

The Impact of Orders from Inter-American Court of Human Rights in Internal Policies – Juveniles Deprived of Liberty in Brazil.

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The Inter-American Court of Human Rights jurisprudence addresses several important issues in which youths' rights can be highlighted. Some important provisional measures to protect juveniles deprived of their liberty in two Brazilian facilities impacted internal public policies in a very positive way.

Concerning youth's rights protection, the Inter-American Court issued, in 2005, the first order regarding Brazil in favor of juveniles detained at Tatuape Complex, state of São Paulo. Later, in 2011, the Inter-American Court adopted provisional measures in favor of juveniles detained at UNIS- state of Espírito Santo. The orders were mostly grounded in prevention of human rights violations such as overcrowding and physical mistreatment in the socio-educational facilities.

The Inter-American Court has, essentially, two functions, an adjudicatory one and an advisory one. Also, the Court may adopt the provisional measures considered necessary in cases of extreme gravity and urgency; and when necessary to avoid irreparable damages to persons, both in cases being processed before the Court and in matters that have not yet been submitted to it, upon request of the Inter-American Commission.¹

About the provisional measures relevance, the author Cançado Trindade calls attention to their protective rather than the precautionary character, given the function of safeguarding human rights. Thus, provisional measures are transformed in a true jurisdictional guarantee of a preventive nature.² Recent rulings of the Inter-American Court clearly express such an understanding.³

¹ Cf. Description of the Inter-American System, available at <http://www.corteidh.or.cr/index.php/en/about-us/how-to-access-the-inter-american-system/denuncias-consultas>.

² CANÇADO TRINDADE, Antônio Augusto. DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS. ESENCIA Y TRASCENDENCIA (VOTOS EN LA CORTE INTERAMERICANA DE DERECHOS HUMANOS 1991, 2006) México: Editorial Porrúa e Universidad Iberoamericana, 2007. p. 967.

³Cf. Order of the Inter-American Court of Human Rights of February 25, 2011. Provisional Measures regarding Brazil - matter of the socio-educational internment facility. *Considering that forth and fifth*. Available at: https://view.officeapps.live.com/op/view.aspx?src=http://www.corteidh.or.cr/docs/medidas/socioeducativa_se_01_ing.doc

The Inter-American Court orders to protect juveniles deprived of their liberty in Brazil do not consist in merits judgement, they were issued as provisional measures in both situations mentioned above.

It's important to clarify that Brazilian Juvenile Justice deals with teenagers only, more precisely, youths whose age is between 12 and 18 years old.

The first order regarding Brazil refers to the Tatuape Complex. It was issued in 2005 and reissued until 2008. After three years of provisional measures, the Inter-American Court verified some progress in the system since the State has gradually deactivated the Tatuape Complex in such a way that inmates were transferred to other units that did not show overcrowding. The Tatuape Complex was completely inactive on October 16, 2007. In addition, the Inter-American Court checked the State had built new socio-educational facilities and had adopted institutional changes that have led to a reduction in the number of rebellions and criminal offenses. In view of this scenario, the Inter-American Court concluded the facts that motivated the adoption of provisional measures in favor of inmates deprived of liberty in the Tatuape Complex no longer subsisted.

Regarding the juvenile detained at UNIS, state of Espirito Santo, the first order was issued in 2011 and reissued until today. The most recent order dates from November 2017. By the provisional measures, the Inter-American Court required the State to adopt all the necessary actions to protect the life and personal integrity of the adolescents deprived of liberty in the socio-educational facility, as well as all other persons in the unit. Also, determined the State to guarantee a disciplinary regimen established within the framework of international standards on the matter.⁴ The recent order of November 2017⁵ analyzed the information provided by the State, Commission, Representatives and Public Defender (as *amicus curiae*) and concluded the eradication of the risk to the beneficiaries of the provisional measures was not evident given the continuing reports regarding aggression among inmates, among officials against inmates, and of the abusive use of handcuffs, among others. Therefore, it was considered necessary to maintain the provisional measures to prevent rioting or rebellions in the unit. In its considerations, the Inter-American Court highlighted improvements in the socio-educational system and mentioned, as an accomplishment, the work plan drawn up jointly with several institutions: Judiciary, Public Prosecutor's Office, Public Defender's Office, State Council for the Rights of Children and Adolescents, The State Secretariat for Human Rights, the Institute of Socio-educational

⁴ Cf. Order of the Inter-American Court of Human Rights of February 25, 2011. Provisional Measures regarding Brazil - matter of the socio-educational internment facility. Available at: https://view.officeapps.live.com/op/view.aspx?src=http://www.corteidh.or.cr/docs/medidas/socioeducativa_se_01_ing.doc

⁵ Cf. Order of the Inter-American Court of Human Rights of November 15, 2017. Provisional Measures regarding Brazil - matter of the socio-educational internment facility. available at: http://www.corteidh.or.cr/docs/medidas/socioeducativa_se_10.pdf

Assistance of Espírito Santo (IASSES) and the petitioners. Cited work plan addresses subjects like units overcrowding; health care; violence prevention and infrastructure of the unit.

As for overcrowding situations, that order indicated the reports showed a number of inmates at UNIS that varied from 108 (one hundred and eight) to 87 (eighty seven) in the last two years. Facing these variation of information, the Inter-American Court requested the State to accurately report the capacity of UNIS.

In addition, the Inter-American Court raises questions for the State to respond in its periodic reports. It is possible to note the concern of the Inter-American Court with the individualization of care; capacity of occupancy of the unit; health care; security of inmates; excessive use of handcuffs; nutrition and food safety, among others.

The Inter-American Court provisional measures regarding Brazil represent an important tool to protect juveniles deprived of liberty. Even with difficulties in complying with the orders, some achievements can be pointed out: The Tatuape Complex was completely discontinued on October 16, 2007; new facilities were built according to recommended patterns; and institutional changes led to a reduction in the number of rebellions and criminal offenses. Regarding UNIS, there is no record of violent death of inmates since the first order was issued; the number of inmates at the unit reduced considerably. In relation to overcrowding in the unit, it is possible to testify that in 2009, there were 290 (two hundred and ninety) inmates and in the last two years, the number of inmates in the unit varied from 87 (eighty-seven) to 108 (one hundred and eight) as registered in the 2017 order. The provisional measures encouraged the creation of the Interinstitutional Commission of the Socio-educational System of Espírito Santo whose purpose is to seek continuous improvements for the system, as well as to monitor compliance with the orders issued by the Inter-American Court. This interinstitutional commission allows greater integration between public institutions, the justice system, the state council of rights and representatives of the beneficiaries. The joint work between all entities is salutary to foster public policies related to the socio-educational service.

Thus, in both Brazilian situations, the provisional measures ordered by the Inter-American Court played an essential role in the improvement of the socio-educational system. The management of the tools available in domestic law would hardly achieve the outcome obtained with the granting of the Court orders. There is still a long path to reach standards of excellence; nevertheless, the conclusion is that orders from Inter-American Court of Human Rights can make important changes in the internal policies related to youth's rights protection.