

Rule of law, democracy and human rights in the light of Advisory Opinion OC-28/21 of the Inter-American Court of Human Rights

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Introduction

According to Article 64 of the American Convention on Human Rights (ACHR)¹ the subjects entitled to submit questions to the Inter-American Court of Human Rights (IACHR) are member States of the OAS and the organs of Organization. As to the Member States of the OAS, the question may concern the interpretation of the ACHR, other treaties concerning the protection of human rights in the American states and compatibility of domestic laws with such international documents. The questions that may be asked by organs of the OAS relate issues within their competence.² At the request submitted on October 2019

¹ Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, OAS Treaty Series, N° 36.

² See HENNEBEL, Ludovic, TIGROUDJA, Hélène. *The American Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, 2022, pp. 1350-1367.

by Colombia on 7th June, 2021, the IACHR gave advisory opinion regarding indefinite presidential re-election in presidential systems in the context of the inter-American System of Human Rights. This is the 28th advisory opinion since the Court's establishment,³ in which the Court deals with important issues of protection and full enjoyment of human rights in the inter-American system. In Latin America, a common feature of the region is tendency towards the concentration of powers in the hands of presidents. Furthermore, vast majority of the State-Parties to the ACHR adopted a republican or presidential form of government.⁴ Unfortunately, the concentration of powers pose an imminent threat to the rule of law, democracy and human rights and the best evidence of this is the report of the Inter-American Commission on Human Rights concerning situation in Nicaragua.⁵

The aim of this paper is to analyze whether presidential unlimited re-election is a human right protected by the ACHR and, whether changes in the laws providing for such indefinite re-election pose a threat to human rights. Having regard to the position expressed in the advisory opinion, whether the Court rightly deserves to be called a democracy builder?⁶ In order to do that, firstly, the content of the request have been indicated. Then, modalities in presidential re-elections in Latin America have been briefly outlined. Next, I have analyzed whether unlimited re-election constitutes a human right guaranteed by the ACHR.

Scope of the request for the Advisory Opinion

Due to the lack an unanimity as to the issue of presidential re-election in the Latin America, Colombia submitted to the IACHR two main questions. However, the Court, in the course of examining the conditions for admissibility of the

³ The advisory opinions are available at: https://www.corteidh.or.cr/opiniones_consultivas.cfm?lang=en [cit. 2022-11-10].

⁴ See ALTAVILLA, Cristian, SOLÁ, Victorino, SOMMER, Christian G. La reelección presidencial indefinida en perspectiva constitucional e internacional comparada: reflexiones desde una mirada del derecho interamericano de los derechos humanos. *Latin American Journal of European Studies*. 2022, Vol. 2, No. 1, pp. 24-26.

⁵ Nicaragua: Concentration of Power and the Undermining of the Rule of Law, OEA/Ser.L/V/II., Doc. 28825, October 2021, Original: Spanish.

⁶ See TORRES ZÚÑIGA, Natalia. *The Inter American Court of Human Rights: The Legitimacy of International Courts and Tribunals*. Routledge: Taylor&Francis, 2022, pp. 224.

request for an advisory opinion, found that the second question needed to be reformulated. In view of respective paragraphs and Articles of inter-American instruments e.i: the resolution of the Ninth International American Conference; the Declaration of the Rights and Duties of Man; the Charter of the Organization of American States; the Democratic Charter: 1) a) whether unlimited presidential re-election is a human right protected by the ACHR?; b) whether laws which limit or prohibit presidential re-election violate Article 23 of the ACHR, including both passive and active suffrage? Or c) whether such limitation or prohibition is consistent with the principles of legality, necessity and proportionality elaborated in the jurisprudence of the IACHR?; 2) whether unlimited presidential re-election is compatible with representative democracy in the inter-American system?⁷ The IACHR stressed that question put forward by Colombia concerns only the issue of unlimited presidential re-elections in a presidential system.⁸

During the advisory proceeding, written observations were submitted by OAS Member States; organs of the Organization and more than 50 *amici curiae*.

Presidential re-election in Latin America

Discussion on the presidential reelection in Latin American has lasted for at least few decades but its roots date back to the 18th and 19th centuries. During that time, constitutional prohibition of re-election were widespread but in the 20th century the prohibition was loosened.⁹ The rationale behind term limits for the executive is a safeguard of the democratic constitutional system and an obstacle for abuse of power by the executive branch. In general, the term limits are constitutionalized in order to make it harder to meet a threshold indispensable to change laws in this matter.¹⁰ On the other hand, limiting a re-election

⁷ I/A Court H.R., Indefinite Presidential Re-election in Presidential Systems in the context of the Inter-American System of Human Rights (Interpretation and scope of Articles 1, 23, 24 and 32 of the American Convention on Human Rights, XX of the American Declaration of the Rights and Duties of Man, 3(d) of the Charter of the Organization of American States and of the Inter-American Democratic Charter). Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 37.

⁸ Ibidem, para 39.

⁹ CAREY, John M. Reelection Debate in Latin America. *Latin American Politics and Society*. 2003, Vol. 45, No. 1, pp. 119-133.

¹⁰ VERSTEEG, Mila, HORLEY, Timothy, MENG, Anne, GUIM, Mauricio, GUIRGUIS, Marilyn. The Law and Politics of the Presidential Terms Limit Evasion. *Columbia Law Review*. 2020, Vol. 120, No. 1, pp. 184-186.

also limits both passive or active suffrage.¹¹ Modalities in the re-election mechanism are very different. They range from indefinite re-election, e.g. in Venezuela,¹² through relative immediate re-election; re-election limited to one consecutive term, e.g. Argentina;¹³ relative prohibition of immediate re-election e.g. Brazil;¹⁴ immediate re-election and absolute prohibition i.e. once the president has completed the second, consecutive term, he/she may not run for the office, e.g. in Dominican Republic;¹⁵ mediate re-election with absolute prohibition i.e. the president who has completed the term cannot run for a new immediate term and when the second, non-consecutive, term is completed, the president cannot run for the office e.g. in Haiti;¹⁶ to absolute prohibition of re-election, e.g. in Mexico.^{17, 18}

Indefinite presidential re-election as a human right

According to Article 23 of the ACHR, every citizen has the right to take part in the conduct of public affair, passive and active suffrage and equal access to public service. These rights and opportunities may be regulated by law only

¹¹ CORRALES, Javier, PENFOLD, Michael. Manipulating Term Limits in Latin America. *Journal of Democracy*. 2014, Vol. 25, No. 4, p. 158.

¹² NÚÑEZ M., Ana Cristina, PÉREZ-PERDOMO, Rogelio. Constitutional Law in Venezuela. In: HÜBNER MENDES, Conrado, GARGARELLA, Roberto, GUIDI, Sebastián (ed). *The Oxford Handbook of Constitutional Law in Latin America*. Oxford: Oxford University Press, 2022, pp. 295–296.

¹³ GONZÁLEZ BERTOMEU, Juan F. The Constitution of Argentina. In: HÜBNER MENDES, Conrado, GARGARELLA, Roberto, GUIDI, Sebastián (ed.). *The Oxford Handbook of Constitutional Law in Latin America*, pp. 19–20.

¹⁴ See SILVA, Virgílio Afonso da, PEREIRA, Thomaz. The Constitution of Brazil in Context: History, Politics, and Design. In: HÜBNER MENDES, Conrado, GARGARELLA, Roberto, GUIDI, Sebastián (ed). *The Oxford Handbook of Constitutional Law in Latin America*, p. 66.

¹⁵ Constitution of the Dominican Republic: January 26, 2010 (Dominican Republic [do]), Article 124. Official Gazette No 10561, January 26, 2010 [cit. 2022–11–04]. Available at: <https://oxcon-ouplaw-com.peacepalace.idm.oclc.org/home/OCW>.

¹⁶ Constitution of the Republic of Haiti: March 29, 1987 (Haiti [ht]), Article 134–3. In: *Oxford Constitutions of the World* [online][cit. 2022–11–04]. Available at: <https://oxcon-ouplaw-com.peacepalace.idm.oclc.org/home/OCW>.

¹⁷ GIMÉNEZ, Francisca Pou. The Constitution of Mexico. In: HÜBNER MENDES, Conrado, GARGARELLA, Roberto, GUIDI, Sebastián (ed). *The Oxford Handbook of Constitutional Law in Latin America*, p. 212.

¹⁸ ALTAVILLA, Cristian, SOLÁ, Victorino, SOMMER, Christian G. *La reelección presidencial indefinida en perspectiva constitucional e internacional comparada: reflexiones desde una mirada del derecho interamericano de los derechos humanos*, pp. 26–28.

on the bases of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings. The aim of this Article is to protect political rights of citizens and was modeled on the Article 25 of the International Covenant on Civil and Political Rights and reflects one of basic principles of the OAS representative democracy (Article 3 (d) of the Charter of the OAS¹⁹).²⁰Article XX of the American Declaration of the Rights and Duties of Man (ADRDM)²¹ states that every person has a right to participate, both directly or through its representatives, in the government of his country. What is more, in the light of Article 1 of the Inter-American Democratic Charter (IADC) peoples in Americas has a right to democracy and the States are obliged to protect it and that democracy is essential for social, political and economic development.²² Article 2 IADC stipulates that exercise of representative democracy is at the core of the rule of law and is reinforced by participation of citizens in public life. In its jurisprudence, the IACHR has constantly underlined that democracy, human rights and rule of law are three pillars of inter-American system and the ACHR.²³ In its advisory opinion No. 28, the Court firmly stated that effective exercise democracy constitute international obligation of American States and democratic principles is the guiding principle in application of the ACHR and interpretative indication.²⁴ One of the basic element of representative democracy is respect of human rights and freedoms and essential to the representative democracy is the obligation to

¹⁹ Signed in Bogotá in 1948 and amended by the Protocol of Buenos Aires in 1967, by the Protocol of Cartagena de Indias in 1985, by the Protocol of Washington in 1992, and by the Protocol of Managua in 1993, [cit. 2022-11-04]. Available at: <https://www.cidh.oas.org>.

²⁰ HENNEBEL, Ludovic, TIGROUDJA, H el ene. *The American Convention on Human Rights: A Commentary*, p. 690.

²¹ Adopted by the Ninth International Conference of American States, Bogot a, Colombia, 1948, [cit. 2022-11-04]. Available at: <https://www.oas.org>.

²² Lima, September 11, 2001, [cit. 2022-11-04]. Available at: https://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf.

²³ See e.g. I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, paras 191-192; I/A Court H. R., Case of Petro Urrego v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 8, 2020. Series C No. 406, paras 90-92.

²⁴ I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 55. See e.g. I/A Court HR. Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations (interpretation and scope of articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States). Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26, para 72.

hold election and choose representatives through which people exercise power. Therefore, the term of presidential office must not have unlimited tenure.²⁵ The IACHR, referring to the Declaration of Santiago²⁶ which states that perpetuation of power is incompatible with effective exercise democracy and, taking into account obligation to hold election, stressed that representative democracy encompasses an obligation to prevent unlimited tenure in office.²⁷ Furthermore, election also guarantees political pluralism which ensures rotation of powers.²⁸ The Court pointed out that separation and independence of power is a tool of limitation of powers imposed on State organs. Therefore, all of these elements are indispensable for full enjoyment of human rights.²⁹ In sum, representative democracy encompasses periodic, fair free election, political pluralism, fixed tenure of office, rotation and separation of powers and independence of the branches of the government.³⁰ From the reasoning of the Court, it is self-evident that the idea of representative democracy is a condition *sine qua non* for the enhancement and protection of human rights.³¹ After analyzing political systems of states parties to the ACHR, the IACHR came to conclusion that most of them are presidential and due to very extensive powers attributed to the executive branch, most of them put limits on presidential re-elections. In some of them, it is even prohibited e.g. Colombia, Mexico.³² Then, the Court, in order to answer the question whether presidential re-election without term limits is a right protected by the ACHR, analyzed the ACHR and ADRD Mand stated that this right is not *expressis verbis* protected by those instruments.³³ What is more, the Court, after analyzing the state practice, concluded that there was no such customary norm either. It is even hard to say that there is a general principle of

²⁵ I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, paras 70–81.

²⁶ Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, August 12–18, 1959, Final Act, Official Records, DEA/Ser. C/1L5 (English).

²⁷ I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 75.

²⁸ *Ibidem*, paras 76–78.

²⁹ *Ibidem*, paras 81–83.

³⁰ *Ibidem*, para 84. See JIMÉNEZ MORA, Elizabeth. The Core Elements of Representative Democracy within Inter-American Law. *Anuario Mexicano de Derecho Internacional*. 2021, Vol. XXI, pp. 107–120.

³¹ TORRES ZÚÑIGA, Natalia. The Image of The Inter-American Court of Human Rights as an Agent of Democratic Transformation: A Tool of Self-Validation. *Araucaria*. 2021, Vol. 23, No. 46, pp. 489–492.

³² I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 90.

³³ *Ibidem*, para 92.

law stipulating unlimited presidential re-election.³⁴ In order to self-validate its reasoning, the Court made cross-references to the report of the Venice Commission.³⁵ Due to the fact that presidential re-election and its limitation has been settled in constitutions of the states, it was indispensable to establish whether such prohibition constitute a restriction for exercising political rights.³⁶ In this regard, the Court pointed out that the aim of prohibition on presidential re-election without term limits was to prevent a person from holding power.³⁷ Hence, such prohibition seeks to enhance representative democracy, and in view of concentration of powers restriction of reelections without terms limit, it is a suitable, necessary and proportional means to achieve this goal.³⁸ That is why the Court stated that the prohibition of re-election without fixed term limits is compatible with the ACHR, ADRDM and IADC.³⁹

As to the second question, the ACHR highlighted that fixed term of office is one of features of the presidential system.⁴⁰ The Court pointed to threats posed by unlimited presidential re-election i.e. it is detrimental to political pluralism, which could undermine political rights of groups of minority and weaken political parties. Furthermore, it violates the principle of separation of powers and also threatens the exercise of rights stipulated in Article 23 (1) of the ACHR as the president running for re-election has easier access to the media to present his views and is better recognizable by voters or even may use public resources on the campaign.⁴¹ Taking into account all these dangers, the court concludes that presidential re-elections without time limits are contrary to the principles of representative democracy and incompatible with the obligation set forth in the ACHR and ADRDM.⁴²

³⁴ I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 99.

³⁵ Ibidem, paras 100–101.

³⁶ Ibidem, para 102.

³⁷ Ibidem, para 119.

³⁸ Ibidem, paras 120–123. See BINDER, Christina, MORALES ANTONIAZZI, Mariela. Towards Institutional Guarantees for Democratic Rotation: The Inter-American Court's Advisory Opinion OC-28/21 on Presidential Re-election. In: *Verfassungsblog on Matters Constitutional* [online]. 2021-10-06 [cit. 2022-11-11]. Available at: <https://verfassungsblog.de/towards-institutional-guarantees-for-democratic-rotation/>.

³⁹ I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 126.

⁴⁰ Ibidem, para 131.

⁴¹ Ibidem, paras 133–142.

⁴² Ibidem, paras 2–4 (operative part of the opinion).

Conclusions

The Organization of American States, from the very beginning, elaborated and adopted instruments regarding promotion and protection rule of law, democracy and human rights, ranging from e.g. ADRDM, ACHR, Protocol of Cartagena de Indias,⁴³ Protocol of Washington⁴⁴ to IADC.⁴⁵ Therefore, it is hardly surprising that, once again, this time in advisory opinion No. 28, the ACHR touched upon both complex and highly controversial issue,⁴⁶ which is directly connected with effective exercise of civil and political rights embodied in Article 23 (1) ACHR –the compatibility of unlimited presidential re-elections with the ACHR. In this opinion, the IACHR firmly stated that rule of law, democracy and human rights are closely intertwined.⁴⁷ According to Article of 23 (1) ACHR, the right and opportunity to vote and to be elected are exercised in periodic elections, held by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters but the ACHR does not oblige to choose specific electoral system.⁴⁸ It is clear from the opinion that the ACHR or other inter-American instruments do not establish the State's obligation to implement a specific electoral system.⁴⁹ But as the Court put it 'the greatest current danger facing the region's democracies' is 'the gradual erosion of democratic safeguards that can lead to an authoritarian regime, even if it is popularly elected'.⁵⁰ Once again, the Court stressed that effective exercise of representative

⁴³ Protocol of Amendments to the Charter of the Organisation of American States 'Protocol of Cartagena de Indias', Cartagena de Indias, Colombia, OAS, December 5, 1985, Treaty Series, No. 66.

⁴⁴ Protocol of Amendments to the Charter of the Organization of American States (A-56) 'Protocol of Washington', December 14, 1992, Washington, D., OEA/Ser.A/2 Add. 3.

⁴⁵ See STAPEL, Sören. Regional organizations and democracy, human rights, and the rule of law: the African Union, Organization of American States, and the diffusion of institutions. Cham: Palgrave Macmillan, 2022, pp. 201-231; JIMÉNEZ MORA, Elizabeth. *The Core Elements of Representative Democracy within Inter-American Law*, pp. 103-107.

⁴⁶ See Dissenting Opinion of Judge E. Raúl Zaffaroni regarding Advisory Opinion OC-28/21 of June 7, 2021, paras 1-2.

⁴⁷ See HENNEBEL, Ludovic, TIGROUDJA, Hélène. *The American Convention on Human Rights: A Commentary*, p. 697; BINDER, Christina, Die Zukunft des regionalen Menschenrechtsschutzes: Europa und Amerika – oder: Subsidiarität revisited. *Zeitschrift für öffentliches Recht*. 2022, Vol. 77, No. 1, pp. 25-26.

⁴⁸ I/A Court H.R., Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs. Judgment of February 8, 2018. Series C No. 348, para 114.

⁴⁹ See ALTAVILLA, Cristian, SOLÁ, Victorino, SOMMER, Christian G. *La reelección presidencial indefinida en perspectiva constitucional e internacional comparada: reflexiones desde una mirada del derecho interamericano de los derechos humanos*, pp. 41-44.

⁵⁰ I/A Court H.R., Advisory Opinion OC-28/21 of June 7, 2021. Series A No 28, para 95. See

democracy is a matter of the rule of law. The IACHR also emphasized the risk and democratic costs of consecutive re-election.⁵¹ But does the unspecified number of presidential re-elections constitute a threat to democracy of the rule of law and human rights? The Vienna Declaration and Programme of Action provides that 'Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all of their lives'.⁵² One can say that after all, the final word belongs to the voters anyway⁵³ and the ban on consecutive re-election does not guarantee that the principles of representative democracy will be respected. What is more, such a ban constitutes a violation of president's right to be elected and voters' right to elect the chosen candidate.⁵⁴ The question is not about re-election or their banning, but about how the office will be held, whether state institutions are strong enough and capable of upholding the rule of law and human rights. The best defenders of human rights are the states themselves.⁵⁵ Bans will be of little use if, during only one term of office, the head of state, using his power, will violate the law, and may even have the laws changed in his favor.⁵⁶ For several years, the phenomenon of 'new authoritarianism' has been observed i.e. those candidates who were democratically elected, while in office restrict civil, political rights and change the law in their favor by granting themselves the right to unlimited re-election.⁵⁷ The IACHR conclusion was probably the result of the still vivid image that exists in the public awareness, as well as the Court itself, of what atrocities and violations of human rights, inequality, discrimination can be committed by authoritarian regimes. It is hard

GINSBURG, Tom. Democracies and International Law: An Update. *Chicago Journal of International Law*. 2022, Vol. 23, No. 1, p. 15.

⁵¹ See KOUBA, Karel, PUMR, Jan. The Democratic Cost of Consecutive Re-election and Presidential Term-Limit Evasion in Latin America. *Government and Opposition*. 2021, pp. 1–33.

⁵² World Conference on Human Rights, Vienna, 14–25 June 1993, A/CONF.157/23, 12 July 1993, para 8.

⁵³ See Dissenting Opinion of Judge E. Raúl Zaffaroni regarding Advisory Opinion OC-28/21 of June 7, 2021, para 2.

⁵⁴ CORRALES, Javier, PENFOLD, Michael. *Manipulating Term Limits in Latin America*, p. 158.

⁵⁵ See GUTTERES, António. Inauguration of the 40th Anniversary Commemorations, July 16, 2018, Inaugural Addresses. In: *Dialogue between Regional Human Rights Courts*, Inter-American Court of Human Rights. San José, 2020, p. 25.

⁵⁶ See Dissenting Opinion of Judge E. Raúl Zaffaroni regarding Advisory Opinion OC-28/21 of June 7, 2021, paras 12–14.

⁵⁷ See e.g. CHACÍN FUENMAYOR, Ronald. El nuevo autoritarismo latinoamericano: Un reto para la democracia y los derechos humanos (análisis del caso venezolano). *Estudios Constitucionales*. 2019. Año 17, N° 1, pp. 15–52.

not to share the Court's concerns, as the practice of Latin American countries is not optimistic. It is worth mentioning, for example, that Nicaraguan President Daniel Ortega has in fact eliminated all mechanisms for controlling presidential power. Changes to the constitution allowed him to serve four consecutive terms. During the 2021 election campaign, his opponents in his race for the presidency were arrested, and the provisions in the penal code allowing arbitrary imprisonment for 90 days were amended.⁵⁸ Unfortunately, a similar decline in democracy is noticeable in Bolivia, Brazil, El Salvador, Mexico, Venezuela.⁵⁹ But perhaps most striking of all is the fact that such states can denounce the provisions of the ACHR and deprive individuals of protection.⁶⁰ In the case of Venezuela, this is exactly what happened in 2012 when it submitted a notice of withdrawal from the Convention.⁶¹ Furthermore, Nicaragua took even more drastic action. After presidential elections held in November 2021, the Nicaragua's Supreme Court of Justice and the Supreme Electoral Council launched a procedure of denunciation of the OAS Charter, which would take effect after 2 years from the date on which the General Secretariat received the notice.⁶² Even in such cases, the Court made it clear that during the period of notice, the state is obliged to respect the essence of fundamental human rights, as reflected in customary norms. Moreover, during the transition period, human rights obligations arising from the OAS Charter remain in effect.⁶³

⁵⁸ See Human Rights Watch, World Report 2022 [cit. 2022-11-09]. Available at: <https://www.hrw.org/world-report/2022/country-chapters/nicaragua>.

⁵⁹ Ibidem.

⁶⁰ I/A Court HR., Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations (interpretation and scope of articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States). Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26, para 114.

⁶¹ Press Release, IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention 10.09.2013 [cit. 2022-11-12]. Available at: https://www.oas.org/en/iachr/media_center/preleases/2013/064.asp.

⁶² Press Release, The IACHR Stresses Its Competent Jurisdiction Concerning Nicaragua and laments Nicaragua's Decision to Denounce the Charter of the OAS in a Context of Serious Human Rights Violations. 20. 11. 2021 [cit. 2022-11-12]. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/312.asp. See RIPPLINGER, Alina Maria, KRIENER, Florian. Nicaragua's OAS Raid and the Inter-American System. In: *Verfassungsblog on Matters Constitutional* [online]. 02.05.2021 [cit. 2022-11-10]. Available at: <https://verfassungsblog.de/nicaraguas-oas-raid-and-the-inter-american-system/>.

⁶³ I/A Court HR., Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26, paras 149, 154-155.

The Secretary General of the United Nations said ‘Human rights are our collective responsibility and we all have a role to play in their preservation and promotion’.⁶⁴ It may be even added that a special duty is incumbent on bodies, such as the IACHR, whose task is to protect individuals from violations of their rights. The Court’s opinion indicates that it has fulfilled this obligation quite well and deserves to be called a democracy builder.⁶⁵

Abstract

Rule of law, democracy and human rights in the light of Advisory Opinion OC-28/21 of the Inter-American Court of Human Rights

One of the characteristics of the Latin American systemic landscape is the widespread presidentialism. The position of the executive is very strong, with certain law-making powers. Most constitutions of member states of OAS provide for a fixed term of presidential re-election but few of them provide for reelections without a defined limit. Each of these solutions has its own pros and cons. However, the indefinite presidential reelection raises considerable doubts. It may pose a threat to the proper functioning of the state, dismantling democratic oversight, undermine effective exercise of political rights, weaken the institutions and mechanism indispensable for protecting individuals and is contrary to the principle of representative democracy. Human rights, democracy, rule of law go hand in hand and lie at the heart of the Inter-American Court of Human Rights case law. This inextricable link was once again stressed by the IACHR in its advisory opinion on the indefinite presidential reelection in presidential systems in the context of the inter-American system of human rights. The opinion proves that the Court, through its jurisprudence, contributes to enhancement and promotion of the rule of law and the principle of democracy in Latin America.

⁶⁴ GUTTERES, António. *Inauguration of the 40th Anniversary Commemorations, July 16, 2018, Inaugural Addresses*, p. 26.

⁶⁵ See PARRA VERA, Oskar. The Impact of Inter-American Judgments by Institutional Empowered. In: BOGDANDY VON, Armin, MAC-GREGOR, Eduardo Ferrer, MORALES ANTONIAZZI, Mariela, PIOVESAN, Flávia (eds). *Transformative Constitutionalism in Latin America: The Emergence of a New *Ius Commune**. Oxford: Oxford University Press, 2017, pp. 357-376.