

Cecilia Medina

The American Convention on Human Rights

Crucial Rights and their Theory and Practice

2nd edition



intersentia

THE AMERICAN CONVENTION
ON HUMAN RIGHTS

Crucial Rights and Their
Theory and Practice

Cecilia MEDINA

Corte IDH
Gestión de Información
y Conocimiento

2nd edition



intersentia

Cambridge – Antwerp – Portland

CONTENTS

<i>Preface</i>	vii
<i>Acknowledgments</i>	xi
<i>Table of Cases</i>	xix

Chapter 1.

The Court and its Circumstances 1

1. Introduction	1
2. Social and Political Landscape	1
3. General Legal Framework	3
4. The American Convention on Human Rights	5
4.1. The Holders of Human Rights	5
4.2. The Supervisory Organs	8
4.3. Protected Rights	9
4.4. State Obligations	15
4.5. Obligations to Respect and to Ensure	17
4.5.1. Prevention	20
4.5.2. The State's Reaction to a Violation	23
4.5.3. Obligations Arising from Noncompliance	25
4.6. Obligation to Cooperate	28
4.7. Obligation to Control Conventionality	29
4.8. Restrictions	32
4.9. Temporary Suspension of Obligations	34
4.9.1. Grounds for Authorizing Suspension	35
4.9.2. Obligations not Susceptible to Suspension	36
4.9.3. Proportionality of Measures of Suspension	38
4.9.4. Prohibition on Affecting Obligations not Subject to Suspension in Other International Law Norms	40
4.9.5. Prohibition of Discrimination	40
4.9.6. Notification of Other States Parties and International Supervision	41
5. The Principle of Equality and Non-Discrimination	42
6. The Interpretation of Human Rights Treaty Provisions	51
7. Responsibility of States	56

Chapter 2.	
Disappearances	63
1. Introduction	63
2. Normative Framework	65
3. The Phenomenon of Disappearances in the Court	69
3.1. Elements and Characteristics	69
3.2. The Question of Jurisdiction	75
3.3. Evidence and State Responsibility	84
3.4. Prevention and Investigation	86
3.5. Impunity	88
4. The Next of Kin as Victims of a Disappearance	92
4.1. The Next of Kin and Article 5	93
4.2. The Next of Kin and Access to Justice	97
Chapter 3.	
Right to Life	101
1. Introduction	101
2. The Death Penalty	103
3. Protection of the Right to Life in General	109
3.1. The Duty to Prevent	109
3.2. The Duty to Prevent the Misuse of Force	112
3.3. Prevention at the Inter-American Level	116
3.4. The Duty to Investigate the Misuse of Force	117
3.5. The Duty to Punish and Make Reparation	122
4. Life, Personal Integrity and Economic, Social and Cultural Rights	125
4.1. Children	125
4.2. Indigenous Peoples	128
4.3. Health, Life and Personal Integrity	132
5. Protection of Life from the Moment of Conception	134
Chapter 4.	
Right to Humane Treatment	147
1. Introduction	147
2. Article 5(1) of the American Convention	151
3. Different Kinds of Prohibited Conduct in Human Rights Treaties	153
4. Prohibited Conducts in the American Convention (Article 5(2))	159
4.1. Legal Framework	159
4.2. The Court's Case Law	162
5. Treatment of People Deprived of Liberty (Article 5(2))	168
6. The Belém do Pará Convention and its Interaction with Article 5 of the American Convention	174

7. The Obligation to Investigate, Prosecute, Make Reparations and Punish	184
8. Separation of Convicted Persons from Accused Persons (Article 5(4))	186
9. Special Provisions for Children and Adolescents (Article 5(5))	188
10. Individualization and Purpose of a Sentence (Article 5(3) and (6))	190

Chapter 5.	
Right to Personal Liberty	193
1. Introduction	193
2. General Requirements: Legality and Absence of Arbitrariness (Article 7(2) and (3))	199
2.1. Legality	200
2.2. Absence of Arbitrariness	202
3. Grounds for Arresting and for Keeping a Person in Detention (Article 7(2))	203
4. Procedural Requirements for an Arrest or for Preventive Detention	206
4.1. Right to be Informed of the Reasons for Arrest (Article 7(4))	209
4.2. Right to be Notified of the Charges without Delay (Article 7(4))	210
4.3. Right to be Brought Promptly before a Judicial Authority (Article 7(5))	211
4.4. Right to be Brought to Trial within a Reasonable Time or to be Released (Article 7(5))	213
4.5. Writ of <i>habeas corpus</i> (Article 7(6))	220
5. Other State Obligations with regard to Deprivation of Liberty	222
6. Prohibition on Detention for Debts (Article 7(7))	226
7. Deprivation of Liberty of Children and Adolescents	227
8. Deprivation of Liberty of Migrants	230
9. Deprivation of Liberty of Migrant Children	233

Chapter 6.	
Right to Due Process	239
1. Introduction	240
2. The Issue of the Fourth Instance	242
3. Right to a Hearing or Access to Justice	246
4. Determination of Rights and Obligations and Criminal Charges	251
5. Competent, Independent and Impartial Tribunal, Previously Established by Law	262
5.1. The Concept of a Tribunal	262
5.2. Tribunal Previously Established by Law	263
5.3. Competent, Independent and Impartial Tribunal	264

6. Due Guarantees	276
6.1. Principles of <i>audi alteram partem</i> and Equality	277
6.2. Right to be Represented by an Attorney	279
6.3. Reasonable Time	280
6.3.1. Factors to Decide on the Reasonableness of a Delay	281
6.3.2. Burden of Proof	286
6.3.3. Start and End of the Period to be Counted	287
6.3.4. Is the Trial an Indivisible Unit for Purposes of Jurisdiction?	288
6.3.5. How to Measure the Period	290
6.4. Right to a Reasoned Ruling	291
6.5. Right for the Ruling to be Enforced	292
7. Investigation, Due Diligence and Right to the Truth	293
7.1. Investigation	293
7.2. Due Diligence	296
7.3. The Right to the Truth	297
8. Special Guarantees for the Accused	302
8.1. Presumption of Innocence	302
8.2. Right to a Translator or Interpreter	305
8.3. Right to be Informed of the Accusation	307
8.4. Right to Defense of the Accused	308
8.5. Pleading of Guilt, Confession and Coercion	314
8.6. Right to Appeal the Judgment to a Higher Court	316
8.7. Principle of <i>non bis in idem</i>	320
8.8. Public Trial, Oral Trials, and Rulings Open to the Public	322
9. Possibility of Other Guarantees not Indicated in Article 8	323
10. Due and Special Guarantees for Children	326

Chapter 7.

Principle of Legality, Freedom from <i>Ex Post Facto</i> Laws, and Right to Compensation for Miscarriage of Justice	335
--	-----

1. The Principle of Legality: <i>nullum crimen sine lege</i>	335
2. <i>Nullum poena sine lege</i>	342
3. The Most Favorable Law	344
4. Right to Compensation for Miscarriage of Justice	345

Chapter 8.

Right to Judicial Protection	349
------------------------------------	-----

1. Introduction	349
2. Article 25 and its Connection with Other Provisions of the Convention	352

3. Characteristics of the Remedy	357
3.1. Judicial Remedy	357
3.2. Simple and Prompt Remedy	358
3.3. Effective Remedy	360
4. State Obligations	364
5. The Right to a Remedy and States of Emergency	366
<i>Index</i>	369