

THE PRINCIPLE OF ACCESS TO JUSTICE IN THE JUDGMENTS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS: A STUDY OF THE CASES OF BRAZIL



<https://doi.org/10.56238/arev6n4-494>

Submitted on: 11/31/2024

Publication date: 12/31/2024

Ewerton Diego Justinian Santos¹ and Flávia Moreira Guimarães Pessoa².

ABSTRACT

The objective of this article is to analyze the content of the principle of access to justice in the judgments of the Inter-American Court of Human Rights, in cases involving Brazil. From this survey, it will be possible to identify the problems that must be faced by the Brazilian State for the correction of violations and the implementation of the principle analyzed. Subsequently, the content of the sentences will be presented, demonstrating the relationship between the grounds of the sentence and the concrete cases, evidencing which guarantees were inserted in the content of the principle of access to justice, in the conception of the court. It was then found that the principle of access to justice encompassed, in the cases analyzed, the guarantees of the reasonable duration of the process, the right to know the truth, the duty to investigate and compensate the victims and their families, and the democratization of access to justice. In the end, it was concluded that the violations identified reflect deep structural problems, which must be faced by the Brazilian state. For this, the research adopted the hypothetical-deductive method, using a quantitative and qualitative approach, through a bibliographic and documentary research.

Keywords: Access to Justice. Inter-American Court of Human Rights. Human rights. Jurisprudence. Inter-American System of Human Rights.

¹ Lawyer, registered with the Brazilian Bar Association, Sergipe Section. Master's student in Law at the Federal University of Sergipe - UFS. Member of the State Commission on Human Rights of the OAB/SE (2019-2021). Bachelor of Laws from Universidade Tiradentes - UNIT/SE (2019). Specialist in Constitutional Law from Universidade Cândido Mendes - UCAM/RJ (2021). Specialist in Civil Advocacy, from the Faculty of Law of the Fundação Escola Superior do Ministério Público - FMP/RS (2022).

² Degree in Law from the Federal University of Sergipe, a master's degree in Law, State and Citizenship from the Gama Filho University, a Master's degree in Constitutionalization of Law from the Federal University of Sergipe, a doctorate in Law from IDP, a doctorate in Public Law from the Federal University of Bahia and a Post-Doctorate in Labor Law from the Federal University of Bahia. She is currently a Professor of the Master's and Doctorate in Law at Tiradentes University and the Master's Degree in Law at the Federal University of Sergipe. Labor Judge of the 9th Labor Court of Aracaju. Counselor of the National Council of Justice in the 2020/2022 biennium. Member of the Advisory Council of the Department of Judicial Research of the CNJ. He holds chair n. 3 of the Sergipe Academy of Legal Letters and Chair 67 of the Brazilian Academy of Labor Law.

INTRODUCTION

The main objective of this article is to analyze the content of the principle of access to justice in the judgments of the Inter-American Court of Human Rights in order to identify the problems that should be faced by the Brazilian state in the implementation of the principle of access to justice. For this reason, it will be necessary, first, to establish the theoretical frameworks on the principle of access to justice in the Inter-American Court of Human Rights, presenting a broad overview of its understanding in the regional system in question.

The research problem consists precisely in identifying in which Brazilian cases the Inter-American Court of Human Rights based its sentences on the right to access to justice and, thus, being able to establish a classification of the content of this right in the highlighted sentences. In addition, the research will point out the relationship between the aspects of each concrete case and the principle under analysis.

Then, the content of access to justice identified in the analyzed sentences will be systematically presented, to demonstrate the relationship between the grounds of the sentence and the concrete case. This will show which violations were inserted in the content of the principle of access to justice, in the conception of the Inter-American Court.

This detail represents a central point of the research, as it allows us to identify, in concrete cases, the structural problems to be faced by the State or, at least, to favor the observation of the symptoms presented by the variation in the content of the principle of access to justice in each case.

The research analyzed all the judgments handed down by the Inter-American Court of Human Rights in which the Brazilian state was a party, from the *Ximenes Lopes vs. Brazil Case*, the first after recognition of the Court's contentious jurisdiction, to the *Horonato Case and others vs. Brazil*, judged in 2023, mentioning, however, by name, only those that are based on the principle of access to justice, in part, in whole or tangentially.

At the end of the research, the results obtained will be presented, pointing out the problems identified, consisting of violations of the guarantees inserted in the content of access to justice, observed in the analysis of the concrete cases submitted to the Inter-American Court.

ACCESS TO JUSTICE IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

In the analysis of the inter-American system for the protection of human rights, it is essential to take into account the historical context and peculiarities of the region, characterized by high levels of exclusion and social inequality, in addition to the existence of democracies that are still in the process of consolidation. In this scenario, it is observed that the marks left by authoritarian regimes still persist, in the culture of violence and impunity, in the fragility of the rule of law, and in the precarious domestic tradition in relation to respect for human rights (Piovesan, 2023).

In this context, the inter-American system is consolidated as an important and effective instrument for the protection of human rights, especially because it acts when national institutions fail or are omitted. The Commission and the Inter-American Court, therefore, play a crucial role in denouncing the most serious abuses and in pressuring governments to stop violations and strengthen the accountability of States.

Among the guarantees guaranteed by the American Convention on Human Rights is the right to access to justice, enshrined in Article 25, according to which everyone has the right to judicial remedy before judges or courts, as well as the express provision of Article 8, which establishes the right to be heard by a competent judge or tribunal, independent and impartial, both enshrined in the aforementioned pact.

It is noticeable that the jurisprudence of the Inter-American Court of Human Rights relates Article 8, which deals with "judicial guarantees", to Article 25, which deals with "judicial protection", of the American Convention, in order to recognize the principle of access to justice as a right that derives from both provisions. Thus, while the Inter-American Court of Human Rights establishes that States must provide effective judicial remedies for victims of any human rights violation (Article 25), it also establishes that they must respect the rules of due process of law (Article 8), in accordance with the general obligation of States to guarantee the free exercise of the rights recognized in the Convention (Article 1). Therefore, it is common for the Court to jointly analyze violations of these two articles, evidencing their interconnections (Piovesan, Fachin, Mazzuoli, 2019).

The right to access to justice (sometimes arising from Article 8, sometimes resulting from a conjunction with Article 25) was addressed by the Inter-American Court of Human Rights in a way that attributes to States the positive duty to investigate and promote the clarification of criminal facts. Especially in cases involving forced disappearance, acts of State agents, or other violations of the right to life and personal integrity, States have the duty to promote, ex officio, a serious, diligent, impartial, and timely investigation of the events that occurred, and to ensure the

possible criminal accountability of those involved, as well as the payment of due compensation (Piovesan, Fachin, Mazzuoli, 2019, p. 108).

Thus, in order to meet this requirement, it is not enough to have a justice system that follows the guarantees of due process, it is necessary to provide judicial instruments that are simple and fast and capable of ensuring the protection of human rights (Piovesan, Fachin, Mazzuoli, 2019).

In this sense, the Inter-American Court of Human Rights broadens in its interpretation the content of the right to access to justice towards a substantial understanding of the principle, as a way of guaranteeing the free and full exercise of the rights and freedoms, recognized in the American Convention on Human Rights itself, intended for every person, without any discrimination, as established in its Article 1.

Therefore, the understanding of due process is closely connected to the notion of justice. Hence, therefore, the need to foster access to justice that goes beyond formality, with a view to the real inequalities faced by those under jurisdiction, so that decisions seek the maximum correction of the law, ensuring fair solutions (Inter-American Court of Human Rights, 2015)

In addition, the right to be heard, provided for in Article 8.1 of the Inter-American Court, ensures that every person can present his or her cases to the State, allowing allegations to be brought and contested during the judicial process. This right encompasses a formal and procedural dimension, which guarantees access to the competent body, enabling the presentation of reasons and evidence. In addition, it implies a positive duty of the State to ensure the integrity of the procedure and decisions, aiming at the effectiveness of the jurisdiction. Thus, the right to be heard encompasses the guarantee of access to the courts, as it aims to ensure that everyone can act in judicial proceedings and that their allegations are analyzed completely and seriously before a final decision.

As will be observed, in some decisions involving the Brazilian state, the Inter-American Court of Human Rights has expanded the right to be heard, recognizing that the victims' families have the right to participate in procedures aimed at clarifying the facts and determining responsibilities, especially in cases of death or forced disappearance. In addition, the Court emphasizes the State's duty to keep these family members informed and to provide them with conditions so that they can participate actively, since they also suffer significantly.

The experience in Brazil demonstrates that international action has contributed to the dissemination of human rights violations, generating a potential political and moral embarrassment for the offending State. In this context, this action becomes an important element in the protection of human rights. In addition, when dealing with the exposure of these violations and international pressures, the State is practically obliged to justify its actions (Piovesan, 2023).

Given these premises, the present study will now analyze the fourteen judgments issued by the Inter-American Court of Human Rights in the cases involving the Brazilian State, with the objective of identifying the structural problems to be faced by the State, through the observation of the symptoms presented by the variation in the content of the principle of access to justice.

THE CONTENT OF THE RIGHT TO ACCESS TO JUSTICE IN THE JUDGMENTS OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN CASES INVOLVING BRAZIL

As previously reported, the present research analyzed the judgments of the Inter-American Court of Human Rights, in cases to which the Brazilian state was a party, with the objective of identifying the application of the content of the principle of access to justice as the basis for these decisions.

It was observed, in this sense, that a plethora of guarantees is encompassed by the content of the right to access to justice, and in the cases analyzed, it was identified that four of these guarantees were the basis for the condemnations of the Brazilian State, which will be dealt with in detail in this chapter. Thus, it was found that the content of the principle of access to justice implies the guarantees 1. the reasonable duration of the process, 2. the right to know the truth, 3. the duty to investigate and compensate the victims and their families, and 4. democratization of access to justice.

The analysis will begin by ensuring the reasonable duration of the process, which was the basis for 10 of the 14 sentences evaluated. Next, the right to know the truth, which was the basis for eight of these decisions, will be addressed, followed by the duty to investigate, which was the basis for eight decisions, and, finally, the guarantee of democratization of access to justice, which was the basis for two of the decisions.

REASONABLE DURATION OF THE PROCEEDINGS

The content of the right to access to justice, which was most evident in the decisions of the Inter-American Court of Human Rights, in cases involving the Brazilian state, was that of the reasonable duration of the process, which served to support ten of the fourteen sentences analyzed. It is important to emphasize that the analysis of the reasonable duration of the process is not based only on merely temporal parameters, as the Inter-American Court of Human Rights adds other requirements to declare whether there was really a violation of this guarantee, without, however, going into the merits of these decisions, as shown below.

In July 2006, the Inter-American Court of Human Rights handed down the first condemnation of the Brazilian state in the case of *Ximenes Lopes v. Brazil*, in which it affirmed the occurrence of a violation of the guarantee of the reasonable duration of the process, adducing that it would not be reasonable for that criminal process to take more than six years without even having a sentence in the first instance, having, for example, the Public Prosecutor's Office taken three years to present an amendment to the complaint, which was only received 8 months and 25 days later. In the judgment of the aforementioned case, the judge of the Inter-American Court of Human Rights Antônio Augusto Cançado Trindade presented a separate opinion in which he noted the important relationship between the right of access to justice and the prompt judicial provision, also emphasizing the visible delay in the processing of the case in the domestic jurisdiction (Inter-American Court of Human Rights, 2006)

In the judgment of the *Garibaldi vs. Brazil Case*, in September 2009, the Inter-American Court of Human Rights recognized that the unjustified delay of more than five years without progress in the investigation phase, which resulted in the archiving of the police inquiry, violated the guarantee of the reasonable duration of the process and highlighted the concern about the flaws and delays in the procedure, because it promotes impunity and the repetition of human rights violations (Inter-American Court of Human Rights, 2009).

In a clear advance in relation to the first sentence, the sentence of the *Garibaldi v. Brazil* states that the Inter-American Court of Human Rights proceeds, in these cases, to an analysis of four requirements to determine the reasonableness of the time limit:

The unreasonableness of the time limit for the development of the investigation constitutes, in principle, in itself a breach of judicial guarantees. In this sense, the Court has considered four elements to determine the reasonableness of the time

limit: a) complexity of the matter, b) procedural activity of the interested party, c) conduct of the judicial authorities, and d) the effect generated on the legal situation of the person involved in the proceeding (Inter-American Court of Human Rights, 2009, p. 38)

Likewise, the judgment in the *Case of Gomes Lund and Others ("Araguaia Guerrilla") vs. Brazil*, evidenced the violation of the guarantee of the reasonable duration of the process, due to the lapse of the 21-year period between the facts and the filing of the ordinary action (in 1982), which aimed to obtain access to official documents on the military operations against the Araguaia Guerrilla, until the sentence (handed down in 2003) and from there until the effective compliance by the State, another six years elapsed (Inter-American Court of Human Rights, 2010)

In *the Case of Workers of the Brasil Verde Farm vs. Brazil*, judged in October 2016, which involved the discussion of the practice of forced labor and debt bondage at the Brasil Verde Farm, in the state of Pará, it was found that the guarantee of the reasonable duration of the process had been violated, since more than ten years had elapsed between the filing of the complaint and the delivery of the sentence that, In the end, it extinguished the lawsuit recognizing the statute of limitations. The unjustified delay was attributed to the conflict of jurisdiction between the state and federal courts, and was only resolved in 2006, when the Superior Court of Justice decided for the jurisdiction of the Federal Court (Inter-American Court of Human Rights, 2016)

Thus, the Inter-American Court, in the *Case of Workers of the Brasil Verde Farm vs. Brazil*, stated that:

With regard to the speed of the process, this Court has already stated that the "reasonable time" provided for in Article 8(1) of the Convention must be evaluated in relation to the total duration of the procedure that takes place until the final judgment is rendered. The right of access to justice means that the dispute must be resolved within a reasonable time, since a prolonged delay may in itself constitute a violation of judicial guarantees (Inter-American Court of Human Rights, 2016, p. 95)

In *the case of Favela Nova Brasília vs. Brazil*, judged by the Inter-American Court of Human Rights in February 2017, it was found that the delay of about 14 years for the conclusion of the police investigation led the domestic jurisdiction to recognize the statute of limitations and archive the case, without a proper investigation into the death of 13 people, which occurred in the context of police raids carried out by the Civil Police of Rio de Janeiro in the Nova Brasília Favela, in 1994 and 1995. Although the case had been

reopened in 2013, it was again shelved in 2015 (Inter-American Court of Human Rights, 2017)

In July 2020, the Inter-American Court of Human Rights recognized that the Brazilian state was responsible for violating the guarantee of the reasonable duration of the process in the so-called *Case of Employees of the Santo Antônio de Jesus Fireworks Factory and their Families vs. Brazil*, whose objective was to ascertain responsibilities for the explosion of a fireworks factory in 1998, which resulted in deaths and injured victims. The investigations in the criminal sphere took almost 22 years in which there was a definitive decision in the criminal sphere. In the civil sphere, it took more than 20 years for the victims to receive compensation, while in the labor sphere, after a period of filing, only after 18 years, it was possible to confiscate enough assets to pay the compensation. This delay, however, did not occur in the administrative investigation carried out by the Brazilian Army, which lasted about 5 months and culminated in the cancellation of the company's registration (Inter-American Court of Human Rights, 2020)

In the *Barbosa de Souza and others vs. Brazil* case, judged in September 2021, in which the criminal liability of former deputy Aécio Pereira de Lima accused of the murder of Márcia Barbosa was determined, the court considered that there was a violation of the reasonable duration of the process, mainly due to the refusal of the Legislative Assembly to grant the prior license for the initiation of the criminal process, generating a delay of 05 years in the investigations, with more than 10 years elapsing from the criminal act to the criminal conviction in the first instance (Inter-American Court of Human Rights, 2021)

In June 2022, when the *Sales Pimenta vs. Brazil* Case was judged, the court considered unjustifiable the delay in processing the lawsuits that aimed to determine who was responsible for the homicide of Gabriel Sales Pimenta, a union lawyer who, due to his office, would have received death threats and requested protection from the state, since almost 24 years elapsed between the facts and the decision that extinguished the criminal process, 7 years from the recognition of the jurisdiction of the Inter-American Court of Human Rights to the aforementioned final decision, and almost 14 years in the processing of civil proceedings (Inter-American Court of Human Rights, 2022).

Although it did not find any delay in the processing of the criminal and military proceedings in the *Case of Tavares Pereira and others vs. Brazil*, in November 2023, the Inter-American Court of Human Rights recognized the unjustified delay in the processing of the civil reparation action, for the moral and material damages caused to the family

members of Antônio Tavares Pereira, a rural worker who is a member of the Landless Rural Workers Movement, due to the homicide allegedly carried out by the Military Police, which repressed a march for agrarian reform held in May 2000 in the state of Paraná. The action for compensation against the state of Paraná began in 2002, and the last decision by the Superior Court of Justice was issued only in 2013, that is, about 13 years without a definitive judicial ruling (Inter-American Court of Human Rights, 2023a)

Brazil's last conviction in the Inter-American Court, handed down in November 2023, in *the Case of Honorato et al. vs. Brazil*, in which the State's responsibility for acts that culminated in the murder of 12 people due to the alleged excessive use of force by the Military Police is assessed, also recognized the violation of the guarantee of the reasonable duration of the process, substantiated by the fact that more than 10 years elapsed between the filing of the complaint in 2003 and the delivery of the first degree sentence in 2014, configuring the excessive delay of the criminal process, attributed to the judicial authorities (Inter-American Court of Human Rights, 2023b).

RIGHT TO KNOW THE TRUTH

The Inter-American Court of Human Rights also recognizes the right to know the truth of the facts as the content of the right to access to justice. This recognition served as the basis for nine of the fourteen condemnations of the Brazilian state in the Inter-American Court, without presenting major conceptual variations between these decisions.

It is for this reason that, in efforts to implement transitional justice after periods of conflict, it is essential that responsibilities are established and that the facts are clarified. Thus, the recognition and practice of the right to the truth is a significant instrument of reparation for victims and their families. The lack of this knowledge about facts, derived from the failure to comply with the obligation to guarantee the right to the truth, highlights the State's inability to ensure the rights infringed, as it lacks an effective system to identify and punish those responsible for the violations (Piovesan, Fachin, Mazzuoli, 2019).

For the Inter-American Court, it is the right of the victims and their families for the State to take the necessary measures to make known the truth of the facts, informing them of everything that occurred in relation to these violations, regardless of the initiative of the victim or their families. This guarantee has been recognized by the jurisprudence of the Inter-American Court of Human Rights since the judgment of *the Velásquez Rodríguez Case*, when the court affirmed that the families of the victims have the right to know their

fate and, if applicable, the whereabouts of the mortal remains, in cases of forced disappearance (Inter-American Court of Human Rights, 1988)

In the case of *Escué Zapata vs. Colombia*, the Inter-American Court of Human Rights stated that the right to know the truth constitutes a means of reparation (IACHR, 2007) and, in *the case of Castillo Páez vs. Peru*, it had already stated that this right creates expectations in the victims and their families, which must be satisfied by the State (Inter-American Court of Human Rights, 1997).

It is extracted from the sentence handed down in the *Case of Gomes Lund and others ("Araguaia Guerrilla") vs. Brazil*, the breadth of the right to truth as a guarantee of access to justice:

At the discretion of this Court, the State cannot rely on the lack of proof of the existence of the requested documents. On the contrary, it must justify the refusal to provide the information, demonstrating that it has adopted all measures within its reach to prove that, in fact, the requested information did not exist. It is essential that, in order to guarantee the right to information, public authorities act in good faith and diligently carry out the necessary actions to ensure the effectiveness of this right, especially when it comes to knowing the truth of what happened, in cases of serious human rights violations, such as forced disappearances and the extrajudicial execution of the present case (Inter-American Court of Human Rights, 2010, p. 80)

The violation of the guarantee of knowledge of the truth, in *the Gomes Lund and others case ("Araguaia Guerrilla") vs. Brazil*, was identified by the absence of information regarding the whereabouts of the bodies of the victims of the so-called "Araguaia Guerrilla". (IACHR, 2010) In *the Herzog and others vs. Brazil case*, the Inter-American Court of Human Rights considered that the Brazilian state violated the victims' right to know the truth, since it did not judicially elucidate the events related to torture and the murder of Vladimir Herzog, in addition to the refusal of the Brazilian Army to provide information and to allow access to the military archives at the time of the facts (Inter-American Court of Human Rights, 2018).

The Inter-American Court, however, directed specific attention to the right to the truth in the judgments of the *Sales Pimenta vs. Brazil Case* and the *Honorato and others vs. Brazil Case*, adducing that the failure to clarify the circumstances of the death of Gabriel Sales Pimenta after more than 40 years and the extrajudicial execution of the 12 victims after 20 years, even though there is ample evidence of the facts in both cases, violated the right to the truth that protects family members and victims of serious human rights violations.

It is also noted that the guarantee of knowledge of the truth enshrined by the Inter-American Court of Human Rights appears, even if tangentially, in the sentences of *the Barbosa de Souza and others vs. Brazil Case*, the *Santo Antônio de Jesus Fireworks Factory Employees Case*, the *Ximenes Lopes vs. Brazil Case*, and the *Garibaldi vs. Brazil Case*, references that are closely linked to the basis of the duty to investigate, in which the right of access to justice includes that the victims or their families have the opportunity to obtain the truth about the facts, in the sense that the State guarantees the carrying out of investigations, trials and, if necessary, sanctions for those responsible.

DUTY TO INVESTIGATE AND HOLD ACCOUNTABLE

In most of the decisions analyzed, the Inter-American Court of Human Rights expressed the understanding that the duty to investigate and punish those who may be responsible for human rights violations is a guarantee that is included in the content of the right to access to justice, so that such a violation was found in cases in which the domestic jurisdiction was unable to investigate, duly the facts and sanction those responsible.

The duty to diligently investigate, prosecute and eventually punish perpetrators of human rights violations is, according to the vast jurisprudence of the Inter-American Court, a consequence of the right of access to justice, embodied in arts. 8 and 25 of the American Convention. Especially in cases involving forced disappearance or other violations of the right to life and personal integrity, States have the duty to promote, ex officio, a serious, diligent, impartial and timely investigation of the events that occurred and to ensure the possible criminal accountability of those involved, as well as the payment of due compensation (Piovesan, Fachin, Mazzuoli, 2019, p. 244).

In this sense, in addressing the flaws in the investigation of the *Favela Nova Brasília vs. Brazil case*, the Inter-American Court of Human Rights stressed that that set of irregularities "constituted a denial by the State of an effective remedy against acts that violated its human rights, that is, the very right of access to justice was violated" (Inter-American Court of Human Rights, 2017, p. 60).

Another violation of the duty to investigate and hold accountable, identified by the court, occurred through the use of parliamentary immunity analyzed in the *Barbosa de Souza and others vs. Brazil Case*, considering that the institute created to guarantee the independence of the legislature, in that case, ended up being used to make an investigation unfeasible and, consequently, cause the impunity of the parliamentarian, giving rise to serious human rights violations (Inter-American Court of Human Rights, 2021).

Understanding the guarantee of the duty to investigate and, eventually, punish those responsible implies from obedience to domestic and international procedural rules regarding investigative formalities to preventing unjustified obstacles to investigations, as occurred in *the Barbosa de Souza and others vs. Brazil case*, in which parliamentary immunity led to the delay of investigations, as well as in *the Brasil Verde Farm Workers vs. Brazil Case* and in *the Favela Nova Brasília vs. Brazil Case*, in which the delay in processing resulted in the statute of limitations and consequent impunity.

In the judgment of the *Brasil Verde Farm Workers vs. Brazil Case*, the IACHR reaffirmed its understanding that:

[...] that it is not admissible to invoke procedural figures such as the statute of limitations, to evade the obligation to investigate and punish these crimes. In order for the State to satisfy its duty to adequately guarantee various rights protected by the Convention, including the right of access to justice, it must fulfill its duty to investigate, prosecute and, if necessary, punish these facts and make reparation for the damage caused (Inter-American Court of Human Rights, 2016, p. 103).

In addition, it is observed that the duty to hold accountable, in the decisions analyzed in this study, has two aspects also included in the content of access to justice, the first is related to the sanctioning of those who are responsible for the practice of human rights violations and, the second, concerns the reparation of victims and their families. That is to say, impunity, whether in the aspect of punishing those responsible, or in the aspect of reparation to the victims or their families, constitutes a violation of access to justice.

DEMOCRATIZATION OF ACCESS TO JUSTICE

The Court, in its jurisprudence, has a firm understanding that Article 1.1 of the American Convention on Human Rights is a rule of a general nature, applicable to all provisions of the treaty. This article establishes the obligation of States to respect and guarantee the full and free exercise of recognized rights and freedoms, without any discrimination. Thus, any form of discriminatory treatment in relation to the exercise of these rights is, by nature, incompatible with the aforementioned Convention, so that the failure of the State to comply with this obligation to respect and guarantee human rights, through discriminatory practices, results in international responsibility.

The democratization of access to justice is, therefore, revealing the proper content of the principle of access to justice: democratic access, for all, without discrimination of any kind, to justice. Thus, the decisions analyzed highlight the indissoluble link between the

obligation to respect and guarantee human rights and the principles of equality and non-discrimination, reinforcing that justice must be accessible to all, without exceptions.

In this sense, the content of the democratization of access to justice finds in the decisions of the IACHR, analyzed by this work, a direction towards access without discrimination of any kind for victims or their families, in cases of human rights violations.

The democratization of access to justice implies, therefore, the overcoming of inequalities, whether of gender, race or social condition. Thus, the Inter-American Court of Human Rights recognized that the Brazilian State had not taken the necessary measures to safeguard material equality in the right of access to justice in the investigations and proceedings that were supposed to investigate the homicide of Márcia Barbosa de Souza, in the so-called *Barbosa de Souza Case and others vs. Brazil*, because they were not conducted from a gender perspective. In view of the fact that it is a case of violence against women. In view of this, in the aforementioned case, the court understood that the way in which parliamentary immunity was regulated at the time of the facts was incompatible with the right of access to justice, which contributes to the continuity and social acceptance of this phenomenon (Inter-American Court of Human Rights, 2021)

Likewise, in the judgment of *the case of Farm Workers Brasil Verde vs. Brazil*, the IACHR recognized that the Brazilian State did not guarantee access to justice to workers rescued in a situation analogous to slavery. The Court recognized that the case of Fazenda Brasil Verde exemplifies structural discrimination in access to justice, evidenced by the inaction of the authorities in the face of labor irregularities. Not only were criminal proceedings not opened, but conciliatory agreements, in the labor sphere, ignored the victims, perpetuating the exploitation of vulnerable groups. The inequality in the treatment of victims, who face exclusion, poverty and lack of education, reflects a normalization of impunity in relation to abuses, underscoring the urgency of equal and effective protection by the State (Inter-American Court of Human Rights, 2016).

The right of people in poverty to participate in society faces a number of economic, social, structural and legal obstacles, hindering their access to justice and information. Even when participatory mechanisms exist, many are unable to use them due to lack of education or illiteracy. Court decisions often affect only the parties directly involved, excluding those who are unable to overcome access barriers. However, in legal systems that allow decisions with broad effect, such as the declaration of unconstitutionality, there is potential to ensure justice for these groups. Thus, access to justice for people in situations

of structural poverty depends on their ability to transcend this condition, often aggravated by historical factors of marginalization (Inter-American Court of Human Rights, 2021)

Another aspect of the democratization of access to justice, in addition to ensuring that all individuals, without distinction, have access to judicial recourse, is to enable the participation of victims of human rights violations and their families, in the search for clarification on the facts and the consequent reparation. According to the Court, it is crucial that victims or their representatives have ample opportunities to participate in judicial proceedings, aiming not only at the sanction of those responsible, but also at adequate compensation for the damages suffered. This access is essential for building a more just and equitable society, where the voices of all citizens, especially the most vulnerable, are heard and respected (Inter-American Court of Human Rights, 2009).

An illustrative example of the violation of democratization due to the lack of participation of family members in internal proceedings is the *Garibaldi vs. Brazil Case*, in which extrajudicial execution, in which the victim's family members are the main stakeholders in obtaining justice, were excluded from the due investigation of the facts, trial and punishment of those responsible, as well as adequate civil compensation (Inter-American Court of Human Rights, 2009)

In that case, the Court emphasized that the State should guarantee these family members not only the possibility of speaking out, but also effective remedies that enable a thorough investigation and accountability of those involved. This includes ensuring that victims have access to information, legal support, and redress mechanisms. By ensuring that these rights are effectively exercised, the State not only promotes individual justice, but also strengthens public trust in institutions, contributing to a more inclusive and accessible judicial system (Inter-American Court of Human Rights, 2009).

FINAL CONSIDERATIONS

Throughout the article, an analysis of the jurisprudence of the Inter-American Court of Human Rights was outlined regarding the understanding of the principle of access to justice, so that its expansive interpretation was verified, in the sense of concretizing a plethora of guarantees inserted in the content of the principle analyzed, establishing the guidelines for the continuation of this study.

Subsequently, the challenge of the research was to analyze the fourteen judgments issued by the Inter-American Court of Human Rights in cases to which the Brazilian state

was a party, and it was found that, in eleven of these judgments, the court used the principle of access to justice as the basis for the decision, either in part, in full, or tangentially.

In view of this, the application of the principle of access to justice in each sentence was analyzed, observing that the content of this principle comprised four distinct aspects of the principle, demonstrating, in each of these aspects, the ways in which these guarantees were violated in each specific case.

Thus, it was perceived that the violation of the principle of access to justice occurred in large part by the affront to the guarantee of the reasonable duration of the process, followed by the violation of the guarantee of the right to know the truth, by the violation of the duty to investigate and hold accountable and, finally, by the need to guarantee the democratization of access to justice for all, without distinction.

Based on all the above, it is possible to conclude that the violations identified in the cases analyzed reflect deeper structural problems. In this context, the violation of the right to a reasonable duration of the process highlights the slowness of justice, which, in several situations, resulted in the statute of limitations and, consequently, impunity. The limitation of the right to know the truth is a reflection of the historical process faced by the country, especially due to the enactment of the amnesty law and the impossibility, at the time of the facts, of preserving documents and evidence.

In addition, the violation of the guarantee to investigate and thus promote due accountability indicates structural flaws in the investigative procedures, in addition to being a consequence of unjustified obstacles, such as parliamentary immunity. Finally, the need to democratize access to justice highlights the inequalities still present in Brazil, particularly in relation to gender and poverty issues, as demonstrated in the cases analyzed.

REFERENCES

1. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2021, September 7). Caso Barbosa de Souza e outros vs. Brasil. Recurrente: Comissão Interamericana de Direitos Humanos. Recorrido: República Federativa do Brasil. Presidente da Corte: Elizabeth Odio Benito. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/Sentenca___Caso_Barbosa_de_Souza_e_Outros_v._Brasil.pdf. Accessed on: December 21, 2024.
2. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (1997, November 3). Caso Castillo Páez vs. Peru. Recurrente: Comissão Interamericana de Direitos Humanos (on behalf of victim Ernesto Rafael Castillo Páez and his family). Recorrido: República do Peru. Presidente: Sérgio García Ramírez. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_34_esp.pdf. Accessed on: December 21, 2024.
3. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2020, July 15). Caso Empregados da Fábrica de Fogos de Santo Antônio de Jesus e seus Familiares vs. Brasil. Recurrente: Representantes das vítimas (employees and family members). Recorrido: Estado brasileiro. Presidente da Corte: Elizabeth Odio Benito. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/seriec_407_por.pdf. Accessed on: December 21, 2024.
4. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2007, July 4). Caso Escué Zapata vs. Colômbia. Recurrente: Comissão Interamericana de Direitos Humanos, representing Germán Escué Zapata and his family. Recorrido: República da Colômbia. Presidente da Corte: Sergio García Ramírez. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_165_esp.pdf. Accessed on: December 21, 2024.
5. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2017, February 16). Caso Favela Nova Brasília vs. Brasil. Recurrente: Comissão Interamericana de Direitos Humanos. Recorrido: República Federativa do Brasil. Presidente da Corte: Eduardo Ferrer Ma-Gregor Poisot. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/copy_of_FavelaNovaBrasiliaSentenca.pdf. Accessed on: December 21, 2024.
6. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2009, September 23). Caso Garibaldi vs. Brasil. Recurrente: Comissão Interamericana de Direitos Humanos, representing Sétimo Garibaldi and his family. Recorrido: República Federativa do Brasil. Presidente da Corte: Cecilia Medina Quiroga. Available at: <https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/SENTENCAGARIBALDI.pdf>. Accessed on: December 21, 2024.

7. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2010, November 24). Caso Gomes Lund e outros (“Guerrilha do Araguaia”) vs. Brasil. Recorrente: Comissão Interamericana de Direitos Humanos. Recorrido: República Federativa do Brasil. Presidente da Corte: Diego García-Sayán. Available at: <https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/SentencaAraguaia24.11.10.pdf>. Accessed on: December 21, 2024.
8. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2018, March 15). Caso Herzog e outros vs. Brasil. Recorrente: Comissão Interamericana de Direitos Humanos. Recorrido: República Federativa do Brasil. Presidente da Corte: Eduardo Ferrer Ma-Gregor Poisot. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/Sentena_Caso_Herzog.pdf. Accessed on: December 21, 2024.
9. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2023, November 27). Caso Honorato e outros vs. Brasil. Recorrente: Comissão Interamericana de Direitos Humanos. Recorrido: Estado do Brasil. Presidente da Corte: Ricardo C. Pérez Manrique. Available at: <https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/SentenaCastelinho.CortelDH.pdf>. Accessed on: December 21, 2024.
10. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2022, June 30). Caso Sales Pimenta vs. Brasil. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/Sentenca_Corte_IDH.pdf. Accessed on: September 20, 2024.
11. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2023, November 16). Caso Tavares Pereira e outros vs. Brasil. Recorrente: Comissão Interamericana de Direitos Humanos. Recorrido: Estado do Brasil. Presidente da Corte: Ricardo C. Pérez Manrique. Available at: <https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/SentenaTavaresPereira.CortelDH.pdf>. Accessed on: December 21, 2024.
12. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2016, October 20). Caso trabalhadores da fazenda Brasil Verde vs. Brasil. Recorrente: Comissão Interamericana de Direitos Humanos. Recorrido: República Federativa do Brasil. Presidente da Corte: Eduardo Ferrer Mac-Gregor Poisot. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/seriec_318_por_FazendaBrasilVerde.pdf. Accessed on: December 21, 2024.

13. CORTE INTERAMERICANA DE DERECHOS HUMANOS. (2006, July 4). Caso Ximenes Lopes vs. Brasil. Recurrente: Comissão Interamericana de Direitos Humanos (on behalf of the victim Damião Ximenes Lopes and his family). Recorrido: República Federativa do Brasil. Presidente da Corte: Sérgio García Ramírez. Available at: https://www.gov.br/mdh/pt-br/navegue-por-temas/atuacao-internacional/sentencas-da-corte-interamericana/seriec_149_por.pdf. Accessed on: December 21, 2024.
14. Piovesan, F. (2023). Temas de direitos humanos (23rd ed.). Rio de Janeiro: Saraiva Jur. E-book. Available at: <https://integrada.minhabiblioteca.com.br/#/books/9786555599619/>. Accessed on: October 2, 2024.
15. Piovesan, F., Fachin, M. G., & Mazzuoli, V. de O. (2019). Comentários à Convenção Americana sobre Direitos Humanos (1st ed.). Rio de Janeiro: Forense. E-book. Available at: <https://integrada.minhabiblioteca.com.br/#/books/9788530987152/>. Accessed on: February 21, 2024.