Inter-American Court in the Argentine Republic, the possible implications of the case "Artavia Murillo" will be analyzed below, and in particular the interpretation of art. 4.1 of the ACHR contained there- regarding the debate on the legalization of abortion. The art. 4.1 of the ACHR provides: "Everyone has the right to have their life respected, this right shall be protected by law and, in general, from the moment of conception, no one may be arbitrarily deprived of life." As stated at the beginning of this article, the Inter-American Court understood - when interpreting art. 4.1- that the embryo cannot be understood as a person; that conception begins with the implantation of the embryo in the maternal uterus (not at the time of fertilization of the human ovum); and that the words "in general" would allow exceptions to the life of the unborn, since the protection of the right to life would not be an absolute duty, but a gradual and incremental duty according to their level of development.³⁵ In order to analyse the possible scope of these conclusions, the following arguments will be developed: 1. Argentina was not a party to the "Artavia Murillo" case, and therefore it is not binding. 2. "Artavia Murillo" is not valid as a guideline of interpretation in the debate on the legalization of abortion, because: (a) it is about different factual platforms, (b) there is no uniform case law in the Inter-American Court. 3. Argentina is obliged to comply with the

³³ CS, "Mazzeo, Julio L. and others s / rec. Of cassation and unconstitutionality." Consid. 21.

³⁴ CS, "Videla, Jorge R. and Massera, Emilio E. s / appeal of cassation". Consid. 8th

³⁵ I / A Court HR, "Artavia Case ...", para., 264.

express text of the ACHR which: (a) provides for an international duty to protect life, (b) does not provide an international duty to legalize abortion.

IV.1. *Artavia Murillo* is not binding because the Argentine State was not part of the analysis described above, from which it was concluded that no judgment of the Inter-American Court is binding if Argentina has not been a party to the procedure, it is clear from the evidence that the case "*Artavia Murillo vs. Costa Rica*" does not obligate the Argentine State. However, this conclusion becomes even stronger in the case under analysis, because it is the Court itself that limited the effects of some of its conclusions to the specific case. Such is the case, eg. regarding the legal status of the embryo. The denial of life in the embryo sustained by five of the six votes, cannot configure a criterion to be followed in subsequent cases, since two of the five votes restrict the assertion only for the specific case.³⁶

In fact, the Court issued a judgment by five votes in favor and one in dissidence, with the majority of the first vote being composed by the judges Leonardo A. Franco, Margarette May Macaulay and Alberto Pérez Pérez; the concurrent vote by President Diego García-Sayán (to which Rhadys Abreu Blondet adhered); and the dissident vote by Judge Eduardo Vio Grossi. Expressly, the concurring vote of President Diego García-Sayán (to which Rhadys Abreu Blondet adhered), maintains that "to the extent that the State has based a good part of its allegations on a certain interpretation of Article 4.1 of the American Convention on Human Rights, the Court has proceeded in this sentence to interpret this rule for purposes of this case"³⁷ (outstanding own), so that the definitions about the legal status of the embryo are limited to the specific dispute that the Court had to resolve in "*Artavia*." And although this conclusion does not detract from the operative part (with respect to the condemned State), it does detract from the precedent of case law, since these are considerations that have less than four adhesions in a court composed of six members.³⁸ This same conclusion has reached part of the national jurisprudence, which has expressly rejected the application of "*Artavia Murillo*" in cases brought to its attention. So, for example, the Supreme Court of Justice of Mendoza held that, applying the "*Artavia Murillo*" judgment to other cases, "would imply (...) to attribute to the judgment more scope than that which the members of the IACHR have foreseen (...) because only half of its members vote without clarifying that its scope is limited exclusively to that specific case".³⁹

IV.2. *Artavia Murillo* is not valid as a guideline of interpretation: As noted above, the SC understands that the case law of the Inter-American Court is an invaluable guideline of interpretation, so it is questionable whether the judgment of the case "*Artavia*" can be considered as a guideline of interpretation applicable to the debate on the legalization of

³⁶ PALAZZO, Eugenio L., "International jurisprudence as a source of law, reflections from the '*Artavia Murillo*' case (in vitro fertilization)", *THE LAW* - DJ 07/08/2013, 5.

³⁷ I / A Court HR, "Caso *Artavia* ...". Concurring opinion of Judge Diego García-Sayán, paragraph 8th

³⁸ PALAZZO, Eugenio L., "International jurisprudence as a source of law, Reflections on the case of '*Artavia Murillo*' (in vitro fertilization)", *LA LAY* - DJ 07/08/2013, 5.

³⁹ SCJM, Cause 110,803, "L., EH and ot.", In J. 221.605 / 50.235 "L., EHC OSEP for action of amparo for appeal s / inc.". Amplifying vote of Dr. Alejandro Pérez Hualde, apart. 95.

abortion. The answer to this question is no due to the fact that: a) The facts are different. b) There is no uniform case law in the Court itself. a) Different factual platform.

For a judicial precedent to be applicable as a valid guideline for resolving future disputes, there needs to be similar cases in the precedent and the case to be resolved. And while the idea of obligatory judicial precedent is typical of Anglo-Saxon common law - where, by virtue of the doctrine of *stare decisis*⁴⁰ judges are obliged to resolve those cases presented to them in accordance with the solutions of judgments handed down previously in similar cases -⁴¹ the truth is that similar cases tend to be similarly solved in almost all jurisdictions or legal systems⁴², including continental law. That is, for a precedent to have applicability, the analogy is crucial, since in the absence of such an analogy, the precedent would not be applied to the new case that has different relevant elements⁴³. This need for analogy is intimately related to the concept of "holding" or of *ratio decidendi*: "rule of law that constitutes the direct basis of the decision on the specific facts of the case"⁴⁴, since only that which is the reason for deciding, "the narrow rule necessary to resolve the dispute arising from a specific factual situation"⁴⁵, has precedent force. The same does not happen with the *obiter dictum*, what is said by the court in passing, those "statements and arguments that are found in the motivation of the sentence but that, despite its usefulness for the understanding of the decision and its reasons, do not constitute an integral part of the legal basis of the decision"⁴⁶, and therefore, have no precedent value.

Given that the holding or *ratio decidendi* are limited by the facts to which they apply, "only when in a future case there are relevant facts analogous to those of the preceding one, does their ratio / holding obligate"⁴⁷. That is why, in order to assess whether the resolution in the case "Artavia Murillo" can be considered a valid precedent, or as a valid interpretation guideline, one has to first analyze if its facts have similarities with the facts that are discussed in the legislative debate on the legalization of abortion. The first conclusion that emerges clearly is that "Artavia Murillo" is not a case on legalization of abortion, but on the absolute prohibition of IVF. What was discussed was whether the prohibition of IVF by the

⁴⁰ The full name of the doctrine is *stare decisis et quia non moveré*, which means, in flexible translation, "to be determined and not to disturb what has already been established, what is still". Conf. LEGARRE, Santiago - RIVERA, Julio C., "Nature and Dimensions of the Stare Decisis", Chilean Magazine of Law, 1, vol. 33, ps. 109-124 [2006].

⁴¹ Ibidem.

⁴² LEGARRE, Santiago - RIVERA, Julio C., "Nature and Dimensions of the Stare Decisis", Chilean Magazine of Law, 1, vol. 33, ps. 109-124 [2006]. Quote from CROSS, Rupert - HARRIS, Jim W. (1991), "Precedent in English Law," Clarendon Press, Oxford, 4th ed., P. 3.

⁴³ LEGARRE, Santiago - RIVERA, Julio C., "Nature and Dimensions of the Stare Decisis", Chilean Magazine of Law, 1, vol. 33, ps. 109-124 [2006].

⁴⁴ TARUFFO, M. (2007), "precedent and jurisprudence", precedent. Legal Magazine, p. 91. <https://doi.org/10.18046/prec.v0.1434>.

⁴⁵ CLARK, David S. - ANSAY, Tugrul (coord.) (2002), "Introduction to the Law of the United States (The Hague, Kluwer)", cited by Santiago LEGARRE and Julio C. RIVERA in Nature and Dimensions of the Stare Decisis, Chilean Journal of Law, 1, vol. 33, ps. 109-124 [2006], p. 120.

⁴⁶ TARUFFO, M. (2007), "precedent and jurisprudence", precedent. Legal Magazine, p. 91. <https://doi.org/10.18046/prec.v0.1434>.

⁴⁷ LEGARRE, Santiago - RIVERA, Julio C., "Nature and Dimensions of the Stare Decisis", Chilean Journal of Law, 1, vol. 33, ps. 109-124 [2006], p. 122

State of Costa Rica was justified under art. 4.1 of the ACHR, t-as understood by the Constitutional Chamber of Costa Rica. On the contrary, the legislative project that is discussed in the Argentine Congress has the purpose of legalizing the practice of abortion during the first fourteen weeks of the gestational process, and beyond that period, under certain cases⁴⁸. Obviously, it is not possible to compare the discussion on the legalization and authorization of in vitro fertilization which - even considering the risks that this practice poses for embryos - is aimed at the search for a new life, with the legalization of abortion, which supposes the destruction of a human being in the mother's womb. Secondly, it should be noted that the legislation regarding IVF in Costa Rica is totally different from that of the Argentine State. Costa Rica prohibited the practice of in vitro fertilization in all its forms, whereas in Argentina such practice is legal since 2013⁴⁹. This means s that, even if an IVF case was the one being discussed, substantial differences would also be found in the facts of the case. Thirdly, it must be considered that everything said in the judgment by the Court, in that the embryo cannot be understood as a person for the purposes of art. 4.1 of CADH, explicitly refers to the embryo conceived in vitro before implantation, but not of the embryo already implanted .⁵⁰ In this sense, without prejudice to the criticisms that can be made to the arguments on the basis of which the Court reaches such conclusion, the fact is that it is the Court itself that explicitly recognizes that the implanted embryo is a person for the purposes of the art. 4.1 of the ACHR, and therefore, holder of the right to life. This forces us to conclude that the Convention protects the implanted embryo against any threat or danger it may suffer from that moment, threats that would be configured in practically all cases of abortion contemplated in the legislative project under analysis. Finally, regarding the affirmation of the Inter-American Court in the sense that the protection of the right to life is "gradual and incremental according to its development"⁵¹, this analysis is not part of the *ratio decidendi* of the sentence, but of its *obiter dictum*, since there is no relation between this doctrine developed by the Court, with the object of the petition, which was about the legalization of in vitro fertilization. In this sense, it is useful to bring up the issue of judicial minimalism, a position that Cass Sunstein proposes to the courts when they have to resolve issues that are extremely debated in society⁵².

The Inter-American Court, having few cases arrived at its understanding, seems to want to solve everything in only one, for which, its sentences contain abundant arguments that do not make the central issue to be decided.

⁴⁸ When the pregnancy was the product of a rape; when the woman's life or physical, mental or social health is at risk; or when there are serious fetal malformations. File 230-D-2018, arts. 1st and 3rd.

⁴⁹ See Law 26,862 of "Comprehensive access to medical-assistance procedures and techniques of medically assisted reproduction" regulated by dec. 956/2013.

⁵⁰ The Court interpreted that "the 'conception' in the sense of Article 4.1 takes place from the moment in which the embryo is implanted in the uterus, which is why prior to this event there would be no place for the application of art. 4th of the Convention. " I / A Court HR, "Caso Artavia ...", paragraph. 264.

⁵¹ "Artavia Case ...", para. 264.

⁵² SUNSTEIN, Cass R., "One Case at a Time, Judicial Minimalism in the Supreme Court," Harvard University Press, 2001.

Judicial minimalism, on the other hand, tries to restrict itself to the concrete case, rather than taking risk giving premature solutions on difficult issues.⁵³ The key to making it work is, according to Sunstein, judicial modesty.⁵⁴ That is why the doctrine developed by the Inter-American Court regarding the protection of the right to life is "gradual and incremental according to its development", cannot be considered as a guideline of interpretation valid for future controversies, and even less so, as a principle that is binding, since it had nothing to do with the underlying issue that was discussed in the specific case.

b) There is no uniform case law in the Inter-American Court. Therefore, what has been said by the Inter-American Court in the "Artavia" case cannot serve as a criterion of interpretation, because there is no uniform jurisprudence of that court that interprets the scope of the right to life in the sense expressed there. Following the analysis of the value of the precedent to solve future disputes, we find that, unlike what happens in the common law, where a single precedent constitutes a right and generates obligations, in civil law system, jurisprudence acquires certain importance "when a determinate solution is repeated over time and generates a custom".⁵⁵ However, this is not what has happened in terms of interpretation of art. 4.1 of the ACHR, with the scope given in the case "Artavia", where the Court, far from maintaining its own jurisprudence, introduces a radical change or break in its interpretation. In fact, the Court interpreted restrictively the scope of the right to life when stating that "the 'conception' in the sense of Article 4.1 takes place from the moment in which the embryo is implanted in the uterus, which is why before this event there would be no place for the application of Article 4 of the Convention"⁵⁶, and that therefore, "the embryo cannot be understood as a person for the purposes of Article 4.1 of the American Convention"⁵⁷. As highlighted by the dissenting opinion of Judge Vio Grossi, the consistent and uniform jurisprudence of the Inter-American Court, expressed up to that time in more than twelve cases⁵⁸, precisely stated the contrary, by recognizing the nature of the right of "every person ... to respect their life"⁵⁹, and rejecting restrictive approaches. He did so, for example, in the case of the "Street Children", he argued that "the right to life is a fundamental human right, the enjoyment of which is a prerequisite for the enjoyment of all other human rights. These rights are meaningless if they are not respected. Because of the

⁵³ SUNSTEIN, Cass R., "Testing Minimalism: A Reply," 104 Mich. L. Rev. 123 (2005), Available at: <http://repository.law.umich.edu/mlr/vol104/iss1/4>.

⁵⁴ SUNSTEIN, Cass R., "Incompletely Theorized Agreements," 103 Harv. L. Rev. 1733 (1995).

⁵⁵ LEGARRE, Santiago - RIVERA, Julio C., "Nature and Dimensions of the Stare Decisis", Chilean Magazine of Law, 1, vol. 33, ps. 109-124 [2006], p. 110.

⁵⁶ I / A Court HR, "Caso Artavia ...", para. 264.

⁵⁷ Ibidem.

⁵⁸ "Myrna Mack Chang Case", Judgment of November 25, 2003, Series C no. 101, para. 152; "Juan Humberto Sánchez Case", Judgment of June 7, 2003, Series C no. 99, paragraph. 110; "Case 19 Traders", Judgment of 05/07/2004, Series C no. 109, paras. 152-153; "Case of the Pueblo Bello Massacre", Judgment of 01/31/2006, Series C no. 140; "Case of the Sawhoyamaxa Indigenous Community", sentence of 03/29/2006, Series C no. 146, para. 150; "Baldeón García Case", Judgment of April 6, 2006, Series C no. 147, para. 82; "Case of the Massacres of Ituango", Judgment of 07/01/2006, Series C no. 148, para. 128; "Ximenes Lopes Case", Judgment of 04/07/2006, Series C no. 149, para. 124; "Case of Montero Aranguren et al. (Retén de Catia)", Judgment of 05/07/2006, Series C no. 150, para. 63; "Albán Cornejo et al. Case", Judgment of November 22, 2007, Series C no. 171, para. 117.

⁵⁹ I / A Court HR, "Caso Artavia ..." dissenting opinion judge Vio Grossi.

fundamental nature of the right to life, restrictive approaches to it are not admissible "⁶⁰. Also in the "Case of the Barrios Family vs. Venezuela", the Court held that "States have the obligation to guarantee the creation of the conditions that are required so that violations of that inalienable right do not occur"⁶¹ (own stand). And in the "Case of the Pueblo Bello Massacre vs. Colombia", he maintained that "compliance with the obligations imposed by Article 4 of the American Convention (...) not only presupposes that no person is arbitrarily deprived of his or her life. (negative obligation), but also, in light of its obligation to guarantee the full and free exercise of human rights, requires that States adopt all appropriate measures to protect and preserve the right to life (positive obligation) "⁶². It is observed that the Court's doctrine explicitly rejected restrictive approaches to the right to life, urging to adopt even positive measures to guarantee its maximum protection and prohibiting the deprivation of this right arbitrarily. In this context, the "Artavia" case involved a substantial change in the interpretation of the right to life, which cannot be considered as a criterion sustained over time, and therefore, as constant jurisprudence of the Inter-American Court.

IV.3: Argentina is obliged to comply with the express text of the ACHR. Finally, taking into account that the Argentine State has been obliged to comply with the express text of the treaty, it is important to analyze the normative content of the ACHR and other international treaties of human rights subscribed by Argentina, from which it can be seen that Argentina has an international duty to protect life, and lacks an international duty to legalize abortion. IV.3.a The ACHR foresees an international duty to protect life from conception: The American Convention on Human Rights prescribes: Art. 1.2 "For the purposes of this Convention, a person is every human being." Art. 4.1. "Every person has the right to have his life respected, this right will be protected by law and, in general, from the moment of conception, no one can be arbitrarily deprived of life." The joint analysis of both provisions shows that ownership of the right to life is recognized when only one condition is met, that is, when an individual of the human species is present, which occurs from the moment of the conception⁶³. The Convention, as can be seen, is not limited to simply recognizing the existence of the right to life, but has a very broad scope, even greater than that recognized in the rest of international human rights instruments. Indeed, the ACHR is the only one that has expressly established that the right to life must be protected before birth and from the moment of conception.⁶⁴ Therefore, the legislator cannot choose a

⁶⁰ Case of the "Children of the Streets (Villagrán Morales and Others)", Judgment of November 19, 1999, Series C no. 63, paragraph. 144.

⁶¹ "Case of the Barrios Family v. Venezuela, Merits, Reparations and Costs". Judgment of November 24, 2011. Series C no. 237, paragraph. 48.

⁶² "Case of the Pueblo Bello Massacre v. Colombia, Merits, Reparations and Costs." Judgment of 01/31/2006. Series C no. 140, paragraph. 120.

⁶³ Without prejudice to the abundant scientific literature on this subject, it should be noted that the National Academy of Medicine has expressly declared that "the unborn child, scientifically and biologically, is a human being whose existence begins at the moment of conception". <https://www.acamedbai.org.ar/declaraciones/02.php>.

⁶⁴ DE JESÚS, Ligia M. - OVIEDO ÁLVAREZ, Jorge A. - TOZZI, Piero A., "The case of Artavia Murillo and others vs. Costa Rica (in vitro fertilization): the redefinition of the right to life from conception , recognized in the American Convention "[online], Prudentia Iuris, 75, 2013, p. 137.

specific moment of human development to begin to grant this protection, since he is obliged to do so from the moment of conception.⁶⁵ Although, as already stated, the Inter-American Court interpreted the term "conception" as synonymous with "implantation"⁶⁶, excluding the protection of the embryo before the occurrence of said event, the truth is that the Court referred to only to embryos fertilized in vitro, but not to those fertilized in the mother's womb. But even if we wanted to extend this interpretation to all embryos (including embryos fertilized in the womb), the truth is that there is no doubt that the protection of the right to life takes place from the first moments of embryonic development, which practically excludes the possibility of admitting any assumption of abortion. Indeed, the mandate to protect life from the moment of conception "is based on the understanding that the right to life already existed at that time, otherwise there would be nothing to protect at that moment".⁶⁷

The Court in its jurisprudence has reaffirmed the scope of protection of the right to life before birth, referring to people not born as "children", "minors", "children" and "babies" in at least three cases⁶⁸, and induced abortions as "acts of barbarism"⁶⁹. The art. 4º also establishes that the right to life must be protected by law. This means, as the Court correctly held, the need to adopt concrete measures to make it effective⁷⁰. Also, it is important to note that, as provided in art. 29 of the ACHR, the right to life recognized to every person from the moment of conception, cannot be suspended or snatched, even by means of restrictive interpretations from the organs of the Inter-American System of Human Rights.⁷¹ The art. 29 (a) of the ACHR, expressly provides that "no provision of this Convention may be construed as permitting any of the States Parties, groups or individuals, to suppress the enjoyment and exercise of the rights and freedoms recognized in the Convention or limit them to a greater extent than the one envisaged therein "or of" excluding other rights and guarantees that are inherent to the human being ". This is closely related to the *pro homine*

⁶⁵ PAÚL DÍAZ, Álvaro, "Status of the unborn in the American Convention: an exercise of interpretation", *Ius et Praxis*, 1, year 18, 2012, p. 68.

⁶⁶ I / A Court HR, "Caso Artavia ...", p. 264

⁶⁷ PAÚL DÍAZ, Álvaro, "Status of the unborn in the American Convention: an exercise of interpretation", *Ius et Praxis*, 1, year 18, 2012, p. 68.

⁶⁸ "Case of the Gómez Paquiyaury Brothers vs. Peru, Merits, Reparations and Costs". Judgment of 07/08/2004. Series C no. 110. Paragraph. 67 (x), 216 and note 62. "Case of the Miguel Castro Castro Prison v. Peru, Merits, Reparations and Costs". Judgment of November 25, 2006. Series C no. 160, para. 197 [57] and 292. "Case of Goiburú et al. V. Paraguay, Merits, Reparations and Costs". Judgment of September 22, 2006. Series C. no. 153., paragraph. 160 (b) (iii) and 161.

⁶⁹ "Case of the Dos Erres Massacre v. Guatemala, Preliminary Objection, Merits, Reparations and Costs". Judgment of November 24, 2009. Series C. no. 211, paragraph. 139.

⁷⁰ "Case of the Pueblo Bello Massacre v. Colombia, Merits, Reparations and Costs". Judgment of 01/31/2006. Series C no. 140, paragraph. 120.

⁷¹ DE JESÚS, Ligia M. - OVIEDO ÁLVAREZ, Jorge A. - TOZZI, Piero A., "The case of Artavia Murillo and others vs. Costa Rica (in vitro fertilization): the redefinition of the right to life from the conception, recognized in the American Convention "[online], *Prudentia Iuris*, 75, 2013, p. 140.

principle, which reaches the entire human rights system, and by virtue of which, in case of doubt, the interpretation that gives greater protection to the rights of the individual should prevail. In this regard, the Court has held that this principle "requires an extensive interpretation of the norms that consecrate them or that extend and restrictively restrict or restrict them"⁷². A correct application of this principle implies that any limitation to the right to life of the unborn should be extremely restrictive, and those interpretations that grant greater and better protection of life from conception should prevail over those that try to limit or condition it⁷³. For its part, the Convention on the Rights of the Child states in its Preamble that "the child, due to his lack of physical and mental maturity, needs special protection and care, including due legal protection, both before and after birth". This provision is an essential part of the text of the treaty, and therefore of mandatory compliance by States, by virtue of what is provided in art. 31.2 of the Vienna Convention on the Law of Treaties⁷⁴. Likewise, the Convention provides: Art. 1: [It is a child] "Every human being under the age of eighteen, unless under the law applicable to him, he has reached majority of age"; Art. 6.1. "The States Parties recognize that every child has the intrinsic right to life." It is important to note that, through the enactment of Law 23,849⁷⁵, the Argentine Republic approved the Convention and issued an interpretative declaration in which it affirms that "a child is understood to be every human being from the moment of conception and even eighteen years old". This declaration enjoys constitutional hierarchy attentive to the fact that, as already stated, art. 75, subsection. 22 of the Constitution granted such character to the treaties listed there, "in the conditions of its validity". These conditions of validity, according to the constituents, conform the extent to which the Argentine State has granted its consent. That is, the treaties are in force for Argentina only under the terms of the law that approves them and the reservations and interpretative declarations that are introduced at the time of the deposit by the Executive Branch⁷⁶. Thus, for the Argentine Republic, the protection of life begins at the moment of conception, which is the first international obligation assumed by the State.

IV.3.b. The ACHR does not foresee an international duty to legalize abortion. Finally, it should be noted that there is no criteria in International Law in general, nor in the Inter-American Human Rights System in particular, that could eventually lead to the conclusion of the existence of an obligation or duty of the Argentine State to legalize abortion. There is no

⁷² I / A Court HR. Enforceability of the Right to Rectification or Response (Articles 14.1, 1.1 and 2, American Convention on Human Rights). Advisory Opinion OC.7 / 86 of August 29, 1986. Series A no. 7, paragraph. 36.

⁷³ DE JESÚS, Ligia M. - OVIEDO ÁLVAREZ, Jorge A. - TOZZI, Piero A., "The case of Artavia Murillo and others vs. Costa Rica (in vitro fertilization): the redefinition of the right to life from the conception, recognized in the American Convention "[online], *Prudentia Iuris*, 75, 2013, p. 151.

⁷⁴ Vienna Convention on the Law of Treaties. Art. 31.2. For the purposes of the interpretation of a treaty, the context will include, in addition to the text, including its preamble and annexes ...

⁷⁵ Law 23.849 (Penalty: 09/27/1990; Promulgation: 16/10/1990; Publication BO : 10/22/1990).

⁷⁶ According to Rodolfo C. BARRA, constituent of the 1994 constitutional reform, cited by BIANCHI, Alberto B., in A reflection on the so-called "conventionality control", *LA LEY*, 2010-E, p. 426.

treaty ratified by Argentina that contains a right to abortion, or the obligation to provide it. Moreover, no international treaty [except for the Maputo Protocol, which applies only to some African countries⁷⁷], contains the word abortion. In the absence of international treaties, the IACHR mentions in the case "Artavia" - among other instruments - recommendations issued by the Committee for the Elimination of All Forms of Discrimination against Women (CEDAW Committee), which has interpreted that, in virtue of the principles of equality and non-discrimination, women's rights should prevail over the rights of the unborn⁷⁸; and highlighted their "concern about the potential antiabortion laws have to violate women's right to life and health (...) [and establishing] that the absolute prohibition of abortion, as well as its criminalization under certain circumstances, violates the provisions of the CEDAW"⁷⁹. However, it must be taken into account that the text of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) does not mention abortion in any of its parts, but rather protects the health of women during pregnancy⁸⁰. On the other hand, it should be remembered that the reports of the CEDAW Committee lack of binding effects and legitimate authority to interpret the treaties, so that no legally binding obligation for States could be derived from them.⁸¹

International conferences in Cairo and Beijing are also frequently cited as sources of an alleged right to abortion, however, these instruments are not binding, since they are not treaties or conventions. Nor do they speak of a right to abortion, but of safe abortion, without the qualification of human right, establishing, even, that "any measures or changes related to abortion that are introduced in the health system can be determined only at the national or local in accordance with the national legislative process". That is to say, the existence of an international commitment in this sense is discarded, recognizing exclusive competence to each State in the regulation on this matter⁸².

Within the Inter-American System, the Inter-American Court has never ruled in favor of abortion. The only case related to this issue that came to his attention was the request for

⁷⁷ The Protocol of Maputo only authorizes abortion in certain circumstances such as rape, incest and danger to the life or health of the mother, and only half of the members of the African Union have adhered to it. See art. 14.2.c "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa", available at <http://www.achpr.org/instruments/women-protocol/>.

⁷⁸ I / A Court HR, "Caso Artavia ...", para. 227.

⁷⁹ I / A Court HR, "Caso Artavia ...", paragraph. 228.

⁸⁰ Art. 12.1, CEDAW. "... States Parties shall guarantee women appropriate services in relation to pregnancy, childbirth and the post-natal period, providing free services when necessary and ensuring adequate nutrition during pregnancy and lactation."

⁸¹ DE JESÚS, Ligia M. - OVIEDO ÁLVAREZ, Jorge A. - TOZZI, Piero A., "The 'case Artavia Murillo and others vs. Costa Rica' (in vitro fertilization): the redefinition of the right to life from the conception, recognized in the American Convention "[online], *Prudentia Iuris*, 75, 2013, p. 153.

⁸² Conference on Population and Development, para. 8.25 of the Report. The same provision is adopted by the Report of the IV World Conference on Women, in its para. 106, inc. k). See Report of the International Conference on Population and Development, U.N. Doc A / CONF.171 / 13 / Rev.1 (1994) available at:http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_spa.pdf and Report of the Fourth International Conference on Women, UN Doc. A / CONF.177 / 20 / Rev.1 (1996) Available at: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20S.pdf>.

provisional measures in the Matter B regarding El Salvador,⁸³ where the Inter-American Court issued provisional measures in favor of a woman who was pursuing a risk pregnancy. There, the IDH Court limited itself to ordering the State to ensure the right to life and health of women, but did not order the means to do so, much less ordered the practice of an abortion⁸⁴. It should be noted that the State complied with the measures ordered by the Court, guaranteeing the right to life and health of the petitioner, without performing any abortion. In conclusion, it can be affirmed that there is no alleged right to abortion at the international level, so the IAHR Court cannot eventually condemn the Argentine Republic to legalize this practice, nor derive any responsibility in case of not doing so.

V. Conclusions

Based on the analysis carried out, it can be concluded that the case "Artavia Murillo vs. Costa Rica" cannot be used to promote the legalization of abortion in Argentina, mainly because of the following arguments: i) Argentina is not obliged to follow the case law of the Inter-American Court when it has not been a party of the case in question; ii) the Inter-American Court expressly interpreted the scope of art. 4.1 of the ACHR with effects for the specific case, iii) "Artavia" is not a case on abortion, but on the absolute prohibition of IVF, iv) what is said in "Artavia" in relation to the right to life, no it constitutes uniform jurisprudence of the Inter-American Court. On the other hand, one could not think of an eventual international responsibility of the Argentine State in case of not legalizing abortion, since there is no conventional obligation to legalize this practice, and on the contrary, if there is a conventional obligation to protect life from the moment of conception. The objective of the control of conventionality is to guarantee the object and purpose of the norms contained in the ACHR or, in the words of the IHR Court itself, "to ensure that the effects of the provisions of the Convention are not impaired by the application of laws contrary to its object and purpose [which] from the beginning lack of legal effects"⁸⁵. In this scenario, the obligation of the Argentine State, through its National Congress, is to adopt measures tending to guarantee the protection of the right to life from the moment of conception - as prescribed in art. 4.1 of the

⁸³ Order of the Inter-American Court of Human Rights of May 29, 2013. Provisional Measures Respect of El Salvador, Subject B [http://www.corteidh.or.cr/docs/medidas/B_se_01.pdf].

⁸⁴ In the operative part of the Provisional Measures, the Inter-American Court expressly ordered: "To require the State of El Salvador to adopt and guarantee, urgently, all the necessary and effective measures for the medical group that treats the woman B. may adopt, without interference, the medical measures deemed appropriate and convenient to ensure due protection of the rights enshrined in Articles 4 and 5 of the American Convention and, in this way, to prevent damages that could reach be irreparable to the rights to life and personal integrity and to the health of Mrs. B., in accordance with what is stated in paragraphs 11 to 17 of this Resolution".

⁸⁵ I / A Court HR, "Case of Almonacid Arellano et al. V. Chile". Judgment of September 26, 2006 (Preliminary Objections, Merits, Reparations, and Costs), paragraph. 124.