

POSITION OF INDIVIDUALS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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Abstract in original language

S cieľom zabezpečiť účinnú kontrolu medzinárodných ľudsko-právnych záväzkov bola jednotlivcom priznaná určitá forma medzinárodno-právnej subjektivity. Vývoj smerom k posilneniu postavenia jednotlivcov nastal aj v medziamerickom systéme ochrany ľudských práv. Autor v príspevku analyzuje postavenie jednotlivcov v tomto systéme na základe ich aktívnej legitímácie na podanie individuálnej sťažnosti, ich procesného postavenia v rámci konania ako aj na základe prostriedkov nápravy či kompenzácie, ktoré môže jednotlivec dosiahnuť.

Key words in original language

Medzinárodná subjektivita; Subjekty medzinárodného práva verejného; Procesná spôsobilosť; Jednotlivci; Medziamerický systém ochrany ľudských práv.

Abstract

In order to secure an effective monitoring of international human rights obligations, certain form of the international personality has been granted to individuals. Development strengthening the position of individuals has occurred also in the Inter-American human rights system. Author analyses the position of individuals within the system by looking at their active legitimacy to submit an individual complaint, their procedural position during the proceeding and by looking at the remedies or compensation, which may be achieved.

Key words

International Personality; Subjects of International Public Law; Procedural Capacity; Individuals; Inter-American Human Rights System.

1. INTRODUCTION

In the traditional international law only sovereign states were recognised as its subject. Principle of reciprocity governed only the relations between states. Later, in the attempt to create effective monitoring of human rights standards, it became necessary to develop new legal concepts in international law and to grant individuals certain form of the international personality. This development has occurred mainly in the second half of the twentieth century, when the major mechanisms for human rights monitoring

had been created. Until the Second World War the provisions, providing some rights and duties for individuals, were only fractional and regional.¹ Commentators generally use the example of the Washington treaty of 1907, the Treaty of Versailles of 1919, the Upper Silesia Convention of 1922, and the International Labour Organisation's Conventions mechanism to demonstrate that individuals have become increasingly recognised as participants and subjects of international law in modern practice.² After the Second World War the process of internationalisation of human rights spread at universal as well as regional level.

Development strengthening the position of individuals has occurred also in the Inter-American human rights system. The Inter-American Commission on Human Rights (Inter-American Commission or Commission) and the Inter-American Court of Human Rights (Inter-American Court or Court) represent regional human rights system that can be compared to its European counterpart. Though the procedural capacity of individual is not the same as in Europe, the individuals can actively participate on the monitoring of states' conduct. What the position of individuals in the Inter-American system actually is?

After the short introduction to the topic of the individuals as subject of international law, present paper analyses three features that can indicate individuals' status in regional mechanism. Firstly, an overview of their active legitimacy to submit an individual complaint is offered. Then, their procedural position during the proceeding is described. Finally, the paper looks at the remedies or compensation, which may be achieved.

2. INDIVIDUALS AS SUBJECT OF INTERNATIONAL LAW

The contemporary international law deals, inter alia, with relations between states and individuals. Since these relations can not be governed by the principle of reciprocity, it was important to create monitoring mechanisms that would observe the compliance of states with their obligations. Consequently, 'a large and important part of international law practice establishes individual rights and obligations and provides international and municipal procedures for enforcing these rights and obligations.'³ Some

¹ J. Klučka, *Medzinárodné právo verejné (všeobecná časť)* [Public International Law (General Part)] (Bratislava: IURA EDITION 2004), p. 73.

² M. N. Shaw, *International Law* (Cambridge: CUP 2008), Sixth Edition, pp. 258 - 259; A. Cassese, *International Law* (Oxford: OUP 2005), Second Edition, p. 147.

³ M. W. Janis, *'Individuals as Subjects of International Law'* *Cornell International Law Journal*, Vol. 17, No. 61, 1984, pp. 61 - 78, p. 73.

enforcement procedures can be initiated by individual or group of persons by submitting an individual complaint or communication. Procedural position of individuals within some international monitoring mechanisms is also strengthened by their procedural capacity to act autonomously during the proceeding before judicial or quasi-judicial monitoring body. Theories also speak about the indirect participation of individuals on creating of international norms and on their application.⁴ Despite of these qualities of individuals, and despite of criminal liability which individuals possess in international law, some commentators still consider individuals only as an object of modern international law.

Individuals have become recognised as subject of international law, though their personality is only limited and restricted to some acts in international area.⁵ On the one hand, individuals are derivative subjects, since they draw their existence from the decisions of other subjects.⁶ On the other hand, the development of individuals' position is still under progress. New forums have been created (e. g. the Committee on the Rights of Persons with Disabilities, or the Committee on Enforced Disappearances), where individuals would be able to object the activity of states, and which work would influence a policy of states. The new urgent action procedure exercised by the Committee on Enforced Disappearances, and the improved compliant procedure of the UN Human Rights Council is going to serve individuals regardless of special acceptance of states.

3. THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American human rights system has been developed within the Organisation of American States (OAS). The OAS Charter⁷ created the regional inter-governmental organisation of states, which agreed to 'respect the rights of the individual and the principles of universal morality'.⁸ No specific human rights provision is included apart from the anti-discrimination principle proclaiming 'the fundamental rights of the

⁴ Č. Čepelka, P. Šturma, *Mezinárodní právo [International Law]* (Praha: CH BECK 2008), p. 88.

⁵ M. N. Shaw, *International Law*, p. 258; A. Cassese, *International Law*, p. 150.

⁶ A. Cassese, 'Individuals' In: M. Bedjaoui (ed.) *International law: achievements and prospects* (Paris: UNESCO; Dordrecht: Martinus Nijhoff Publishers 1991), p. 119.

⁷ Charter of the Organization of American States (OAS Charter), 119 UNTS 3, 1948, entry into force in 1951.

⁸ OAS Charter, Art. 17.

individual without distinction as to race, nationality, creed, or sex'.⁹ More importantly, in 1959 the Inter-American Commission was founded based on the OAS Charter 'to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters'.¹⁰ The Commission is competent to recommend legislative measures on human rights protection, to prepare studies or reports, to provide advisory services, to conduct on-site observations, reporting procedure and the individual complaint procedures.¹¹

Full list of human rights was declared separately in the American Declaration of the Rights and Duties of Man (American Declaration) from April 1948.¹² This non-binding document covers rights and freedoms which the American states agreed to respect in the OAS Charter. Material basis of the system comprise also of the American Convention on Human Rights (American Convention) from 1969.¹³ It is the first human rights legally binding document within the organisation. It specifies rights declared in 1948 and make the whole system stronger institutionally. The functions of the Commission were enhanced and in 1979 the Inter-American Court was established. The second monitoring mechanism within the Inter-American human rights system has been introduced; one mechanism observes only rights set fort in the American Declaration while the second monitors the human rights obligations introduced by the American Convention.

The system based on the OAS Charter and the American Declaration is operated in relation to all OAS members only by the Commission. The system based on the American Convention is exercised only towards the contracting parties by the Commission and the Court. One can consequently presuppose, that the protection of rights proclaimed by the general language of the Declaration would be different than the protection of rights guaranteed by the Convention. However, in practice the Commission may consider sources of interpretation and information from one system and

⁹ Ibid, Art 3 (l).

¹⁰ Ibid, Art. 106.

¹¹ Statute of the Inter-American Commission on Human Rights, OAS Resolution No. 447, General Assembly of the OAS, October 1979, Art. 18 – 20.

¹² American Declaration of the Rights and Duties of Man, OAS Res. XXX, April 1948.

¹³ American Convention on Human Rights, OAS Treaty Series No. 36, 1144 UNTS 123, 1961, entry into force in 1978.

apply them in other. The systems are closely interconnected, and they are complementary rather than mutually exclusive.¹⁴

The American Declaration, originally legally non-binding document, became explicitly connected to the competence of the Commission, when the Statute of the Inter-American Commission on Human Rights was adopted. It was entrusted to promote the observance and defence of rights set forth in the American Declaration in relation to OAS member states that are not state parties to the American Convention.¹⁵ The Declaration has become directly applicable within the Commission's mandate. 'The normative value of the Declaration, therefore, was significantly strengthened with the adoption of the Statute.'¹⁶

3.1 INDIVIDUAL COMPLAINT PROCEDURE

One of the monitoring procedures within the Inter-American human rights system is the individual complaint procedure. It is an effective device to enforce the fulfilment of state obligations and represents the shift in recognising the international personality of individuals. There are two parallel individual complaint procedures within the OAS.

3.1.1 PROCEDURE BASED ON THE OAS CHARTER AND THE DECLARATION

The procedure based on the OAS Charter and the Declaration covers all OAS member states that are not parties to the Convention. The petition system introduced in 1965 originally referred only to civil and political rights but now relates to all Declaration's human rights.¹⁷ It is not explicitly mentioned in the OAS Charter but it has developed throughout the years from the Commission's mandate. The Commission examines communications or petitions submitted to it by any person or group of persons or non-governmental entity legally recognized in one or more OAS

¹⁴ D. Rodríguez-Pinzón, C. Martin, *The Prohibition of Torture and Ill-treatment in the inter-American Human Rights System: A handbook for Victims and their Advocates* (Geneva: World Organisation Against Torture 2006), p. 40.

¹⁵ Statute of the Inter-American Commission on Human Rights, Art. 1, para 2 (b).

¹⁶ D. Rodríguez-Pinzón, C. Martin, *The Prohibition of Torture and Ill-treatment in the inter-American Human Rights System: A handbook for Victims and their Advocates*, p. 34.

¹⁷ M. Nowak, *Introduction to the International Human Rights Regime* (Leiden: Martinus Nijhoff Publishers 2003), p. 191.

member states, on their behalf or on behalf of third persons, concerning alleged violations of a human right.¹⁸ Moreover, the Commission is empowered to address the government of any member state not a party to the Convention for information deemed pertinent, and to make recommendations to it.¹⁹ Generally, the admissibility criteria for petitions referring to the Declaration are the same as the admissibility criteria for petitions referring to the Convention.²⁰ The fundamental difference between the two complaint procedures is that the Commission can not transfer the complaints on violations of the Declaration to the Court; the proceeding of such complaints ends within the Commission. It is, therefore, the quasi-judicial body, which can only issue findings or recommendations in particular case. They do not have binding character in a strict sense.²¹

3.1.2 PROCEDURE BASED ON THE CONVENTION

The procedure based on the Convention covers only its state parties. Petition containing denunciations or complaints of violation of the Convention may be lodged with the Commission by any person or group of persons, or any non-governmental entity legally recognized in one or more OAS member states.²² If a friendly settlement is not reached the Commission will issue a report with proposals and recommendations.²³ After its consideration by the Commission, the case may be submitted to the Court by the state parties or by the Commission providing that the concerned state has recognised as binding the jurisdiction of the Court.²⁴ The contentions jurisdiction of the Court is facultative. Special declaration or agreement on its jurisdiction concerning the interpretation and application of the Convention is necessary.²⁵ The judgement in the merit is final and not subject to appeal.²⁶

¹⁸ Rules of Procedure of the Inter-American Commission on Human Rights, Inter-American Commission on Human Rights, Approved by the Commission at sessions held from 28 October – 13 November 2009, Art. 23.

¹⁹ Statute of the Inter-American Commission on Human Rights, Art. 20 (b).

²⁰ Rules of Procedure of the Inter-American Commission on Human Rights, Art. 28, 52.

²¹ D. Rodríguez-Pinzón, C. Martín, *The Prohibition of Torture and Ill-treatment in the inter-American Human Rights System: A handbook for Victims and their Advocates*, p. 48.

²² American Convention on Human Rights, Art. 44.

²³ *Ibid*, Art. 49 – 50.

²⁴ *Ibid*, Art 61 – 62.

²⁵ Twenty-one, out of twenty-four state parties of the American Convention, have accepted the contentious jurisdiction of the Inter-American Court (Argentina, Barbados, Bolivia,

Individuals do not have the right to directly petition the Court; they may only indirectly invoke the Commission's activity. The petitioner may 'present his or her position as to whether the case should be submitted to the Court'.²⁷ In case of an affirmative position the petitioner should also present position and personal data of victims, reasons of such decision, and the claims concerning reparations and costs. The Commission has to base its choice, among others, on 'the position of the petitioner; the nature and seriousness of the violation; the need to develop or clarify the case-law of the system; and the future effect of the decision within the legal system of the member states'.²⁸ Movement towards more open judicial procedure has been supported in 2009 when the new Rules of Procedure of the Inter-American Commission on Human Rights were adopted and 'the quality of the evidence available' was eliminated as a factor taken into consideration.²⁹

Thought the *ratione personae* condition does not allow individuals to submit complaint to the Court, the Commission is obliged to refer the case if the concerned state has not complied with the Commission's recommendations and proposals. It applies 'unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary'.³⁰ This rule was introduced in 2001 and is regarded as 'one of the most important modifications'.³¹

The position of individuals within the Inter-American Human Rights System is formed also by capacity of the individuals to use the individual complaint procedure before the Commission and consequently before the Court also with regard to other human rights treaties. The Court has jurisdiction to determine if there has been a violation of other treaties that confer the jurisdiction on the Court.³² Up to date, such explicit conferral is

Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela).

²⁶ American Convention on Human Rights, Art. 67.

²⁷ Rules of Procedure of the Inter-American Commission on Human Rights, Art. 44 para 3.

²⁸ *Ibid*, Art. 45 para 2.

²⁹ Compare e. g. J. M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (Cambridge: CUP 2003), p. 99.

³⁰ Rules of Procedure of the Inter-American Commission on Human Rights, Art. 45 para 1.

³¹ D. Rodríguez-Pinzón, C. Martín, *The Prohibition of Torture and Ill-treatment in the inter-American Human Rights System: A handbook for Victims and their Advocates*, p. 52.

³² J. M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, p. 90.

made in relation to the rights set forth in the Inter-American Convention on Forced Disappearance of Persons³³ and right to organize trade unions and right to education according to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.³⁴ The case law of the Court adjudicated the procedure also for the Inter-American Convention to Prevent and Punish Torture³⁵ and is envisaged for the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.³⁶

To sum up, the individuals can launch two parallel individual complaint procedures. The complaint procedure based on the Declaration is obligatory for all OAS member states. The complaint procedure based on the Convention has also an obligatory character in part exercised by the Commission; no declaration of the state party accepting the competence of the Commission is needed. On the one hand, individuals do not possess right to forward case to the Court. On the other hand, the Commission bound itself to take their opinion into account. The power of the judicial body covers the Convention as well as some other human rights treaties.

The remarkable feature is that ‘any person or group of persons, or any non-governmental entity legally recognized’ is able to initiate both parallel procedures before the Commission. It is quite unique in international human rights law, since *locu standi* is generally governed by principle which allows petitioner to claim to be a victim only if personally affected by the act or omission which is at issue.³⁷ The right of petition before the Commission is not limited only to victims of human rights violation; anyone can file a petition with the Commission, even without the authorization of the actual victim.³⁸

³³ Inter-American Convention on Forced Disappearance of Persons, OAS Treaty Series No. 68, 1994 (entry into force 1996), Art. XIII.

³⁴ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, OAS Treaty Series No. 69, 1988 (entry into force 1999), Art. 19 para 6.

³⁵ Inter-American Convention to Prevent and Punish Torture, OAS Treaty Series No. 67, 1985 (entry into force 1987).

³⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 33 ILM 1534, 1994 (entry into force 1995).

³⁷ T. Zwart, *The Admissibility of Human Rights Petitions, The Case law of the European Commission of Human Rights and the Human Rights Committee* (Dordrecht: Martinus Nijhoff Publishers 1994), p 50.

³⁸ J. M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, p. 100.

3.2 PROCEDURAL POSITION OF INDIVIDUALS

To present a picture of procedural position of the individuals within the Inter-American human rights system, the description of some procedural rights of petitioners, alleged victims, victims' relatives, or their representatives during the proceeding before the Inter-American Court is used. The framework is set in the Convention, but more importantly in the Rules of Procedure of the Court. They have undergone significant development and the last version was adopted in November 2009.³⁹

Under the change of the Rules of Procedure of the Court in 2001 individuals have been granted locus standi in judicio; they are able to participate directly in all stages of the procedure.⁴⁰ Once the case is brought to the Inter-American Court, the individuals may act autonomously. Currently, 'alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings'.⁴¹ The impact of this provision is obvious; an oral presentation given by the victim, a witness or expert witnesses may be decisive in the final outcome.⁴² 'The victim's activity before the Court is independent of that of the Commission, though coordination may occur, similar to many domestic legal systems in which the prosecutor and the victim's private attorney act independently before a criminal court.'⁴³ Hearing of the witnesses and presentation of other evidence proposed directly by the alleged victims can effectively help the Commission to balance a defence strategy of a concerned state.

Individuals are entitled to request provisional measures to be ordered by the Court, which can act also on its own motion.⁴⁴ Such possibility for the

³⁹ Rules of Procedure of the Inter-American Court of Human Rights, Inter-American Court of Human Rights, Approved by the Court during sessions held from 16 to 28 November 2009.

⁴⁰ A. A. Cancado Trindade, *The Development of International Human Rights Law by the operation and the case-law of the European and the Inter-American Courts of Human Rights* Human Rights Law Journal, 2004, Vol. 25, No. 5-8, pp. 157 - 160, p. 158.

⁴¹ Rules of Procedure of the Inter-American Court of Human Rights, Art. 25 para 1.

⁴² D. Rodríguez-Pinzón, C. Martín, *The Prohibition of Torture and Ill-treatment in the inter-American Human Rights System: A handbook for Victims and their Advocates*, p. 85.

⁴³ *Ibid*, p. 57.

⁴⁴ American Convention on Human Rights, Art. 63 para 2; Rules of Procedure of the Inter-American Court of Human Rights, Art. 27 para 1.

victims of alleged human rights violation was introduced in 2001, when victims became a 'party' before the Court. The condition to be a party to a case was necessary to be officially able to request for measures.⁴⁵ As of 2009, 'victims or alleged victims, or their representatives' may request provisional measures in cases before the Court providing extreme gravity and urgency, and when necessary to avoid irreparable damage to persons.⁴⁶ If the matter is not yet submitted to the Court, it may order provisional measures at the request of the Commission. Although in almost all of the cases, the measures were ordered at request of the Commission, the examples are present to illustrate that the Court does not hesitate to act *ex officio* in response to direct request by the individual petitioner.⁴⁷

Very interesting provision towards the victim-oriented procedure before the Court is, that the '[a]lleged victims, witness, expert witnesses, and all other persons that the Court decides to hear may be interrogated by the alleged victims or their representatives, the respondent State, and if applicable, the petitioning State'.⁴⁸ This rule was introduced in November 2009 and represents the platform that allows concerned individuals directly influence the outcome of the oral presentation of persons before the Court. Victims may interrogate the witnesses proposed by both, the respondent State or themselves. They are allowed to ask questions while the interrogation is moderated by the President of the Court. Victims may also formulate questions in writing for the witnesses offered by the opposing party.⁴⁹ It should 'improve the application of the adversarial principle in evidence of this nature'.⁵⁰ The contradictory character of the procedure is strengthened by pulling the victims in the presentation during the hearing of the Court. Since the rule entered into force just on 1 January 2010, more time is needed to assess the effect of it in practice.

⁴⁵ J. M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, p. 311.

⁴⁶ American Convention on Human Rights, Art. 63 para 2; Rules of Procedure of the Inter-American Court of Human Rights, Art. 27 para 1 and 3.

⁴⁷ A. A. Cancado Trindade, *The Evolution of Provisional Measures of Protection under the case-law of the Inter-American Court of Human Rights (1987-2002)* *Human Rights Law Journal*, 2003, Vol. 23, No. 5-8, pp. 162 - 168, p. 165, 168.

⁴⁸ Rules of Procedure of the Inter-American Court of Human Rights, Art. 52 para 2.

⁴⁹ *Ibid*, Art 50 para 5.

⁵⁰ Annual Report of the Inter-American Court of Human Rights, Inter-American Court of Human Rights, 2009, available at <<http://www.corteidh.or.cr/informes.cfm?&CFID=640736&CFTOKEN=42819215>> (accessed on October 2010), page 17.

Alleged victims and their representatives have opportunity ‘to present final written arguments within the term established by the Presidency’.⁵¹ Although the main intention of the rule is ‘to enhance the principles of procedural economy and promptness’,⁵² it also shaped the procedural capacity of alleged victims. Individual can also influence future clarification of the Court’s judgements on preliminary objection, on merits, or on reparations and costs. All those participating in the case may submit any written comments they deem relevant on request for interpretation of the judgment.⁵³ The request may be brought by ‘any of the parties’ of the case.⁵⁴

3.3 REMEDIES

The position of the individuals as subject of the international law is also determined by their ability to request and acquire the remedies at the international forum. Individuals did not have this opportunity in the traditional international law. The development in this direction has occurred mainly in the second half of the twentieth century, when the major mechanisms for human rights monitoring had been created. The level of efficiency when looking for redress may be defined by accessibility to the appropriate body, by the extent of remedies available and by the character of damage compensated.

If a right or freedom protected by the Convention has been violated, the Inter-American Court will rule that the injured party must be ensured the enjoyment of a right or freedom violated; that the breach must be remedied; and that fair compensation must be paid to the injured party.⁵⁵ Remedies in the Inter-American system generally consist of the financial compensations and the non-monetary remedies. Remedies in form of restitution, rehabilitation, or satisfaction are expected to cure pecuniary as well as non-pecuniary damage occurred when human rights were violated. Former usually includes a loss of earnings or loss of earning capacity, a loss of property or its injury, or medical expenses. Latter category, usually compensated by the Commission and the Court, consists of a past or future physical and mental suffering, a permanent disability and disfigurement, a

⁵¹ Rules of Procedure of the Inter-American Court of Human Rights, Art. 56 para 1.

⁵² Annual Report of the Inter-American Court of Human Rights, 2009, page 18.

⁵³ Rules of Procedure of the Inter-American Court of Human Rights, Art. 68 para 2.

⁵⁴ American Convention on Human Rights, Art. 67. Since the definition of ‘party’ of the case is not included in the current Rules of Procedure of the Court, it seems that only the concerned state and the Commission are able to present the request for interpretation.

⁵⁵ *Ibid*, Art. 63 para 1.

humiliation, fear or mental distress, lost opportunities of victim or lost enjoyment of his or her life.⁵⁶

‘The Court’s jurisprudence on damages has increased in generosity towards victims over the years’.⁵⁷ Quite unique development in the area of remedies for non-pecuniary damage has been achieved in the Inter-American regional system. For example in *Barrios Altos* case, the Court found the violation of the right to life of fifteen victims, the right to humane treatment of four victims, and the right to fair trial and to judicial protection of nineteen victims which occurred due to the massacre for which the state was held responsible.⁵⁸ Consequently, it ordered the state, inter alia, to ‘grant the beneficiaries of the reparations their healthcare expenses, granting them free care at the respective health care center according to their place of residence and at the respective specialized institute or hospital of referral, in the areas of out-patient consultation, diagnostic support procedures, medicine, specialized care, diagnostic procedures, hospitalization, surgery, childbirth, traumatological rehabilitation, and mental health’.⁵⁹ The four surviving victims and the thirty-six heirs of deceased victims were defined as ‘beneficiaries of the reparations’.⁶⁰ Since the mass consequences of the events in question, state was, besides the others, obliged to publish the judgment in specified official gazette, to publicly express apology to the victims for the grave damage caused, and to erect a memorial monument.⁶¹

The importance of helping to cure the non-pecuniary injuries was demonstrated in *Loayza Tamago* case. The state was declared responsible for violation of right to personal liberty, right to human treatment and right to fair trial.⁶² As restitution measures the Court ordered to re-instate the victim in the teaching service in public institution with salaries and benefits equal to the pay she was receiving before. Apart from the compensatory remedies, the state of Peru was required to investigate the facts, to identify

⁵⁶ D. Shelton, *Remedies in International Human Rights Law*, Second Edition (Oxford: OUP 2005), p 292.

⁵⁷ *Ibid*, p. 299.

⁵⁸ *Barrios Altos v. Peru*, Judgement of 14 March 2001 (Merits), I/A Court H.R., Series C No. 75, para 51.

⁵⁹ *Barrios Altos v. Peru*, Judgement of 30 November 2001 (Reparations and Costs), I/A Court H.R., Series C No. 87, para 50 (3).

⁶⁰ *Ibid*, para 29.

⁶¹ *Ibid*, para 50 (5) (d) (e) (f).

⁶² *Loayza-Tamayo v. Peru*, Judgement of 17 September 1997 (Merits), I/A Court H.R., Series C No. 33, Art. XVIII.

and punish those responsible for those acts, and to adopt all necessary domestic legal measures to ensure that this obligation is discharged.⁶³

The Inter-American Court sometimes imposes quite specific remedies on concerned states, e. g. to publish, at least once, in the state's official newspaper and in another newspaper of ample national circulation, both the section called 'Proven Facts' as well as the operative part of the judgement; to eliminate the name of the victim from the public criminal registries in which he or she appears in connection to the case as satisfaction measure⁶⁴; to create the trust funds for the minor children⁶⁵; to provide the conditions required to transfer the mortal remains of the victim to the place chosen by his next of kin, at no cost to them.⁶⁶ The demand to make the public familiar with the judgments is an important part of the satisfaction. The personal and societal dimensions of the right to truth are overlapping and interrelated; adequate reparation for victims and their families requires that wider society knows the truth about gross violations of human rights.⁶⁷

Legislative activity is also sometimes needed to comply with the judgement on reparations. In Juan Humberto Sánchez case, for example, the state had to implement a record of detainees that enables control of legality of detentions. It must 'include identification of the detainees, the reason for their detention, the competent authority, the day and time of admission and of release, and information on the arrest warrant'.⁶⁸ The Court may order to adopt a new law, to amend or to repeal an existing law.

Though the Court was assessed as 'reluctant to utilize its power to order non-pecuniary reparations'⁶⁹ in the past, the Inter-American bodies have

⁶³ Loayza-Tamayo v. Peru, Judgement of 27 November 1998 (Reparations and Costs), I/A Court H.R., Series C No. 42, para 192.

⁶⁴ Acosta-Calderon v. Ecuador, Judgment of 24 Jun 2005 (Merits, Reparations and Costs), I/A Court H.R., Series C No. 129, para 175 (6) (7).

⁶⁵ El Amparo v. Venezuela, Judgment of 14 September 1996 (Reparations and Costs), I/A Court H.R., Series C No. 28, para 64 (2).

⁶⁶ Juan Humberto Sánchez v. Honduras, Judgment of 7 Jun 2003 (Preliminary Objection, Merits, Reparations and Costs), I/A Court H.R., Series C No. 99, para 201 (11).

⁶⁷ D. Cassel, 'The Inter-American Court of Human Rights' In: Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America (Washington: Due Process of Law Foundation 2007), p. 161.

⁶⁸ Juan Humberto Sánchez v. Honduras, para 201 (12) in connection with para 189.

⁶⁹ D. Shelton, 'Reparations in the Inter-American System' In: D. J. Harris, S. Livinstone (eds.), The Inter-American System of Human Rights (Oxford: Clarendon Press 1998), p. 169.

moved towards measures that require some non-pecuniary activity from the state. This level of victim-oriented approach in remedies can not be seen in the European human rights system.

4. CONCLUSION

Present paper endeavours to support the concept of the individuals as subject of contemporary international law. By outlining some features of the Inter-American human rights system, the position of individuals in regional mechanism and international law generally has been indicated.

The access of the individuals to the judicial and the quasi-judicial body with power of the authoritative interpretation of the American Declaration, the American Convention and other treaties has given them the possibility to influence the acts of state. Individuals can initiate two parallel complaint procedures to determine whether the human rights or freedoms were violated. Also individuals from non-state party to the American Convention are protected by the individual complaint procedure; this was not the case in Europe before 1998 when only individuals from contracting parties of the European Convention for the Protection of Human Rights and Fundamental Freedoms were granted standing before the monitoring bodies. Final quasi-judicial or judicial outcomes of the procedures elaborate and specify the obligations of states and, consequently, set the scope of the state activities in many areas. Professor Cancado Trindade has concluded that the Inter-American Court has set limits to state voluntarism, established some degree of control of undue restrictions of states, and reassuringly enhanced the position of individual as subject of the international law of human rights.⁷⁰

The procedural capacity of individuals does not involve the right to bring a case directly before the Inter-American Court but they have the right to directly participate in all stages of the procedure. They can act autonomously and the direction of the procedure is not beyond their control.

The Court's case-law 'have provided the most wide-reaching remedies afforded in international human rights law to date, both in compensatory and non-compensatory forms'.⁷¹ There are no rigid criteria for remedies, but the compensation should be based upon a prudent estimate of damages, and the assessment of moral damages requires application of principles of

⁷⁰ A. A. Cancado Trindade, *The Development of International Human Rights Law by the operation and the case-law of the European and the Inter-American Courts of Human Rights*, p. 158.

⁷¹ D. Shelton, *Remedies in International Human Rights Law*, p 299.

equity.⁷² The Commission as well as the Court does not hesitate to order to adopt measures in which an active participation of state is needed towards non-pecuniary remedies. Damages are not limited to the pecuniary compensation.

The development within the Inter-American human rights system has confirmed the position of individuals as bearer of international personality. Their procedural position is better than the place of individuals within the UN treaty-based or charter-based bodies, but it is not as good as the position of individuals within the European human rights system. Some shortcuts of the OAS system have been corrected, however, there is still place for evolution towards more opened and efficient mechanism.

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⁷² Ibid, p. 301.

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