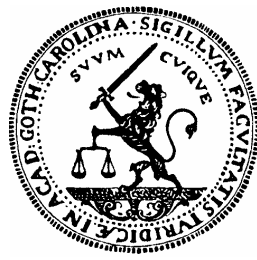


The Raoul Wallenberg Institute
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The Right to Equal Redistribution of Wealth. An Argumentation to find the tools for its implementation under the individual complaints

Thesis in Partial Fulfilment of the Master's Degree in International Human Rights Law

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implementation under the individual complaints.**

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Preface: While I was following the different courses of the Master's Programme in International Human Rights Law at Lund's University, I was constantly thinking about the different topics on which I could write my final thesis. All of them were linked with some of the topics and subjects that I have studied all my life (political rights, electoral systems, Inter-American system of human rights, minorities and indigenous rights, among others) and I was completely sure that I would have chosen one of them. Suddenly, when I was studying for the exam in "Economic, social and cultural rights and Right to Development" (first days of may, 1999) I read a news in one of the most important newspapers from Argentina¹ saying that poverty in that (my) country had increased to 36% of the population in the last years (the "historical" average has been, roughly, 20%) and that it had succeeded, during a period of a very strong increase of the national economy, to generate deeper inequalities among the people of my country. This was a kind of "revelation" to me and, even if I more or less knew this information, it shocked me, probably due to the fact that I had been abroad since so many months. Few minutes after I read that article I decided that my thesis should be linked with something practical (not only a theoretical topic as I normally used to do), trying to help directly the bad situation of people and human rights in the world. At that moment I began to develop the topic of my thesis that the reader now has in his/her hands. But the main problem was linked with the fact that I had no knowledge about economy and statistics, and only little knowledge about many other subjects like political science, philosophy (and philosophy of law), ethics, and sociology, only to cite some of the most important of them linked with the topic. At that moment I thought that trying to write about this topic in so little time and with only few tools related with law, international law and human rights law could be a wrong decision. But I liked to do it, even if the challenge was much more difficult than working on one of the "usual" topics. I decided to try it, and the advice of my supervisor was very stimulating considering that this situation should be considered as a motivation to write about it instead of being something that obliges me to stop. But, of course, it is not possible to learn, even the minimum, of all these subjects in such a short time. I have tried to read about philosophy and ethics, about economy and sociology, but in only few months my knowledge has not increased very much. This is the main reason why I want to advise to the reader that many of the topics need a better development with a better knowledge. That is the reason why I consider this thesis as being a first step in my studies about this topic, that I have found marvellous (I will continue working in the field for my doctoral thesis). The main reason for

¹ *El legado de Menem al proximo gobierno. Informe exclusivo del Banco Mundial. Existen 13,4 millones de pobres en Argentina* in *Página 12*, edition of the 30 April 1999. Web page www.pagina.12.com.ar/1999/99-04/99-04-30/pag.03.htm visited the 5th. of May 1999.

that is, precisely, the strong link with so many different subjects, and, principally, the feeling that your research can be used in a direct practical way, that your thesis can end up as a real case in a real court trying to improve the situation of “real” people. If I had reached that aim, even with many theoretical wrongs and lack of knowledge, I am much more than happy.

Lund, February 2000.

Chapter I:
Introduction

1) Aims and stipulations:

A) Aims of the thesis: I have different aims with this thesis and I hope that I have reached them, even if in a partial way. Those “ambitious” aims are the following:

a) To find arguments to hold the existence of the right to equal redistribution of wealth.

b) To find some kind of arguments to hold, through the analysis of that particular right, that human rights should not only be considered to be satisfied with a “minimum core” of enjoyment because they should be enjoyed “proportionally” among all the human beings.

c) To hold that the right to equal redistribution of wealth can be used as an individual right and then individuals can complain to enjoy this right within the present international human rights law.

d) To analyse the different possibilities to exercise this individual complaint at the international and regional level in relation to the specific case of Argentina linked with the public expenditure for individuals.

In the concluding remarks I will try to present a balance of the thesis in relation with these aims.

B) Some stipulations: During the thesis I will use many technical and difficult words and terms. They will mainly be used in their “normal” meaning, but I want to clarify the meaning of some of them to avoid misunderstandings because of their difficult and “broad” meanings. “Right”, “wealth”, “income distribution” and “individual complaints” are such kinds of “words”. In fact, some of them are even in the title of the thesis and I will use them all over the thesis. When I will use the word “*right*” I will understand the possibility that all human beings (or at least the nationals or legal residents of one State) have to ask the State for the fulfilment of one specific legal norm that assures them the exercise of that right and the State is obliged (in some way) to comply with that. For the word “*wealth*” I will understand all the different valuable materials or elements in one society, but principally money, properties and valuable possessions. In this sense, the word “wealth” is going to be strongly linked with “income” (or “potential” income) including all the incomes that a

person or a society receives. I will use the term “*income distribution*” in its common sense, as “*a measurement of the way in which income is distributed in a given society. It goes beyond purely monetary aspects*”². For “*individual complaints*” (using the term “complaints” as synonymous with “communications”, “applications” or “cases”) I will understand the exercise or use of a right, in a judicial or quasi-judicial mechanism, with the aim of asking some authority or tribunal for the fulfilment by a State of that right of the individuals.

- 2) Presentation of the problem: Poverty is recognised as one of the most acute problem at the moment in the world and at the same time its link with human rights is very clear and strong³. Millions of peoples do not have daily food to eat, do not receive any kind of education or health care, do not have a house where to live, among many other problems. But at the same time we know that some people are “billionaire” and posses hundreds of properties and resources and money. For instance, at this moment, Bill Gates is the richest man in the world and possesses 90 billions dollars⁴, which means years of food and lots of help for thousands of starving people in the world. There are many other billionaires in the same situation. Is this contrast fair? Is this contrast a violation of human rights? Does “Gates” deserve to have this incredible amount of money or wealth and to use it as he wants? Do the “poor” people “deserve” to be poor? All these questions inevitably bring us to a philosophical, ethical and psychological problem: who deserves what in this world? Do we (human beings) deserve some things because we are able to have them “thanks” to many tools (because we are strong, we are clever, we are rich...) or do we deserve to have –more or less- the same resources, wealth, money or at least the same possibilities to

² Absbjorn Eide “The realization of economic, social and cultural rights”, E/CN.4/Sub.2/1994/21 of 5th. of July 1994, point 17.

³ See the Report Submitted by A. M. Lizin *Human Rights and Extreme Poverty* E/CN.4/1999/48 of 29 January 1999 in which there is a good presentation of poverty as a violation of human rights. In point 9 she says, “*Poverty is the principal cause of human rights violations in the world*”. I like the illustrative famous phrase by Nelson Mandela “*Poverty is the new face of apartheid*” that shows the very strong link between poverty and human rights. The General Assembly adopted a Resolution (47/134) in 1992 in which it established that “extreme poverty is a violation of human dignity” (UN Doc., A/RES/47/134, 1992) and the Vienna Declaration of 1993, in its paragraph 2, affirms that “*extreme poverty and social exclusion constitute a violation of human dignity*”.

⁴ Source: Forbes “The world’s richest people” Page Web www.global.forbes.com/tool/toolbox/billnew/index.asp, page visited the 4th. of November 1999. I could continue with many examples showing the inequalities of wealth among the people in the world, but it is not my aim. The aim is to show one indicator of the bad distribution of wealth without caring so much of the exact numbers. I want only to show the differences in a rough way and nothing else. It is possible to find many numbers and situations that can shock in many articles in newspapers, magazines, books etc. (For instance, my last shocking information was reading the Newsweek Magazine –Special edition, December 1999/February 2000- where it said that “*The assets of the world’s three richest people, Bill Gates, Prince Alwaledd Bin Talal Bin Abdulaziz*

reach them? Who “deserves” what and why in this world? Who can decide what everyone deserves? The answers to all these questions are really very difficult and they are linked with many different fields of study⁵. Returning to the example that I have put in relation with Gates, we find that many people think that he “deserves” to have this amount of wealth because he is a “genius”, he has worked very hard, he earned his money honestly and, thus, it is fair if he is compensated for that. But why is he a “genius” and why did he work so hard? Is it because of him or because of many other circumstances? Why are “poor” people not “geniuses” and why don’t they work, if it is the case, so much (or are «lazy» people)⁶? Are we as we are because our “essence” or because of our “circumstances”? Does it matter if we answer in one way or another? In my opinion, there is not only one element that allows persons to work, to have some skills and to survive, but a whole set of elements. What is sure is that *persons are not “good” or “bad” (clever or stupid, rich or poor, strong or weak, etc.) because of their “essences”. Human beings are as they are because of many factors among which cultural and social factors are the most important.* It seems that it is completely “unfair” that Gates possesses that incredible amount of money and that, at the same time and in the same world, billions of people are dying because they can not eat even a piece of bread every day. I am sure that someone could say that this situation could be considered, in fact, “unfair”, but that does not mean that this situation is against human rights and more specifically against international human rights law. Here we go to another problem: what are human rights? I am not going to stop here to answer this question⁷ because is not the aim of this work. But I only want to say that if "human rights" mean, in a general way, those rights that the human beings “deserve” for the only fact of being human beings, then it seems clear that the “big differences” of wealth among people is against human rights⁸. I am thinking immediately in the opposite argument: “your affirmation is false because human rights, in fact, mean those rights that the human beings deserve for the only fact of being human but from that

Alsaud and Philip F. Anschutz, are more than the combined GNP of 26 of the world’s poorest countries. The assets of the world’s 200 richest people are more than the combined income of 41 percent of the world”, page 72).

⁵ This is a very long philosophical and ethical discussion about these kinds of questions which I am not going to analyse here.

⁶ I am trying to use some “common” arguments even if it is very important to clarify that when I am making these comments I do not think necessarily many of the things (particularly this one) that I write, but they are useful for my argumentation.

⁷ Among the very broad literature about this topic see, with different views, for instance Henry Steiner and Philip Alston *International Human Rights in Context* (Clarendon Press 1996) Chapter 4. See also Chapters 1 to 4 in Raija Hanski and Markku Suksi (Editors) *An Introduction to the International Protection of Human Rights* (Institute for Human Rights Abo Akademi University 1997) and Carlos Nino *Etica y derechos humanos* (Paidós 1984, but there is a second edition that has been translated into English by Oxford University Press).

⁸ I will present the arguments to hold this affirmation in Chapter III, showing the incompatibility between the actual international human rights law and the “big differences” in the amount of wealth of human beings.

does not derive the fact that Gates must not have his money. What is necessary is to try to find a solution to the problems of the poor people but not to impede him to have his money”⁹. I do not agree with this position. In fact this opinion seems to say that human rights are linked with *minima* (I could say that is “the official” and general position) while I think that human rights are also linked with *proportions*. In other words, human rights are related with minimis but to them we have to add some proportions in the possibilities of enjoyment of the rights. Let’s consider one hypothetical and simple example: in principle it should be a violation of human rights if one person has 1.000.000 of “x” (“x” is a something, the only one, that allows reaching resources which are very desirable objects for human beings). The total amount of “x” in the world is 1.500.000 and many other people have only 1 or even no “x”. In this extreme and imprecise example, there is, it seems to me, a violation in the proportion that would not happen, for instance, if the differences would be smaller. But then, what is to be considered the exact relation and proportion? In which products, sources and elements? What is the “right” point? Everybody the same amount of everything? Is that possible? What happens with many other rights –as freedom for instance- if we try to impose a very strict proportion in the enjoyment of rights? Is this a kind of tension among, for instance, a “capitalistic” and “Marxist” vision of the society and the world? No, or better, not necessary. In other words, there are different schools of thought about visions of the society in reference with inequality. The three most important could be classified as the Liberals, Neo-Marxist and Libertarian. “*Liberals such as Rawls emphasizes that initial wealth, family background, social connections and the like can be unfairly distributed at the ‘birth-lottery’. For Rawls the organization of a just society requires a social contract negotiated from a ‘veil of ignorance’ on the distribution of wealth and other traits among individuals that shape their interests in society.*

The idea is that a fair social contract must be independent of background conditions, otherwise the rules of the game will be biased in favour of those who are more wealthy in society.

A social arrangement is just for Rawls only if that arrangement is the best for those relatively worse-off in society, compared to other alternative social arrangements; this is called the difference principle.

⁹ For instance in a recent interview the famous sociologist (who comes from a “left” way of thinking) Anthony Giddens says “*Noi dobbiamo creare una societa che non impedisca a Bill Gates di arricchirsi, perche questo e un bene per tutti. Credo che in Europa sarebbe molto difficile per un Bill Gates che viene dal nulla di diventare l’uomo piu ricco del mondo*”, in the Italian newspaper *La Repubblica* of 17 of November 1999, page 18.

Utilitarianism and welfare economics provide another analytical base for liberalism, different from the social contractualism of Locke or Rawls. In contrast to Rawls, utilitarians avoid judging the justice of a given distribution of income and wealth in society. Utilitarians focus only on maximizing the total sum of personal utilities independently on how these utilities are distributed among different members of society. Moreover, welfare economics see distributive outcome as the result of voluntary wealth accumulation over generation with the remuneration factors of productions given by productivity and effort levels. This is a contrast with the emphasis given to features (background factors) outside personal control and responsibility, as stressed by Rawls and the theory of distributive justice.

*Another perspective is provided by Neo-Marxism. In particular, marxian economics sees unequal property relations and command of productive wealth in capitalism as the main factors in generating and reproducing existing inequalities over time. Neo-Marxism eschews the idea of a social contract negotiated for the veil of ignorance. On the contrary, this view stresses that the owners of productive wealth design or influence, at the end, institutions that are functional to their interest of the less favoured in society; hence, the neo-marxian claim of the unfair nature of capitalist society. In contrast, Libertarians as Robert Nozick for example, see the possession of wealth and the right to enjoy its benefits, as a natural right of the individual, and part of their 'self-ownership' that includes the right of private use of productive assets and natural resources. Libertarians propose a 'minimal state' devoid of powers of taxation that expropriate the fruits of individuals effort and risking"¹⁰. In my opinion, the vision of these complex ideas from the human rights point of view is that societies have to be "the most equal as possible". This in the sense of "the most egalitarian as possible" but without loosing all the other freedoms and rights. That is the reason why I think, even if I know that it is a partial solution, that wealth is so important. Without wealth it is not possible to enjoy all the other rights. Therefore, States have to allow a very large margin of liberty and freedom in all the fields of rights of human beings but the effects and consequences of that freedom in relation with the inequalities of the human beings *have to go* to the benefits of the whole society and not *only* to those persons who, for special capacities, skills or other reasons, are the strongest, the most clever, the "winners" and thus can collect much more money, wealth and properties than others. The State has to play an*

¹⁰ See Andres Solimano *Beyond Unequal Development*, Policy Research Working Paper No. 2091 (March 1999), The World Bank Group, pages 6/7. The paper was obtained through the web-site of the World Bank; www.worldbank.org visited the 1st. of February 2000.

important role in relation with this dynamic situation. It has to protect the proprieties and wealth of the richest (and of the whole society) but at the same time it has to redistribute the differences of wealth and income in some way. Tax systems appear as one of the principal keys of redistribution, even if there are many other alternatives too. All this happens because societies have to establish “equal rights” for the human beings that live there and equal rights implies equality of treatment, of opportunity and of outcomes, the three together, but in steps. I say this in the sense that the first task of the State to respect this mandate is *equal treatment for everyone* with “reasonable” exceptions. Those exceptions are –if we think of taxes for example- linked with equality of opportunity, in the sense that the State is obliged to generate the conditions for similar opportunities for all, and here the necessity of a minimum redistribution of wealth appears clear again, particularly in this more and more capitalistic world. From here, it seems logical, then, to think of a minimum, at least, of equality in the outcomes (some proportion): a, more or less, egalitarian society (in the sense that equality of outcome can be measured too, but it depends how to measure it). States have to do something to reach a society that is as “egalitarian as possible” and this is because of moral and many other reasons, but for us principally because of human rights law. Human Rights organs have to check and control this State’s task -at least in that clear, evident and completely “non-egalitarian” societies- with the aim of finding remedies to those situations.

This State’s role in the redistribution of wealth and the search of societies “as egalitarian as possible” is inevitably linked with the now called “globalization” process that every day implies a more intensive gap among rich and poor countries and peoples¹¹, with strong influence at the national level. The international human rights law should interfere also in this process of “globalization”, but this step seems, nowadays, more difficult and far away for practical and political reasons.

But returning to the main topic in discussion, it is clear that differences are inevitable because we (human beings) are very different. The question is to find which of the effects or consequences of those differences among human beings in some questions (for instance

¹¹ See Janusz Symonides *New human rights dimensions, obstacles and challenges: Introductory remarks* in the book edited by him *Human Rights: New Dimensions and Challenges* (Ashgate 1998) especially page 28 and ss. where he says “..... *The benefits of globalization should exceed the cost. During 1995-2001, the results of the Uruguay Round of the GATT are expected to increase global income because of greater efficiency and expansion of trade by an estimated U\$ 212-510 billion. However, those benefits are spread unevenly. Gaps among developing countries are widening. In many industrial countries, an increase in overall income is accompanied by a rise in income inequality and in unemployment which has reached a very high level and is rapidly growing*” (page29/30) and “..... *States still bear the main responsibilities for the implementation of human rights. Markets can not replace governments in the determination of economic, social and cultural policies, in providing social services and infrastructures, eradicating*

wealth) can not be justified¹². Differences until where?¹³ In the case of “wealth” it seems very important to try to find an “equilibrium” because it is related with many others factors and rights. But even if it seems necessary for moral, legal and many other reasons that I will present in the following chapter, not to accept the big differences in the possession of wealth among human beings, no one wants (or at least very few, “outsiders”) a “totally equal” society in a world in which everybody would have and receive exactly the same things. Even more, one of the most important topics in the new agenda of human rights questions is the right to be different with special protection to minorities, indigenous and other specific groups and cultures. In sum, what we need is to find a solution to this “big differences” among different human beings in the amount of money (or wealth) that they possess (money and wealth that principally, even if with other things, give people the many possibilities of real choices, for instance and precisely, the choice to be different).

I have said that big differences in the distribution of wealth are against human rights and I will talk about this in the following chapters. I know that, a priori, it seems easier to find the “violation” and to make the “diagnostic” of the problem than to find a solution. This is because the distribution of wealth and the meaning of wealth can be understood in many different modes and ways in the different societies¹⁴. In fact it is not easy to find the solution or the “ideal” distribution of wealth in a society but also it is not easy to find the local and specific violations in reference with inequalities in wealth in a society. But I am not going to continue with this problem from a theoretical point of view because it is not the approach to the question of this thesis and because I think that this short introduction to the problem is sufficient. This is because I know that I am not going to find the “theoretical” solution to this question. I will try, instead, only to think in

poverty, protecting vulnerable groups and defending the environment. Weak states cannot guarantee the rule of law which is conditio sine qua non for the full implementation of human rights” (page 30).

¹² The same argumentation and position, even if more complicated, could be given taking into consideration different countries, but I am not going to analyse this option particularly linked with the right to development because I will concentrate the analysis on the individuals and at the national sphere for reasons that I will explain later.

¹³ The answer is very personal and subjective. An interesting analysis of this problem and many others linked with it can be found in the book *Inequality reexamined* by Amartya Sen (Clarendon Press 1992).

¹⁴ See about this question the Bengoa’s Final Report to the Commission of Human Rights of the Economic and Social Council of the U.N, *The realization of economic, social and cultural rights* (E/CN.4/Sub.2/1997/9 of 30 June 1997), point E. There he says “*The distribution of wealth in societies can be understood in many modes and manners. The form of distribution of land ownership, for example of agricultural land, was for a long time one of the main criteria for understanding equity or inequity in a given society, Income distribution in agrarian or traditional societies should be analysed principally by the way in which ownership is distributed, and, consequently, by the use of systems of personal services. In modern societies, especially at the end of the last century, it was considered that ‘ownership of the means of production’ was the principal phenomenon and that it affected all aspects of social life and culture. Today it is not uncommonly considered that the most important factor is the way in which cultural goods, knowledge and information are distributed, and the informal networks of relationships between people.....*” (Point 17).

finding a minimum tool for helping to improve this unfair situation in the world, in some way. What I want, then, is to show that the big differences (and in this thesis I will present some *specific* differences) in the distribution of wealth are clearly unfair, it is ethically incorrect and it is against human rights law. But even if I do this, my problem (to find a solution to this situation) is still there –a theoretical problem- and that is the reason why I have to try to find some tentative solution. My aim is not to find the “perfect” or “ideal” solution, it is only to find a specific case linked with this topic where a violation of the international human rights law exists. *Therefore, I will present an argumentation applying the juridical tools that already exist in this “imperfect” and “unfair” world from a “realistic” point of view.*

Therefore, what I have to do is to find juridical arguments based in the “international human rights law” standards. The first thing that I would like to clarify is to say that I am using the world juridical argumentation because I think that that is a good “tool” through which it is possible to change this factual terribly unfair situation. I can not change the *law* (law in the sense of legislative norms) but I can try to find some arguments with the aim to change the *law* (law in the sense of the interpretation of those legislative norms and other sources). That is my task: only to try to find good argumentations, nothing else¹⁵. And, of course, for finding good argumentations it is necessary to know the law and to use the law. As I have some knowledge about the standards of “international human rights law” I am completely sure that for the hypothetical “Gates and the poor case” it is impossible, at least until now, to find a solution based in those standards. The main reason is linked with the fact that until now only States are recognised as subjects of international law¹⁶. I make this affirmation even when at the international level there are many ideas “fighting” against this situation and some of them are in course, as we will see in the next chapter. As a conclusion of this chapter and with other words, I will try to find arguments to hold the elimination of big inequalities among human being's wealth. I am not going to do this at the international level because I can not use any law tool to have a good result and then I know that I will lose my time, but not because I do not think that the situation is completely against the “human rights law principles”. I will present arguments only in reference with the national level and two cases in one State, Argentina. The analysis will

¹⁵ I agree with the idea that the use of law means “argumentation”, trying to persuade and convince. I will try to convince with arguments that this right is not only a “moral right” with the aim of persuading the reader and eventually in the future some international tribunal. In this sense I agree also with the “original” position held by Leif Carter when he says that law is an esthetical question and the aim is to find good or beautiful arguments to persuade others about some rights, in *Derecho Constitucional Contemporaneo* (Abeledo Perrot, Buenos Aires 1991).

¹⁶ See Chapter IV point 2.

be concentrated in those big inequalities among the relations between the “Bill Gates” or rich people and the poor at the national level (particularly Argentina). The aim is to find arguments based in the international human rights law and its standards and see if those arguments are applicable in reference to those particular States in which inequalities of wealth appear and how to apply them. Of course it is not possible to say: “In State X there is a big violation of human rights because Mr. Y has 1.000.000 and Mr. Z has nothing”. No, I will use, as I have already said, the present international human rights law, its standards and the way of functioning of them. For that reason it seems necessary to find some specific case (and I will analyse this from the individual complaints mechanism) always with the hope that a single case can “open the window” and from there to begin to go further with many other cases. These are the “rules” that nowadays exist in the international human rights law system and I want to follow them in this work with the idea of use it in a real practical case in the future. I think that it is possible to find good juridical arguments to try to change this unfair, unjust and non-ethical reality.

Briefly, in Chapter II I will try to present a quick overview about the reality of poverty, inequality and marginalization in the world and in Latin America and the different strategies to fight against that situation from the UN and the role of the international law trying to change this unequal distribution of wealth. In Chapter III I will go to the justifications of the existence of the right to equal redistribution of wealth based, principally, in the international human rights law. In Chapter IV I will present the link among the factual situation in a hypothetical State and the violation of the right. In Chapter V I will examine in the juridical possibilities for individuals to apply against the State-violator. In Chapter VI I will try to show a specific case linked with Argentina and the unequal distribution of public salaries and pensions. In the last Chapter I will present some conclusions and final remarks.

Chapter II:
Poverty, inequality and marginalization in the world and in Latin-America.
Role of the UN.

1) Poverty, inequality and marginalization in the world and in Latin America. It is important briefly to look at some statistical numbers linked with the problem of poverty, inequality and marginalization in the world. This is important because, as I have already said, even if I will not consider the problem at the international level in the most important part of the thesis, the “final aim” of the fulfilment of the right to equal redistribution of wealth lies there in the future. In fact, the violation of human rights law, at least from a theoretical point of view, it is clear at the international level too. Then, this short presentation is principally concentrated in the idea that the national level is the first step but inequalities at the international level and among all human beings are the next step in the future (Is this a utopia?)¹⁷.

*Poverty is the principal cause of human rights violations in the world*¹⁸. At the same time it is well known that it is very difficult to find a specific and unique definition of poverty. But is also very well known that nowadays it is calculated that at least one/quarter of humanity is poor, without having even one dollar per day.¹⁹ The quantity of people is really incredible: approximately 1.500.000.000 people, and the majority of them are in the “South” of the world, the third world or “developing” countries. This terrible reality contrasts clearly with the reality in the developed world, even if within many of those countries the contrast is also terrible (USA is a clear example of this fact). However, we do not find many poor people in the developed States and the incomes of the people there, normally, are much higher than the incomes of other “human beings” with the same “universal” human rights in the developing countries. Besides, in many of these developed countries, the internal differences of the individual’s wealth are not so high (for instance in all the “Nordic countries” in Europe). But sometimes numbers are more efficient than words showings situations. Let’s see, then, some numbers about these topics. If we make the comparison among countries, the international distribution and differences by countries shows real incredible amounts, like for instance the fact that in the international distribution of the

¹⁷ I agree with the phrase saying that the utopias from yesterdays are the progress of nowadays and that the utopias of today are the progress of the future generations. I prefer and I like utopias, because they mean future and hope.

¹⁸ About the relation between poverty and inequality and human rights see the Report by A.M. Lizin cited in note 3, especially chapter I. See also the Report by Asbjorn Eide cited in note 2.

¹⁹ Source: Argentinean newspaper *La Nacion* in the article *El 2000 comenzara con 1500 millones de pobres* by Luis Cortina from 16th of September 1999 based in one paper of the World Bank. This number can be found in different sources and sometimes arrive to 2.000.000.000 depending on the criteria to make the statistic. See about this the *UNDP Poverty Report 1998 (UNDP 1998)* where this question and the ways to combat against it are discussed.

GDP²⁰ by quintiles we see that in 1960 the 1st. Quintile (of the richest countries) had 90,20% of the GDP while the fifth quintile (the poorest countries) had only the 0,21% of the GDP. The situation is going worse year by year. In fact if we consider the same vision in the year 1994 the relation is 92,42% against 0,07%.²¹ At the individual level we can see that the real GDP per capita²², which considers the average in each country without taking account of the internal differences in the country, is more than U\$ 20.000 per year (1995) in the richest countries in the world, while it is U\$ 355²³ per year for the “same” human beings that deserve the “same” universal human rights in some countries like the Democratic Republic of Congo. About this question, in other words we could say, with Bengoa, *“As is well known, the gap between the various groups of countries is widening every day... In 1992, the per capita income of the poorest 20 per cent of the world population was \$ 301 per year, while that of the richest 20 per cent was U\$ 19.542, measured in terms of countries. If the calculation is based on the total number of people, rather than broken down into countries, the per capita income of the poorest sector was only U\$ 163 per year in comparison with the U\$ 22.208, i. e. 79 per cent of world income, for the richest”*.²⁴

This situation of poverty and inequality is particular in the Latin-America region. In fact, this region has a very high proportion of poor people (the highest after Africa) and it is the most unequal region in the world. In fact, in Latin America we find the biggest inequalities in the income distribution and the rich people receive the biggest part of the proportion of the income. For instance one/fourth of the total of the national income is perceived by only one fifth per cent of the population, while the 40% of the income by the 10% richest. In the other extreme, the 30% of the poorest of the population perceive only the 7,5% of the total income.²⁵ This situation of inequality is particularly bad in many countries, as for instance in Brazil where we can find that the first quintile has 32,1 times the wealth

²⁰ GDP means “Gross domestic product” that is the *total output of goods and services for final use produced by an economy by both residents and non-residents, regardless of the allocation to domestic and foreign claims. It does not include deductions for depreciation of physical capital or depletion and degradation of natural resources.* Source *Human Development Report 1999*, Oxford University Press 1999, page 254). In the examples it is shown the percentage share of the international distribution of GDP.

²¹ See this table and many others in the Final Report prepared by Jose Bengoa “The realization of economic, social and cultural rights”, op. cit. in the note 14.

²² The real GDP per capita (presented here in US dollars) is calculated, normally, by the total unduplicated output of economic goods and services produced within a country as measured in monetary terms.

²³ Source: *Human development index 1998*, web page www.undp.org/hdro/98hdi.htm, visited the 19th. of April 1999. In the Human Development Report 1999, op. cit., the extremes are more or less the same. In fact, we see, for instance, that taking in reference the year 1997 the average of incomes in the developing countries is U\$ 21.647 while the poorest income is in Sierra Leona with U\$ 410 (Table 1).

²⁴ Jose Bengoa “The realization of economic, social and cultural rights”, Provisional Report, E/CN.4/Sub.2/1996/14 of 24th. of June 1996, point 10.

that the fifth quintile possesses.²⁶ In the case of Argentina (that will be presented with more details in chapter VI) the situation of inequality has grown up notably in the last years. For instance in 1991 the 10% richest persons of the population received 34,1% of the income while the 30% poorest persons received only 8,8% but in 1997 the numbers were 36,6% and 7,7%.²⁷

I could continue for many pages showing the different inequalities and situations about the wealth that people possess or their incomes in the world, but this is only a kind of “remembering” before going to the topic of the thesis. All these numbers can be found in the bibliography linked with the topic²⁸. I think it is clear that this *situation of poverty and inequality implies a big marginalization of those human beings who suffer this situation, and until now “human rights” have not been a good tool to fight and to improve the situation of this people* (for sure, at least, in the field of the economic, social and cultural rights). I say this even if the UN and other organisations have tried and are trying to do something, especially in these last years. For that reason, before presenting the legal arguments that show that this situation is a clear violation of human rights, I would like to present a very short overview of the behaviour of the UN and its agencies in the fight against poverty, inequality and marginalization in relation with the human rights field.

2) The role and strategies of the UN and its agencies against poverty, marginalization and inequality. In the beginning of the evolution of the UN system, “poverty” and “income distribution” were not considered as important topics in the agenda. They were near to the topic of economic, social and cultural rights and as it is well known that these rights did not had the pull that civil and political rights had²⁹. But in recent times things have began to

²⁵ See the very good and complete report (that also exists in English) *América Latina frente a la desigualdad. Progreso económico y social en América Latina. Informe 1998-99* by the Banco Interamericano de Desarrollo (Inter-American Development Bank), 1998.

²⁶ See Bengoa, in the Report cited in note 24, where he shows that Brazil is, among the 69 analysed countries, the most unequal country (Table 9, period 1985-1990).

²⁷ See *Balance de 10 años de ajuste* by Susana Torrado in the Argentinean newspaper *Clarín*, 30th of November 1999.

²⁸ See the following Reports: Absjorn Eide’s report, cited in note 2. Jose Bengoa’s four very good reports about the realization of economic, social and cultural rights and income distribution which indications are E/CN.4/Sub.2/1995/14 of July 1995; E/CN.4/Sub.2/ 1996/14 of 24 June 1996; E/CN.4/Sub.2/1997/9 of 30 June 1997 and E/CN.4/Sub.2/1998/8. Lizin’s report about human rights and extreme poverty cited in note 3. The very interesting report by Paulo Sergio Pinheiro, Malak El-Chichini Poppovic and Tulio Kahn prepared for the World Conference on Human Rights of 1993 (A/CONF.157/PC/60/Add.3). There are four other detailed reports made by Leandro Despouy about the realization of economic, social and cultural rights and extreme poverty which indications are E/CN.4/Sub.2/1993/16 of 2 July 1993; E/CN.4/Sub.2/1994/19 of 10 June 1994; E/CN.4/Sub.2/1995/15 of 5 July 1995 and E/CN.4/Sub.2/1996/13. It is also possible to see the *Human Development Index 1999*, op. cit. In the case of Latin America, the report cited in note 25 is very good and complete because it shows this topic clearly and from different angles.

²⁹ About the comparison and the different treatment and conception of this two categories of rights see Steiner and Alston, op. cit. Chapter 5. A good article about this topic in Spanish is *Hacia la exigibilidad de los derechos económicos, sociales y culturales. Estándares internacionales y criterios de aplicación ante los tribunales locales* (page

change and now we can see that these two topics occupy the interest of many bodies in the UN and its agencies. Many reports have been written. Some working groups and special rapporteurs have been appointed. Some resolutions have been approved³⁰. The most important document at the international level has been the Declaration of Right to Development in 1986 but that is still only a “polemic declaration” without sufficient legal effects to oblige the international community and the rich States to react in front of inequalities and poverty in the world. In fact, “rich” countries (and many of their “friends” in the poor countries) do not show any kind of interest in its implementation. In fact, besides the “normative efforts” (sometimes even then contested, as in this case) made by the General Assembly of the UN and many other organs and agencies of the UN, the real situation in reference with poverty and inequality in the world is every day more problematic and seems to get worse instead of better.

But at the same time, two of the most important organs in the world economy, the World Bank and the International Monetary Fund, always impose their adjustment policies which generates almost inevitably a worse situation for the disadvantaged people. Nevertheless, probably as a response to external demands, they begin to consider (after a long period without caring and probably increasing the situation of poverty and inequality, giving some kind of loans that were “against” the poor people³¹) as an important question the distribution and the internal budget of the developing countries, and in a very general and a bit rhetoric way the human rights questions at the internal level, in particular the World Bank. The question to answer is why this “good change” seems is beginning to happen? The answers can be very different³² but I am not going to go into this question because is not linked with the aim of this thesis.

283 and ss.) by Victor Abramovich and Christian Courtis in *La aplicación de los tratados sobre derechos humanos por los tribunales locales* edited by Martin Abregu and Christian Courtis (CELS 1997).

³⁰ For an enumeration of the different documents and resolutions adopted by the UN in this topics see the bibliography cited in note 28.

³¹ An example that I know is the strong help given by these organs to the Argentinean military government during the dictatorship. This help was utilised principally for armament and corruption, with the almost certain knowledge of the international financial organs. This is only one example, but the aid to corrupt regimes without conditions have not stopped yet, even if they are in process of diminution. This diminution probably is because “dependence” of the poor countries is already almost assured and now the aims and tools are others. Or probably because the organisations and their chiefs are in a process of moral change? I do not have the answer and probably there are strong reasons for this change in the behaviour of these organs even if I have the “intuition” that the first option is stronger than the second one. See Jean Ziegler *La fame nel mondo spiegata a mio figlio* (Pratiche, 1999, translation to italian from french by M. C. Reinhart) page 131/2.

³² I have commented my opinion about this question in the precedent note. See *Human rights and extreme poverty* (page 157 and ss) by Louis-Edmond Pettiti and Patrice Meyer-Bisch in the book edited by Janusz Symonides, op. cit. See also Sigrun Skogly *Structural adjustment and development: Human Rights-An agenda for change in Human Rights Quarterly* 15 (1993) 751-778 and Katarina Tomasevski *The influence of the World Bank on Economic and Social Rights in Nordic Journal of International Law* 64: 385-395, 1995.

I would like to conclude this point in which I have been a bit pessimistic saying something positive. I think that this evolution in the “recent” recognition that poverty and unequal distribution of wealth as a clear violation of human rights (at least as “principles”) is very important. In fact, nowadays this evolution seems only concentrated in the vision from *up to down* (the UN organs, some others agencies from the UN and many regional organisations, plus the non governmental organisations) and seems (talking only from the juridical point of view) only nice words, documents and principles but not yet *law* (in the sense of a norm that I can apply to make a claim to someone for the exercise of a right). Nevertheless, this evolution is very useful from the legal point of view. In fact, it serves to increase the argumentation. Also, the claim is stronger because reinforces the case in front of the fact that some specific cases are violations of human rights (thinking now from *down to up*, from people to the organs). In fact, the claim is not only settled in the articles of one or another convention or document, but it is also based in a question that each day seems nearer to be considered “customary law” thanks to all these “nice words”. Then, all these, until now, only nice words could start to be compulsory (always in a weak sense because of the characteristics of this part of the law) under international law, for the States. In other words, those documents and arguments -that at the moment seem only “words”- will be very useful to help in the argumentation in reference with concrete cases when it is necessary to argue holding the existence of the right to equal redistribution of wealth and the possibilities of presenting individual complaints against the violator's States of that right. It is in that situation that their importance becomes “concrete”.

Chapter III

The right to equal redistribution of wealth as a human right

In this chapter I will present the different arguments showing that the right to equal redistribution of wealth (or the right to equal income)³³ is a basic human right in accordance with the standards that nowadays exists in international human rights law. Before that I want to show, briefly, some arguments that come from other fields of study but that, of course, are very linked with the argumentations from the legal point of view. In fact, the legal position is related with many other factors, like economic, political, sociological, moral and ethical ones.

1) The “non juridical” arguments.

A) Economic arguments: From this point of view the interest for the topic of redistribution has increased in the last years. In fact the actual debate is concentrated in determining whether the consequences of new government policies of redistribution are bad or not for the population and for the economy. It seems that in the past, the economy-theory and the majority of the economists had the idea that redistribution was against development. But this is not the view nowadays³⁴. In the past the arguments to hold that view were different, such as the fact that a bigger concentration would facilitate the generation of major saves which would favour the investment and development or that the concentration was the other face of the coin of effort and productivity. The new studies, on the contrary, *show that the countries with lower level of concentration of wealth*

³³ These two rights are not the same even if their link is very strong. I could say that the first one (right to equal redistribution of wealth) is related with wealth while the second one is related only with income, so that it is a kind of consequence of the first one. Differences are clear but even if the redistribution of wealth is not only linked with income, this is one of its most important elements. Also, if income and redistribution are related with money seems even better. In fact, the redistribution through money seems less paternalistic than other ways of redistribution (see about this opinion the Leslie Jacobs's *Rights and Deprivation*, Clarendon Press 1993, chapter 5). In some way, I think that the aim and effects that both generate are more or less the same. I like to use them as synonyms because the right to equal income is going to be the topic of the case in chapter VI.

Besides, both rights are strongly linked with equality and non-discrimination and in some way are consequences of them. Nevertheless, I think that it is very important to present them (or better, the right to equal redistribution of wealth) separately because it has some specific characteristics, as I will present in this chapter, that make this right complex and a bit different.

³⁴ See the report *América Latina frente a la desigualdad*, op. cit., that on page 24 says “*Desde Adam Smith, la mayoría de los economistas han considerado que el crecimiento y la equidad son en gran medida incompatibles. Solo una nueva corriente de teóricos ha venido a argumentar recientemente lo que parece observarse en la realidad: que los altos niveles de desarrollo económico se encuentran en sociedades relativamente igualitarias, donde resulta atractiva la acumulación de capital físico, humano y social*”. In that study they cite a large bibliography holding the idea that a bad distribution of income reduces the possibilities of economic development, pages 25 and 32.

tends to develop quicker³⁵. Then we can say that from an economic point of view, a good redistribution of wealth is very important too.

- B) Political arguments: The right is valid for all the kind of political systems but I will suppose the political arguments stating that democracy (in its large conception) is the best system of government and the system that should exist all over the world. In fact, this is the position hold by the international human rights standards. Then, even if it is possible to conclude that a bad redistribution –in a democratic regime- can be corrected trough vote, this seems a very “partial” view of the problem and we will return to this argument in chapter V³⁶. The fact, instead, is that the *unequal redistribution of wealth can threaten the functioning of the democratic institutions and can complicate the process of political decisions*. This means that the whole democratic system is in danger with an unequal redistribution. At the same time if we consider that economic development “helps” a better redistribution because there are more resources, then it is very important to have democracy because it seems that *if we find institutional and political instability economic development is not possible*³⁷.
- C) Sociological arguments: The arguments here can be very different. The most important is linked with the fact that in an in-egalitarian society can generate many negative effects. For instance, in egalitarian societies security of life is bigger. In fact, *the more egalitarian a society, the more peaceful it is, which implies that there are less social conflicts*. An egalitarian society implies, for instance, a smaller quantity of crimes.

³⁵ See the report *America Latina frente a la desigualdad*, op. cit., page 23 and ss. The same position is held by the Argentinean economist Federico Sturzenegger in the article *Un mejor reparto de la torta puede ayudar al crecimiento* in the newspaper *La Nación* of 4th. of January 1998. In a very interesting article *Economic Inequality, Human Rights and Labour Markets*, Jens Leirmann Rasmussen makes an acute analysis in relation with why inequality should be a social concern and why it is against human rights. Among the reasons, the sixth one is that “*there is important evidence that less inequality promotes political stability and long term economic growth*”. The other common sense reasons why inequality is not desirable are “1) *Inequality is often caused by discrimination.....*; 2) *High inequality is widely considered unfair.....*; 3) *In most cases, higher inequality implies more poverty.....*; 4) *Even if people are not concerned with the poverty of others, they normally dislike the idea of becoming poor themselves. If a certain randomness in future economic distribution exists (disease, drought, bad luck) a risk averse person will prefer less unequal distributions.....*; 5) *In all distributions observed in practice, the median is less than the mean. This means that the majority of the population have entitlements that are smaller than the average. So the majority will have a self-interest in redistribution from richer to poorer... ”*. (*Netherlands Quarterly of Human Rights*, Vol. 15/2, 143-160, 1997). I think that this is a good synthesis of the main reasons in relation with economic and other factors (about which I will talk in the next points) why big inequality is not desirable in any society.

³⁶ In fact, it should be necessary to discuss here what a democracy is, in which situation people vote, the level of knowledge of the voters, etc.

³⁷ This is the classical position held by Samuel Huntington in *Political Order in Changing Societies* (Yale University Press, 1968) cited in Mariano Grondona’s book, *Las condiciones culturales del desarrollo economico* (Planeta, Buenos Aires 1999) page 85.

D) Moral and ethical arguments: It seems morally intuitive that human beings should have equal wealth. This is a very widely held position in philosophy and ethics. The human rights theory agrees with the principle of equality. Even more, almost all the religions in the world agree with this position (but some of them, Catholicism for instance, make a “hidden defence” of inequality saying that the “real life” is in the next life and arguing that “heaven” will belong to the poor people and not to the rich³⁸).

But moral is a very subjective question and arguments can be very wide and different. In fact, it is possible to find some moral arguments to justify some inequalities for instance in reason of the differences (putting them in decreasing order of acceptability) based in the effort, or in the talents, or in relation with the different levels of education and training, or those inequalities based in the size of property or due to the differences based in reasons of living in one or another country³⁹. Obviously, each of these “justifications” is very different and what seems more important for the “moral justification” depends, principally, on the level of inequality that they generate and the mechanisms used to “balance” it.

2) The “juridical” arguments. All the reasons presented in the precedent point have a very strong influence in the determination of the juridical reasons to hold the existence of the right to equal redistribution of wealth. In fact, it is well known that the juridical norms are strongly influenced by economic, political, sociological and moral reasons. But in this point I will try to concentrate the analysis on specific “juridical” problems.

The first question is linked with those that could be called the “general juridical arguments” to hold the existence of the right. In fact, for the realisation of the majority of the rights, a minimum (I think that this minimum should be in relation with proportion, as I have already said) of resources is necessary. The “normal” way to have resources is having “wealth”. Thus, the right to equal redistribution of wealth and many other rights as the right to life, to housing, to food, to health, to education, to cite only some of the most important, is very clear. Even more, the need for a minimum of resources is linked with the right to liberty, because without resources it is not possible to be free⁴⁰.

³⁸ Also the Catholic Church, with its dogmatic vision of many things, “helps” the situation of inequality and poverty. One example is the official position against the different systems of control of births. I am talking about this religion because is the closest to my reality, but I am almost sure (without “empirical proofs”) that the majority of them “helps” to this situation too.

³⁹ See Jens Lehrmann Rasmussen *Economic Inequality, Human Rights and Labour Markets*, op. cit. page 148-150.

⁴⁰ See in relation with the moral argumentation (but also with the philosophical juridical foundations of this right) the interesting book of Leslie Jacobs *Right and Deprivation*, op. cit. In this work he analyses the different opinions of the

A second question, always from a “strict” juridical point of view is to try to “discover” –as “jurists” use to do- the category or “nature” of this right. I do this even if I think that this kind of mechanisms do not have a real sense and effect⁴¹. In fact, the only use of this kind of “categorisations” could be a pedagogic one. Nevertheless, we know that the normal or most common classification of human rights is that one which divides them among generations, considering the first generation of rights as the civil and political rights; the second one as the economic, social and cultural rights; and finally the third one as those rights linked with the future generations, for example the right to development and those rights linked with a clean environment.⁴² This classification nowadays is very contested⁴³ but it is still, as I have already said, the most used and accepted, probably because the important separation following this criteria of the two UN Covenants of 1966. But, in which of these categories do we put the right to equal redistribution of wealth? Does it really matter if we consider that the right is a first, second or a third generation right? One first answer could be linked with the legal effects because if we consider that the right is not a “first” generation right, probably it could be concluded that the “tools” linked with those rights, as for example the International Covenant of Civil and Political Rights and its First Optional Protocol, would have to be excluded. *I do not think that this is the correct way of reasoning because the system of rights is unique and the rights are inter-linked and interrelated*⁴⁴. Even if we consider that this right could be interpreted as a first, or a second or third generation right, this consideration should, theoretically, not be important. The important question is to be sure that the right exists and that someone has the duty to respect it and then people can claim against someone in case of violation of the right. But does this right *really* exist? Is this a new right that exists or, in other words, is it a derivation of the normative system of rights? This topic is very important. In fact, it is very interesting to answer it because there are many reasons to be worried for this big “inflation” of rights, a topic that has generated many different articles and opinions linked with the convenience and the reasons of this new growth of rights. Is this good for the

most important authors that have discussed the question such as J. Rawls, R. Nozick, J. Raz and R. Dworkin. See also, more from an economic but also philosophical approach, *Equality reexamined* by Amartya Sen, op. cit.

⁴¹ See the short and good paper of Eugenio Bulygin *La naturaleza juridica de la letra de cambio* (Abeledo Perrot, Buenos Aires 1961) where he makes a good argumentation showing the logical non-sense of the “juridical natures”.

⁴² See, for example, Cees Flinterman *Three generations of Human Rights in Human Rights in a Pluralist World, Individuals and Collectivities*, edited by Jan Berting, Peter Baehr and others (Unesco 1990), pages 75-81.

⁴³ See Hanski and Suksi, op. cit, page 25/26.

⁴⁴ At the same time this is the “official” position of the UN, the majority of the people who study human rights and, then, the most accepted position. For instance, Steiner and Alston say “*The interdependence of the civil and political rights, and the economic, social and cultural rights, has always been part of UN doctrine*”, op. cit., page 263. In that sense the Vienna Declaration on Human Rights of 1993 has clearly said “*All human rights are universal, indivisible and interdependent and interrelated*” (point 5). About this question see, in relation with the two covenants, *The Interdependence and Permeability of Human Rights Norms: Towards a partial fusion of International Covenants on Human Rights* by Craig Scott in the *27 Osgoode Hall Law Journal*, pages 769-878. See also the UN Document *The importance of the inter-play between economic, social and cultural rights and civil and political rights* by Philip Alston (A/Conf.157/PC/66/Add/16April1993).

people? Does it mean more protection, or, on the contrary, less protection?⁴⁵ The answers are many and different. I have many doubts in relation to the benefits obtained with this “inflation” of rights because many of them have been generated only for specific interests (from different parts and subjects) and in some cases they are only words that can not be realistically fulfilled. This generates, therefore, a lack of trust in the whole juridical system and “the law”, with some dangerous consequences and effects as to the respect of the “most important” (or those that are fulfilled) human rights.

However, how to know if this right “exists” or not? One of the most classical, but contested, position is the one held by Alston in relation with how and when we can consider that “new human rights” exist. He says (in relation with the procedural mechanisms of creation by the UN General Assembly) that it is necessary to see if the “candidate to right” has the following requisites.

- [1] *“reflect a fundamentally important social value;*
 - [2] *be relevant, inevitably to varying degrees, throughout a world of diverse value systems;*
 - [3] *be eligible for recognition on the grounds that it is an interpretation of UN Charter obligations, a reflection of customary law rules or a formulation that is declaratory of general principles of law;*
 - [4] *be consistent with, but not merely repetitive of, the existing body of international human rights law;*
 - [5] *be capable of achieving a very high degree of international consensus;*
 - [6] *be compatible or at least not clearly incompatible with the general practice of states; and*
 - [7] *be sufficiently precise as to give rise to identifiable rights and obligations”*⁴⁶
- (numbers are not included in the original text).

I think that all of these requirements are fully respected in the case of the right to equal redistribution of wealth. In fact, I think that requirements number 1, 2, 3 and 5 have been analysed above and are fully respected in reference with the right under treatment. In reference with requirement 6 the right is not incompatible with the general practices of States and normally States and Governments formally declare their aim of trying to fulfil, at least in theory and as principles, a minimum of redistribution of wealth to generate a better situation for the poor and more

⁴⁵ See for a brief comment of the topic Hanski and Suksi, op. cit. page 44/5.

disadvantaged people. In reference to the 7th requirement I think that the right is clearly “identifiable” while I will talk about the “obligation”. Then, it seems to me that now I have to verify if this human right can be considered as a human right in accordance with the international law standards today in force (i.e., to show the validity of the 4th. requirement formulated by Alston).

If we see the documents, we do not find a special convention or special provisions of them specifically regulating this right. But the juridical system is not an isolated article or even an isolated convention: *the normative juridical system includes the norms that are in it and all its logical consequences*⁴⁷. Then, it is clear that we can conclude to the existence of this right, taking in consideration many of the documents that exist in the international human rights law system, and that right can particularly be derived from the right to non-discrimination and to equality. These documents or instruments “belong” to those from the so-called first, second and third generation rights, but, as it has been said, all of them “belong” to the international human rights law system, and then they are relevant for our analysis.

At the international level the main documents and their articles that imply the existence of this right to equal redistribution of wealth are the following (I will cite only those which I consider the most important articles related with the question, even if many others can have some kind of link)⁴⁸:

- a) The Universal Declaration of Human Rights (here in after “UDHR”) of 1948⁴⁹. The main articles are 4; 23; 25 and 28 (also the articles 17; 21 (2); 22; 26 and 27).

⁴⁶ Philip Alston *Conjuring up new human rights: A proposal for quality control*, Chapter 6 of “Law and Development” edited by Anthony Carty (Darmouth 1992) page 615. For a different vision in relation with the creation of new human rights see Upendra Baxi *The Development of the Right to Development*, in Symonides, op. cit., chapter 4.

⁴⁷ See Carlos Alchourron and Eugenio Bulygin *Sobre la existencia de los sistemas normativos* (Valencia, Venezuela, 1979).

⁴⁸ It is important to add, also, that I am not going to explain -article by article- the connection with the right because that would imply a very hard and long work that is not the principal aim of this thesis. I am not going, either, to make the transcription of the different articles of the declarations or conventions because I think that the reader can do it by himself. I am using, for the majority of the documents cited in this part of the thesis, *The Raoul Wallenberg Compilation of Human Rights Instruments* edited by Goran Melander and Gudmundur Alfredsson, Martinus Nijhoff Publishers, 1997. I will only transcribe some few parts, in the notes, of the most important articles or parts of them among the many that I will present. This exception is due to the importance to show or comment some question linked with the following in the thesis or the necessity to have autonomy in it for the most important norms. In this transcription, I will emphasise – with a pedagogic aim- some words or groups of words, which obviously are not emphasised in the originals.

⁴⁹ The Declaration was adopted by the General Assembly of the United Nations, resolution 217 (III) of 10 December 1948. Article 25 (1) says “**Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control**”. Article 28 says “**Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized**”

- b) The International Covenant of Civil and Political Rights (here in after “ICCPR”) of 1966⁵⁰. The main articles are 6 (1) and 25 c.
- c) The International Covenant of Economic, Social and Cultural Rights (here in after “ICESCR”) of 1966⁵¹. The main articles are 2 (1); 6; 7; 8; 9; 11; 12 (1) and 13 (1).
- d) The Convention on the Elimination of All Forms of Discrimination against Women of 1979⁵² (here in after “CEDAW”). The main articles are 11; 12; 13 and 14.
- e) The Convention on the Rights of the Child of 1989⁵³. The main articles are 24 (1); 26 (1) and 27 (1).
- f) The International Convention on the Elimination of All Forms of Racial Discrimination of 1965⁵⁴. The main article is the 5 e.
- g) The ILO Convention 168 concerning Employment Promotion and Protection against Unemployment⁵⁵.

⁵⁰ The Covenant was adopted by the General Assembly of United Nations, resolution 2200 (XXI) of 16 December 1966 and entered into force the 23rd. of May 1976. The first sentence of article 6 (1) says “*Every human being has the inherent right to life*”.

⁵¹ The Covenant was adopted by the General Assembly of United Nations, resolution 2200 (XXI) of 16 December 1966 and entered into force the 3 of January 1976. The article 9 says “*The States parties to the present Covenant recognize the right of everyone to social security, including social insurance*”. Article 11 says “*1 - The States parties to the present Covenant recognize the **right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2 – The States parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; b) Taking into account the problems of both food-importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need***”.

⁵² The Convention was adopted by the General Assembly of United Nations, resolution 34/180 of 18 December 1979 and entered into force the 3rd of September 1981.

⁵³ The Convention was adopted by the General Assembly of United Nations, resolution 44/25 of 20 November 1989 and entered into force the 2nd September 1990.

⁵⁴ Adopted by the General Assembly of the United Nations, resolution 2106 A (XX) of 21st of December 1965 and entered into force the 4th of January 1969.

⁵⁵ This convention was adopted by the General Conference of the International Labour Organisation the 21 June 1988 and entered into force the 17 October 1991.

There are many other documents, with “less juridical power”⁵⁶, that can be mentioned here linked with this right. Among the most important of them we can cite the following:

- a) The Declaration of the Right to Development of 1986⁵⁷, particularly articles 2 (3), 3, 4, 8 (1) and 10.
- b) The Universal Declaration on the Eradication of Hunger and Malnutrition of 1973⁵⁸, especially the paragraph g of the Preamble.
- c) The Declaration on Social Progress and Development of 1969⁵⁹ especially articles 7, 10 and 11.
- d) The Vienna Declaration and Programme of Action of 1993⁶⁰ especially paragraph I.10.

In the regional sphere it is possible to find also other documents talking about the issue. Only in reference with the Inter-American system, we can find many instruments that are related with the problem. They are, principally, the following:

- a) The OAS Charter in its article 33 and 44 (1)⁶¹.

⁵⁶ I could say that the first documents that I have presented are, in some way and only for the States who have ratified them, binding. I include among them the UDHR even if its juridical situation it is controversial. The documents that I will present now have less power, because they are only declarations.

⁵⁷ The Declaration was adopted by the General Assembly of the United Nations, resolution 41/128 of 4 December 1986. Article 2 (3) says “3 – *States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom*”. Article 8 (1) says “1 – *States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices*”.

⁵⁸ The Declaration was adopted by the World Food Conference convened under General Assembly resolution 3180 (XXVIII) of 17 December 1973; and endorsed by the General Assembly resolution 3348 (XXIX) of 17 December 1974.

⁵⁹ The Declaration was adopted by the General Assembly of the United Nations, resolution 2542 (XXIV) of 11th of December 1969. Article 7 of the Declaration says “*The rapid expansion of national income and wealth and their equitable distribution among all members of society are fundamental to all social progress, and they should therefore be in the forefront of the preoccupations of every State and Government*”.

⁶⁰ The Document was adopted by the World Conference on Human Rights on 25 of June 1993 (A/CONF.157/23, 12 July 1993).

⁶¹ The OAS Charter was signed on 30th of April 1948 and entered into force the 13th of December 1951. Article 33 says “*The Members States agree that equality of opportunity, equitable distribution of wealth and income, and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: b) Equitable distribution of national income; c) Adequate and equitable systems of taxation.....*”.

- b) The American Convention on Human Rights in its article 1 and 26⁶².
- c) The American Declaration of the Rights and Duties of Man in articles 14, 16, 23, 35 and 36⁶³.
- d) The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) principally in its articles 9 and 12 (also in 6, 7 and 10).⁶⁴

After this enumeration of legal norms that are clearly related with the right to equal redistribution of wealth it seems easier to hold the existence of the right. In fact, all the norms that have been cited justify the argumentation of the existence of the right in juridical terms. Even if only few norms make reference to the concepts of “wealth” and “redistribution” I think that the connection among them and the right in analysis is clear. But to all these norms it is possible to add many others to reinforce the concept of the right. They are, principally, linked with “equality and non discrimination” and I will present them immediately. But before that I would like to insist on the legal existence of the right to equal redistribution of wealth and to make a summary of the

⁶² The Convention was adopted by the OAS on 22 November 1969 and entered into force the 18 July 1978. Article 1 (1) says “*Obligations to respect rights: 1 – The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition*”. The article 26 says “*Progressive Development: The States Parties undertake to adopt measures, both internally and through international co-operation, especially those of an economic and technical nature, with a view to achieving progressively by legislation or other appropriate means, the full realization of the rights implicit in the economic, social educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires*”.

⁶³ The Declaration was adopted by the Ninth International Conference of American States in Bogota in 1948. Even if this document is a Declaration, it has a special “juridical status”. In fact, in the Advisory Opinion 10 from 1989 (I/A Court H. R., Series A No. 10) the Inter-American Court says that for the member States of the OAS the declaration is a source of international obligation related with the Charter of the Organization, while for the States parties of the American Convention the source of their obligation is that one, but the States can not escape the obligation they have as members of the OAS under the Declaration, in reason of what is established in Article 29 (d) of the Convention (See paragraphs 45 and 46 of the Advisory Opinion).

Article 14 second paragraph of the Declaration says “*Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family*”. Article 16 says “***Every person has the right to social security which will protect him from the consequences of unemployment, old age, and disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living***”.

⁶⁴ The Additional Protocol was adopted by the OAS on 17 November 1988. It has recently entered into force the 16 of November 1999 with the ratification of Costa Rica. Article 9 says “*Right to social security. 1 – Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security shall be applied to his dependents. 2 – In the case of persons who are employed, the right to social*

arguments presented until now in that sense. In fact, after the presentation of the non-juridical factors and the presentation of the articles of the norms on human rights made before, it seems clear that from different sources we can derive that all human beings should be equals. We can agree also that some level of equality is good from a juridical point of view and also from many other “non-juridical” points of view. It seems that a “equal society” from the point of view of wealth (thus with a “proportional” redistribution of it) is good for everybody, and only some few exceptions can not agree with this opinion. At the same time, it seems clear too that without a minimum of wealth is not possible to enjoy many things in life and consequently almost all the rest of the rights that the human beings have in accordance with the international human rights law instruments. However many people do not have “wealth” (specifically in a material sense) and wealth is very badly distributed. This is, in a general sense, a violation to the right and it is necessary to find the specific situations of violation in each case. Therefore, to see clearly the violation of the right, after the presentation of the norms, I think that it can be useful to conceptualise it: *it is the right that nationals and legal residents of one State (both who live there) have to receive, enjoy and possess an equal and reasonable part of the wealth of that society that has to be in proportion with the total amount of it and has to be in accordance with the economic, cultural, political and moral reality there.*

Some short and specific explanations of this conceptualisation are necessary, even if they are treated in the whole text of the thesis in a broader way.

The right is only limited to the people who *legally* live in the territory of the State because it seems very difficult to me to find a better solution. In fact this limitation is linked with the recognition of States as the exclusive responsible of international human rights law violations, even if from an “idealistic” point of view in the future (probably with a different global organisation of the power) all human beings should be beneficiaries of the right.

“*In proportion*” because, as it will be shown in the following paragraphs, equality implies comparison and proportions. I think that “human rights principles”, with equality as a basic notion, implies not only minima, but also implies “proportions” in the enjoyment of rights. I can not say that human beings are equals when there are such big differences in the possibility of achieving many of the most important elements in life. Today (yesterday and tomorrow too) wealth is a key factor to have the possibilities of achieving goals and aims in an equal way. This does not mean that “equality” implies all the same things for everybody. But equality implies, at least, that everybody has to have the same possibilities (“*equality of opportunity*”). If we do not establish a minimum of redistribution of wealth, “equality” in the depart-line is not possible. Therefore, *States as correctors*

security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or

of the big inequalities in wealth seem to me an imperative mandate from the “international human rights law principles” (States, then, to guarantee “equality of opportunity” has to generate “equality of outcome”). In other word, States have the task of keeping the society as nearer as possible its population to the “equal depart line”, without harming, of course, all other basic human rights. Thus “in proportion” means each one in comparison whit the rest of the members of that society. Which “proportions” in the redistribution of wealth? It is a question open to interpretation and it is the task of the “human rights tribunals” and “organs” decide about the standards. I have already talked about this question in the first chapter, point 2 and I prefer not to repeat again the arguments.

“*In accordance with the economic, cultural, political and moral reality there*”: these words are related with the situation in the specific country that has to be judged and considered in relation with the right. I have already talked about this, but can be important to insist. Realities are very different, and then the “margin of appreciation” of States in reference with the concept of wealth and the way of distribution of it has to be deeply considered.

“*Equal and reasonable*” shows the clear link of the right with “equality and non-discrimination” clauses and concept. I will analyse it now.

In fact, I have not included in the long enumeration of documents and articles some of the most important articles linked with the right to equal redistribution of wealth. I have done this because I think that after the conceptualisation of the right it is clear to see the connection between this and *equality and non-discrimination* clauses. Equality and non-discrimination are two concepts that are fundamental in human rights⁶⁵, and non-discrimination constitutes one of the most important tools to safeguard or to achieve equality. As it has been already said, there is a strong link between equality and non-discrimination on one side and the right in analysis on the other side. In fact, the right to *equal* redistribution of wealth implies equality and non-discrimination. In other words, the right to equal redistribution of wealth is a derivation of the “right” to equality and non-discrimination. It is important to add that for the presentation of individual complaints, the most important tools for the “practical and concrete” defence of this right are, precisely, the equality and non-discrimination principles. This also explains why the problem of determining where the right to equal redistribution is recognised is so important. If we think that it belongs to the economic, social and cultural rights, as I could agree, there are likely to be some practical problems. In fact, we can agree or not and I do not agree, but those rights and also the third generation rights are considered less important rights or less “juridical” rights and practically “political aims” in comparison with

occupational disease and, in the case of women, paid maternity leave before and after childbirth”.

⁶⁵ For instance, Manfred Nowak says “*Along with liberty, equality is the most important principle imbuing and inspiring the concept of human rights*”, in *U.N. Covenant on Civil and Political Rights* (Engel 1993) page 458.

civil and political rights⁶⁶. Indeed, what is worse is that these rights do not have strong tools to ensure their implementation and respect. The differences among the categories of rights can be clearly seen in many ways, like for instance the way of redaction of the norms in the different instruments or the number of States that have assumed “binding” compromises in one or the other sphere of rights by the ratification of the respective conventions, etc.⁶⁷. The problem is that practically the most important *binding* conventions and instruments in the international and regional human rights systems are much more linked with the sphere of civil and political rights and, obviously, among them the conventions that admits individual complaints. Even if I have already said above that it is difficult and even irrelevant to determine to what category the right to equal redistribution of wealth belongs (even if the majority of the academics would include it among the economic, social and cultural rights and I would agree with that theoretical vision, as I have already said), what does not seem irrelevant is the use of the tools of the structure protecting human rights to make this right effective and “real”. Those tools are, as I have already said, practically linked until now with the first generation rights. Among those rights the right to equal protection and non-discrimination is one of the most important ones. For the practical defence of the right to equal redistribution of wealth and to hold its existence and realisation, it seems very important to use the “binding” instruments from the civil and political rights, and particularly through the right against discrimination and for equality⁶⁸. This seems even more important in relation with individual complaints, as I will present in the next chapters.

Finally, it is important to clarify that the instruments and documents in international human rights law use the terms “equality before the law”, “equal protection of the laws” and “non discrimination by way of law” in different senses because they imply different ideas⁶⁹.

The most important instruments in international human rights law for the protection of equality and non-discrimination (linked with the right to equal redistribution of wealth) are:

- a) In the UDHR in article 7⁷⁰ (articles 1, 2, 10 and 26 have also some importance).

⁶⁶ See the bibliography cited in note 29.

⁶⁷ See *ibid.*

⁶⁸ There is a big discussion in relation with the existence of the “right to equality”. For instance Asbjorn Eide and Torkel Opsahl in *Equality and Non-Discrimination* (Norwegian Institute of Human Rights 1990) say “... (T)he classic formula requiring “equality before the law”, as well as the famous clause granting everyone “the equal protection of the law are restated in the Universal Declaration, Article 7. They have later been repeated in several international human rights instruments. Their scope is not entirely clear. Many would accept that the essence of “equality before the law” is formal, i.e. requiring a consistent and objective application of the law in regard to every individual, whoever he is. “Equality before the courts” then becomes an important part of it, but it would also bind other law-applying bodies, such as administrative organs./ In contrast, “equal protection of the law” might suggest also material equality, or justice, e.g. in the sense of equal distribution of rights and benefits. If this be so, the second principle might bind also the law maker, who would have to promote equality in a more real sense, through the law” (page 29).

- b) In the ICCPR in articles 2 and 26.⁷¹ (Also linked with the topic are the articles 14, 20 and 27).
- c) In the ICESCR in article 2.
- d) In the International Convention on the Elimination of All Forms of Racial Discrimination there are many articles linked with the question, among them articles 1; 2 (1); 3; 4; 5; 6 and 7.
- e) In the CEDAW the most important article linked with the question is 4.
- f) In the Convention on the Rights of the Child the most important article is 2 (also related are articles 17, 29 and 30).

In the Inter-American System we find articles linked with this question. The most important of them are article 2 in the American Convention, article 2 in the American Declaration and article 3 in the Additional Protocol (Protocol of San Salvador).

There are many other instruments that could be cited. The ILO has promoted many instruments (conventions and recommendations) in relation with equality in the work's field. Among them, the most important (besides the already cited Convention 168) are the Equal Remuneration Convention No. 100 of 1951; the Convention No. 111 concerning Discrimination in respect of Employment and Occupation of 1958; the Convention No. 118 concerning Equality of Treatment (Social Security) of 1962; the Convention No. 131 concerning Minimum Wage Fixing of 1970; the Convention 157 on Maintenance of Social Security Rights of 1982.

⁶⁹ For a very interesting and short analysis of the question see *ibid*.

⁷⁰ The article says "*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*".

⁷¹ Article 2, in the 1st. paragraph, says "1 - *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". Article 26 says "*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". The Human Rights Committee has adopted General Comments that complement these two articles. They are the General Comments 4 and 18. I will analyse the last one in Chapter V (2 A).

Other documents as the Convention against Discrimination in Education (UNESCO 1960), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN 1984) are also important. I am not analysing them because they are less linked with the topic and with the question of “individual complaints”, so that it seem less important to analyse here their articles⁷².

I think that is not necessary to analyse in this chapter all the norms that have been cited here. This is because I will return to the question in the specific cases of the norms linked with the individual complaints and I will make the relation among the norms that hold the right and the norms linked with discrimination and equality (particularly to the articles from the ICCPR).

But, is this presentation of these norms enough? Can we consider that the right exists and is protected? I am sure that its existence is clear, even if it is possible to discuss about the denomination or other non-substantive points in reference with it. The final decision in reference with the *real* existence of the right (and the determination of what is wealth in each State, the proportionality of its distribution in that society and if that is reasonable or not, etc.) has to be made by those tribunals and organs that are in charge of deciding about the international human rights law standards. I will analyse infra some of the possibilities of pronouncement of some of those tribunals and organs in relation with the individual complaints mechanism.

To conclude this chapter and after this presentation of *norms* (words, “nice words” I could say) and conceptualisations it seems important to go back to reality. In fact, after this words everything seems good and it would seem that everyone possesses this right, but the reality that I have quickly presented above in the two precedent chapters continues existing. The poor people are still poor and do not have food, health and education among many other things, while many of their “neighbours” have everything and even more. Then, which is the *real* world? Is it the text of the documents or the fact that millions of people are without even a piece of bread to eat every day while others have enormous richness? Because if we see the norms cited, it would seem that we, human beings, clearly have the right of equal redistribution of wealth and therefore we can complain against someone for the violation of our right in reference with international human rights standards. I think that things are not so clear and easy. I will analyse it in the next chapters if it is possible to complain, when and against whom to complain, etc.

⁷² For a short vision of the principal articles of the international human rights law see, in reference with minorities but strongly linked, *A compilation of Minority Rights Standards* by Gudmundur Alfredsson and Goran Melander (Raoul Wallenberg Institute 1997).

Chapter IV

The violation of the right and the role of the State

In this chapter I will first present, from a theoretical prospective, when it is possible to consider that the right has been violated. This question implies and needs a very broad vision of the problem. After that I will present the question related to the subjects that have “an obligation”

regarding the right and the last question will deal with the mechanisms to enforce the behaviour of these subjects in relation with the fulfilment of the right.

1) The violation of the right. To determine when the violation of the right has occurred is a very difficult question. In fact, when do we consider that a right, in this case the right to equal redistribution of wealth, has been violated? It is difficult because to the general problems of interpretation, it is necessary to add the analysis of many other factors to conclude if a violation of the right has happened. Then the analysis of the right is not linked *only* with that right. Of course that this is not an exclusive characteristic of this right, but in this case elements of analysis are many.

At the same time, rights are interrelated and no one of them is absolute. For all these reasons it is not enough to find a *factual situation of violation*. In fact, it is not enough to find, for instance, a society in which differences of wealth are extremely high, because it is also necessary to take into account many other factors as, for example, if that society or State is trying –seriously and constantly- to fight against that factual situation. Even if we know that rights are not absolute and they are interrelated, they have to be interpreted in each case. In fact, normally the different violations of the rights are not isolated, they are mixed with many other rights and norms that can, sometimes, justify the violating behaviours.

In the right under analysis the situation is even more complicated because it is a right that is clearly linked with *comparisons* (as I have said I think that all rights should be considered in proportions. That implies comparisons, but in the case of the right of equal redistribution of wealth in particular –with independence of proportions- it can *only* be considered through comparisons). The problem is even more complex because it is not enough to see if one person (individuals or a group, but I will speak only about individuals and I am not going to enter in this difficult and complex problem) has the possibility or not to exercise the right in an “x” situation (as could be in the majority of the civil rights, as for instance the freedom of the speech). In this case the only *non-interference* of the State could be considered enough. But in the right of equal redistribution of wealth, as in almost all the so called second and third generation rights, it is also necessary to see, instead, if the society and the State allow people the *effective* exercise of the right. And this allowance implies an *active role of the State*. In fact, if we look carefully, normally the so-called "first generation rights" are directed to individuals allowing them competencies in which the States can not interfere. The structure of functioning of the right to equal redistribution of wealth, instead, is much more similar to the case of the so-called "second generation rights", which norms, even if related and directed to individuals as

final aim, are practically directed to the State's behaviours and actions. In this right, the behaviour of the State has to be active and positive. *The role of the State is, thus, crucial.*

Another interesting and problematic question is the fact that States can respect the right in many different ways. This means that *the “margin of appreciation” of States in the fulfilment of this right should be very broad.*

If we want to know if there is a situation (or, in other words, a person which situation implies a violation) in which a person's right to equal redistribution of wealth in one country is violated, it is necessary to consider (excluding here all the considerations linked with procedural matters) many questions that are strongly linked with the appreciation of the existence of the right. Trying to make a classification (with the limits that classifications have, being useful only to show some elements better) I can divide those indicators which I consider the most important to define the violation of the right in a specific case, into *objective* and *non objective* “indicators”:

A) Objective indicators: These could also be called “economic indicators”. Here it is necessary to find an “objective” situation of inequality in the distribution of wealth in a country or inside one country. Inequality implies comparison and requires measurement. In that comparison we have to find that the redistribution of wealth is “not rational” or “arbitrary”. This is a very “subjective” question because what is “rational” for me is not “rational” for many others. Even to decide whether there is an “objective” situation of inequality in the distribution of wealth, we are –like always happens with classifications and categorisations– including subjective feelings, values and opinions. But it is clear that if we are stating that the right is linked with comparisons, it seems that we will find some clear cases (in one extreme with a very strong concentration of wealth and the other one with a very wide distribution) that will be very easy to “classify” but we will also find more “difficult” cases (probably most commons) which are situated in the middle of the extremes where the distribution of wealth is not so clear⁷³.

Another important question is, even in the objective indicator, what is going to be considered “wealth” by the interpreter, which can be strongly linked with,

⁷³ In this sense there are some ways of measurement that are very useful. Among them, the most famous in relation with incomes is the Gini coefficient used by economists that serves to “*measure the extent to which the distribution of income (or, in some cases, consumption expenditures, among individuals or households within an economy deviates a perfectly equal distribution. The coefficient ranges from 0 –meaning perfect equality– to 1, complete inequality*” (Human Development Report 1999 page 254).

for example, cultural factors in one specific society as we will see in the next paragraph.

B) Non objective indicators: Among them I will include all the other factors, which measurement is even more difficult and less “objective” than the measurement of “economic indicators”. They are, at least, the following:

a) Cultural factors: Culture is very linked with the society and the State. It is also an important factor in the lives of human beings in all parts of the world⁷⁴ and it makes them feel identified and integrated with that society or State. But cultures are very different and to judge the distribution of wealth in one specific society, it is absolutely necessary to see what is wealth for that society. In fact, the western approach to wealth is linked with property, principally of material objects, but not only because it is related with many other things such as knowledge, capacities, that allows reaching “material wealth”. But in some societies things can be very different. In fact we know that for some tribes or indigenous peoples the conception of property is very different, so that in those societies the approach to the concept of the right in analysis has to be completely different. Summing up, *to decide in front of a claim for the violation of this right, the cultural factor has to play a very wide and important role, because the measurement and “feeling” of wealth is very different among the peoples and countries in the world.* This does not mean that it is not possible to measure the concentration of wealth, but it is necessary to adopt case by case the cultural traditions and values in the situation that is under analysis (at international, regional or local level).

b) Historical factors: It is obvious that it is not possible to measure societies in the same way, without considering the cultural factors, as I have said, as well as the historical facts that the people have lived, suffered and enjoyed. Thus, when judging a society represented by a State, it is not possible to apply the same criteria in one country that recently has finished a very strong situation of concentration of wealth (because a

⁷⁴ For a brief and good analysis of the different concepts of “culture”, see Rodolfo Stavenhagen in Asbjorn Eide, Catarina Krause and Allan Rosas (eds.) *Economic, social and cultural rights* (Martinus Nijhoff 1995), Chapter 4, pages 64/5.

kingdom, a tyranny or dictatorship period has passed, or many other regimes that imply, generally, a strong concentration of wealth in few people) and it is trying to redistribute the wealth in some “good” way but do not have the same “average” than another country that under democracy is going to a strong “concentration” of wealth even if its average, since years, is better than the other one. With this example I only want to show how the historical factors have to be considered, in particular trying to understand the conduct of the States, that can do many things, but can not do everything. *Historical factors, then, have to be considered to judge a factual situation linked with this right and have to be considered at a certain level in order to decide a specific case.*

- c) Political and sociological factors: These are the factors linked with aspects related to political and sociological matters. It is not easy to decide the content of them. Therefore, I have decided to use the terms “political” and “sociological” in a wide sense, including the classical problem linked with democracy but, at the same time also including some other topics that are in connection with the policies of the State that could be included as a specific category or in the economic factors, for example the tax system.

- Democratic choice. This is a very difficult topic. I have talked about this topic briefly before saying that it seems clear that the right can be better fulfilled by a State that is a democratic State than those that are not.

If we have “democracy”⁷⁵ (a democratic State or a democratic system) it is possible to argue that the best way of correction of inequalities has to be the choice of the people. So, if the majority of the people agree with having inequalities in that society it could be acceptable. In fact, if the poor people increase they can change reality through the vote. I do not agree with this way of thinking for many reasons. I will answer only the two premises that I have put to my self. I think that democracy,

⁷⁵ Democracy at least in some wide concept, in the sense of periodically free elections. I think that from a “formal” point of view the concept of democracy is “dynamic”, not static, in which in between the two extremes of this dynamism we have autocracy and democracy. The different countries are nearer of the ideal of democracy (in a formal way) and in a dynamic situation in reference with these two extremes. See about this concept, Norberto Bobbio *Il Futuro della Democrazia* (Einaudi 1984).

without doubts, is a good reason to accept collective decisions, but from here it is not possible to deduce that if “democratic” decisions are in favour of keeping inequalities (or are generally “unfair”) we can not do anything. It is like saying, putting an extreme example, that if 99,9% of the society votes for the elimination of the only “jewish” or “black” (and the decision is taken only because of their being “jewish” or “black”) in that society we have to accept that decision because it was adopted almost by unanimity. No. *Democracy is only a good and strong “moral” reason to accept the decisions of the people* but from there that does not mean that the content of those decisions can not be against international human rights law⁷⁶.

At the same time, the “quality” of the specific democracy involved in the problem should be considered. In many democracies people do not really have the possibility of choice, for many reasons, so that in these democracies the stronger “moral” reason to respect the decision has to be evaluated even more carefully⁷⁷.

As a conclusion, *it seems that if there is a country with a democratic regime, the parameter to judge the violation of the right for that country has to be more flexible than in a country without a democratic regime* (The same gradual consideration has to be done in relation with the different levels of democracy in the different countries that have this political regime).

- Tax system and public expenditure. As it has been said in Chapter I, the importance of taxes in the redistribution of wealth is

⁷⁶ This argumentation is well developed in Carlos Nino *Etica y Derechos Humanos* (Paidós, Buenos Aires 1984), especially in chapter 8.

⁷⁷ As one example of this position in reference with the Latin America new reality see *The transition to authoritarian electoral regimes in Latin America* by James Petras and Steve Vieux in the magazine *Latin America Perspectives*, Issue 83, Fall 1994, Volume 21, Number 4 page 5 and ss. One conclusion of the article states: “*Contemporary Latin American electoral regimes fail to meet the basic criteria for democracy. Procedurally and substantively the exercise of power in them is authoritarian*”. Another view of this problem is held by the Inter-American Commission on Human Rights saying “*The formalities of a democracy through the election of presidents and parliamentarians is not a strong enough foundation to ensure stable and enduring political and economical systems. This is demonstrated by the fact that despite the region’s transition to democratic rule over the past decade, there has been a marked increase in the incidence of poverty which, in effect, endangers political stability in many of the region’s states*” and adds “*Poverty is,*

high. It would thus be incomplete to make an analysis related with this right without considering the situation, when it exists⁷⁸, of the tax system. In fact, the problem of big differences among incomes and wealth (in its general meaning) can exist in some societies but they can be corrected through an appropriate system of taxation and with it to generate redistribution. In this respect the size of the State is not important but instead its efficiency in its role on redistribution is important. Therefore, it is necessary not to see only the norms as, for instance, often happens in Latin American States where politicians enact norms that are not in accordance with the local reality and do not have the real wanted effects, it is necessary also to see the entire system in function. In fact, it is necessary to analyse the different kind of taxes that the State imposes, who pays them and the degree of “return” of these taxes to the whole society.

One of the most common classification divides taxes in direct or indirect. The first group, in principle, has a bigger distributive effect in relation with wealth and incomes of the people if they are progressive while the second type are less re-distributive because this kind of taxes are paid by the whole society (and normally the incidence in the proportion of payment is smaller in the richest groups of the population). But many times, in Latin America for instance, the “tax evasion” level is very high, particularly in reference with the first group of taxes, so that governments tax using the second group of taxes, which effects, as said, do not generate redistribution.

However, what seems even more important than the source of the taxes in the redistribution is the level of cash income by the State through taxes to be used for public expenditures. In fact, the more money the States has, the more it has possibilities of

in part, a result of a state's inadequate commitment and organization to protect and promote economic, social and cultural rights” (IACHR, Annual Report 1993, Whashington, D. C. February 1, 1993, Point 1).

⁷⁸ As far as I know practically all the States nowadays have the same kind of tax system for individual and juridical persons (societies). However, in some States the reality is still different nowadays (as it was, for instance, in the first “socialist” period in the Soviet Union and in China). It is not my aim to make a research about which systems have and which have not taxation. Then, the item analysed here is in relation with those systems that have a tax system (practically all, if not all).

redistribution through public expenditures, particularly those expenditures that are considered to have a high level of effect in “redistribution”, as for instance health and education. Therefore, it is important to see the level of expenditure done by the State in social matters and, particularly, its efficiency. This last problem, efficiency, is the normal problem that we find in Latin American States, where public expenditure even if not so small in some social fields, is not efficient in the way of execution⁷⁹.

Then, as a conclusion, *it seems very important to check the tax system in the country, the real taxpayers and the level of evasion to understand if the government really is trying to redistribute. Besides that it seems necessary to see also what happens with the money that governments cash, in the sense of how that money returns to the society. In other words, it is important to check the level of redistribution in the public expenditure and particularly its efficiency.*

- Corruption. Very linked with the topic of taxes is the question of corruption. In fact, it is necessary to know the level of corruption in the country and then I could say that *the more corruption the country has, the more risk of bad redistribution exists*. Therefore, when it is necessary to find the existence of the right, the way of measuring it has to be more strict (or less flexible) in those countries where it is well known that a big level of corruption exists.

- Social security system. As it has been said above in reference with the public expenditures of the State, it is very important to contemplate the situation of that expenditure in the social system for the whole population in one specific country because it is strongly linked with wealth and income. In fact, if the State provides a very large and effective social system to the population (as health care, food, education, etc.) the necessity of an income is

⁷⁹ See *America Latina frente a la desigualdad*, op. cit., chapter 8.

less important than in one State where this services are not provided or are provided by the State in a worse way in comparison with private services. *The better is the social system, the more acceptable are some differences in wealth and income. In other words, the worse is the worry of the State for the social problems less justified inequalities in wealth and income are.* I could say that in those States that have a good social security system, wealth is shared among the entire population and there exists a way of redistributing it.

- Social and familiar context. It seems clear that to measure the possession of wealth it is necessary to consider, in some way, the familiar, social and economic context in which the persons are involved. In this sense it could be reasonable to accept a State where important differences of wealth and income for persons who have a big family to maintain in relation with others who are single exists. At the same time it can be reasonable to accept differences of wealth and income in the territory of one country in relation with the values and cost of living in the different regions and zones, in which it can be very different. All these factors are linked with the political policies that the government can adopt and even if *a priori* this can appear like a justification of the violation of the right, they can be clearly justified and they have to be deeply analysed in the moment of taking the decision about that.

- d) Progressive development. This point is very linked with the historical factors and means that it is necessary to consider the “will” of the State in relation with the right. In fact, as already has been said, if there is a State with a very important level of inequality of wealth and income in its society but this situation is changing –even slowly- through the implementation of many policies (social, economic, taxes, etc.), it seems that the State could not be considered as a violator. On the contrary, a State where the inequality is not so big, but where in the last years all the

policies are trying to increase the economic inequality of the population, could be considered as a violator. Thus, *the progressive evolution in the policies of the State has to be considered in the determination of the violation of the right by the State.*

After this short and incomplete enumeration of factors linked with the violation of the right, it is not easy to establish when this right has been violated and when the State is responsible for that. The organs that have to determine if a violation has happened or not in one State have to consider many different aspects to decide about it. In doing that they have to use some “normal” juridical mechanisms, as for example the “margin of appreciation” doctrine, to consider the very wide differences that exist among the different States of the world or even in the regional realities. This does not mean that it is not possible to find cases where the behaviour of the State is a violation of the right (linked, probably, with a violation of other rights at the same time). In examining this violation, it will be necessary to use the normal juridical mechanisms to establish whether the behaviour of the State (for instance, discrimination) is “reasonable” or not, which, as it is well known, is often linked with ideological, political, economic and other factors. Even if this is true, nevertheless it would imply a very important step for the improvement of the human rights of the “people” in the world to find some cases where we can say to a State that its policies or its behaviour in one specific case is a violation of the right to equal redistribution of wealth and consequently a violation of human rights standards. It seems very important to say to that State that it is a “human rights violator” because it does not redistribute well the wealth of its population.⁸⁰ In fact, that case generates standards that are going to be used in new cases, and so on.

2) The State as the only actor “legally obliged” to respect the right. As it is very clear for the reader, I have been saying repeatedly that the obligation of fulfilment of this right *is exclusively lying upon States*. This is a difficult question. In fact, if we look at it from a moral point of view, the subjects obliged to fulfil the rights are not *only* States because individuals, groups, national and international organisations, foreign States, the “international community”, among others, are also obliged (and “should be” from a juridical point of view?). In other words, it is clear that all, absolutely all, the human beings (including groups, organisations, etc.) should be obliged to respect all human rights. This is a difficult field, because then we could ask how and by whom human rights have to be respected? From the moral point of view, the respect of human rights is

not linked *only* with a *passive* role (prohibiting and condemning some active behaviours, like homicides and torture). It is also linked with an *active* role (to intervene in situations of passive behaviour, as for instance famine). In fact, the actual standards in international human rights law more and more begin to ask for more positive or active behaviours, but until now it is only States who are involved by these norms. Is a person who does not respect (in its many ways) the minimum standards of international human rights law a violator of those standards? The answer should be (and is) “yes”, but the problem is that this person could be considered as a violator of the moral standards linked with human rights but not yet with the *juridical* standards. In fact, today we do not have any kind of juridical mechanism at the regional or international level (with independence of the type of “sanction” that can only be the publicity by the press, the NGO’s reports and international or regional organs reports that are so weak that it is possible not to consider them as “real sanctions”) to condemn them. Another question is the necessity of finding general parameters to decide for which rights we can ask a positive behaviour and, even more difficult, in which quantity⁸¹. In fact, normally authors talk about four categories of obligations that the States have in relation with “defence” of human rights (sometimes only for economic, social and cultural rights, but I think that the classification is valid for all the categories of rights): the obligation to *respect*, the obligation to *protect*, the obligation to *ensure* and the obligation to *promote*. All these conducts are related with the particularities of the right and the interpretation of it, as I will mention later in reference with the right to equal redistribution of wealth in particular, but these conducts implies a different activity by the State in the fulfilment of the defence of each specific right, requiring in some cases passive or active behaviours⁸².

The majority of these comments are in the field of what human rights standards should be nowadays but not what they are. The reality is that *today, only the State is responsible for the protection of human rights and it is the only one responsible for the violation committed by its action or, more polemic and difficult, for its “in-action”*⁸³. It is true that this “official position” seems to begin to change⁸⁴, but this is only something that is in the beginning and we do not know yet how it can evolve. *Thus, under the actual parameters of international human rights*

⁸⁰ In fact, redistribution implies benefits for disadvantaged people. I think, as many others do, with the idea that the main aim of the human rights systems has to be to protect the more disadvantaged people.

⁸¹ For the question of duties and positive actions see Henry Shue *The interdependence of duties in The Right to food* edited by Philip Alston and Katarina Tomasevski (Martinus Nijhoff, 1984), page 83 and ss.

⁸² See *ibid.* See also G. I. J. H. Van Hoof *The legal nature of economic, social and cultural rights: a rebuttal of some traditional views* published in the same book (pages 97 and ss.). An interesting practical case related with the positive obligation of the State in the fulfilment of its duties is the famous case *Velazquez Rodriguez* decided by the Inter-American Court of Human Rights in its sentence of the 29 of July 1988 (Serie C No. 4), especially points 160 to 177.

⁸³ For the question that individuals do not have, until now, responsibility or obligations in the field of human rights see Hanski and Suksi, *op. cit.*, Chapter 4.

law, the only one who can violate the right to equal redistribution of wealth is the State because it is the only one obliged by binding norms to respect the right at the international level. But from this we can not say or deduce that many other persons and organisations are not obliged to respect the right even if they are not able to suffer some kind of sanction at the international level or even at the internal level. In this sense the State is obviously responsible for all the grounds covered in its territorial areas, including the problem of the different regions, minorities or indigenous people, etc.

- 3) The mechanisms to enforce the respect of the right by the State. There are many different mechanisms to enforce the fulfilment and respect of human rights by States. In fact, many tools are normally used through international human rights law and structures but there are other tools in relation with the policies that States use among them and the policies of international or regional organisations. For instance, among those linked with the structure of human rights, it is possible to use the *report* system by governments (periodic or specific) in which some international or regional organs establish some kind of conclusions. Another tool is the use of *individual complaints* –about which I will talk in the next chapter- in front of the international or regional organs, where these have to make a pronouncement about some specific matter. The role of the non-governmental organisations in these kinds of mechanisms is, in the real practice, very important and useful. In preparing the reports or conclusions, or even to resolve a specific case under the individual complaints systems, the organs can use many mechanisms like the *on site visits*, the *general comments* or *advisory opinions*, etc.⁸⁵.

At the same time there are many other ways to try to oblige the States to respect human rights outside the specific structure dedicated to them even if in many cases the link among the two groups is very strong. Among these mechanisms, we see that many of them are linked with political or economic decisions, as to establish some kind of diplomatic, economic or political measures against some State. In the case of the international or regional organs, they can decide some sanctions or measures trying to enforce the respect of human rights by States. An example of these measures could be the rejection of loans to those States that do not respect some human rights, as sometimes the World Bank seems to do.

⁸⁴ The “Pinochet case” could be considered as paradigmatic example of these new airs.

⁸⁵ About this topic see Hanski and Suksi, Chapter 22. See also Alston and Steiner, op. cit., especially chapters 8, 9, 10 and 11.

Chapter V

The individual complaint as a very important tool in the defence of the right

1) The importance of individual complaints. During the evolution of the international and regional systems of protection of human rights many different strategies and tools have been used to try to fight against their violation, as it has been briefly said in the precedent chapter. In this chapter, I will consider only one of them, the system of “individual complaints”, or “individual communications” or “individual petitions”, that are, as it has also been already said, those claims made by individuals. Individual complaint mechanisms, generally, have been largely refused by the States because they do not like to be controlled by their own nationals, residents or to allow an increase of the intervention of many non-governmental organisations that can be the “real actors” pushing individuals to claim. In fact, the big difference among the individual claims and all the other forms of claiming against the violation of human rights, is that the individual claims are much more “elastic” and “flexible” mechanisms, and they allow the development of a protection in a very

important and different way than the other mechanisms. I think that in this moment of the evolution of the protection of human rights, the individual complaint mechanisms in the different spheres are practically the most important way of defence against violations of human rights.⁸⁶

There are many procedures in the international system that allow individual complaints⁸⁷. The most famous and important procedures in the UN system are the following:

A) From the centralised UN we can find “individual complaints” in many organs⁸⁸. The first 3 are “treaty-bodies” organs while the 4th is the Commission of Human Rights of the Economic and Social Council of the UN. Then, the individual complaints can be presented:

- a) To the Human Rights Committee in accordance to the Optional Protocol (First) of the ICCPR that I will analyse later;
- b) To the Committee against Torture, in reason to the acceptance by the States of article 22 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment. This convention is not relevant for the right of equal redistribution of wealth, because even if we could discuss in a theoretical way if “poverty” is not a way of torture, the definition of this one in article 1 of the convention excludes without doubts this possibility. Therefore, I will not analyse this “avenue”.
- c) To the Committee on the Elimination of Racial Discrimination, in reason of the acceptance by the States of article 14 of the Convention of All Forms of Racial Discrimination⁸⁹. This convention seems not directly linked with the right that we are analysing. Besides that, few States have accepted the individual complaint procedure and few cases have been submitted to the Commission. At the same time, the suggestions and recommendations that the Commission can make are not binding for the States.

⁸⁶ In fact Nowak states in reference with the individual communications of the Optional Protocol of the ICCPR “*Despite the strong scepticism voiced by many States –and originally in the literature as well- the individual communications procedure has developed into one of the most important procedures for the international protection of human rights. It has been followed with great attention by States and in the literature on international law*”. Manfred Nowak *UN Covenant on Civil and Political Rights*, op. cit. page 648 with wide literature citation in the notes.

⁸⁷ For a general overview of the different procedures at the international and regional level see *Guide to International Human Rights Practice* edited by Hurst Hannum (University of Pennsylvania Press, 1992, 2nd. edition). For the UN procedures see Chapter 3 and 4.

⁸⁸ I am considering only those communications that have a judicial or quasi-judicial prosecution. I do not include the Convention on the Rights of All Migrants Workers and Members of their Families because it is not yet in force.

⁸⁹ This convention was adopted by the General Assembly of the United Nations by resolution 2106 A (XX) of 21 December 1965 and entered into force the 4th of January 1969.

Nevertheless, it is possible to imagine an hypothetical case in which wealth would be badly distributed and the victims of that distribution would be in relation with one of the grounds fixed in the article 1 of the convention. This can happen in some countries of the world (it is not difficult to imagine the poor situation of many indigenous peoples in some Latin American country or the majority of the black people in South Africa in relation with the white minority's wealth). But what seems more problematic and difficult is the demonstration and the proof that the violation of the right by the State implies a "discrimination" based on the grounds of article 1 of the convention and in relation with a totally homogenous group (not only with individuals cases).

- d) To the Commission of Human Rights (which is the "final" organ even if other organs take part in the procedure) by the presentation of communications of violations of human rights in reason of the procedure established by the Resolution 1503 of the Economic and Social Council⁹⁰. I will analyse this avenue later on.

B) There are some other procedures in the agencies of the UN that accept individual complaints. They are principally the UNESCO and ILO mechanisms but I am not going to consider them here because they are very specific to some topics not necessary related with the right in analysis.⁹¹

C) In the Inter-American system, the organ where individuals can present complaints is the Inter-American Commission on Human Rights for those States that belongs to the OAS organisation in relation with those rights that are in the American Declaration of the Rights and Duties of Man, in the American Convention on Human Rights and in some few cases in the Protocol of San Salvador. I will talk in the next point about this possibility.

2) The analysis of the different options where to claim this right. From the overview presented in the precedent point, considering a violation of the right to equal redistribution of wealth in an American country, we should evaluate which of the procedures to apply. I think, as it is possible to see from the presentation made to the different avenues, that the possibilities are the following 3,

⁹⁰ The resolution 1503 (XLVIII) was adopted by the Economic and Social Council of the United Nations the 27th of May 1970.

⁹¹ See Hannum, op. cit. See also Hanski and Suksi, op. cit. chapters 10, 11 and 22.

even if –as I will try to sum up at the end of the chapter- probably the most effective avenue, for an American country, is the Inter-American Commission of Human Rights. I will try to show the three options trying to see the possibilities of obtaining a positive result in reference to a hypothetical case in front of those organs. In the presentation of the avenues I am not going to analyse the procedural formalities because this is not the aim of this thesis, but I will cite the bibliography to do it.

A) First Option: The Human Rights Committee (here in after “HRC”). For the interposition of individual complaints under the HRC it is necessary to follow the procedure established in the Optional Protocol 1 of the ICCPR. Of course that the State against which the individual wants to complain has to be part of those documents. Without presenting the procedural formalities, as a summary I can say that the complaint has to be presented by the victim, or, exceptionally, by another person who justifies the reason why he/she is acting on representation of the alleged victim. The complaint has to be compatible with the provision of the Covenant and can not be considered if the same problem is under examination in another international organ. All domestic remedies have to be exhausted before presenting the complaint.⁹²

Going now directly to the argumentation linked with the substantial question, I will present a short view of the rights involved and the jurisprudence of the HRC.

The rights that we can cite are, principally, those that has been presented above in relation with the ICCPR: articles 6 (1), 25 (c) and principally articles 2 and 26 (also articles 14, 20 and 27). To these rights it is possible to add the General Comments made by the HRC. The general comments are tools adopted by the HRC to facilitate the interpretation of the ICCPR. The most important of them in relation with the right to equal redistribution of wealth is General Comment 18⁹³ in which there are many clarifications in relation with the topic that is in analysis. The HRC has said there (in brackets the paragraphs and only citing some of the most important expressions in the GC) that “*Non discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes a basic and general principle relating to the protection of human rights*” (para 1). “*The Committee also wishes to point out that the principles of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant*” (para 10).

⁹² For an analysis of the procedure see Nowak, op. cit.; Dominic Mc Goldrick *The Human Rights Committee* (Clarendon Press 1994) and P. R. Gandhi *The Human Rights Committee and the Right of Individual Communication* (Ashgate 1998). For a simple vision of the procedure see Hanski and Suksi, op. cit., chapter 6; Steiner and Alston, op. cit., chapter 9 or the Fact Sheet No. 7 *Communications procedures* by the United Nations (published, among others, by the Raoul Wallenberg Institute in *United Nations Human Rights Facts Sheets No. 1-25* (4th. Edition 1996).

⁹³ General Comment 18/37 adopted by the HRC the 19 of November 1989 and it is in relation with the non discrimination clause.

“While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant” (para 12).

Then, it seems that the first problematic question, that is to skip the inadmissibility by the HRC, can be pass, in the sense that this rights can be considered as included among those recognised in the Covenant. In fact, the main tool to use, as insinuated above, is article 26. In this sense there are also in the “individual complaints jurisprudence” some famous cases related with the Netherlands and resolved the same day (S. V. M. Broeks v. Netherlands; F. H. Zwaan-de Vries v. Netherlands; and L. G. Danning v. Netherlands)⁹⁴ in which the HRC established that the scope of article 26 in the ICCPR is not limited only to the rights protected in that Covenant. In fact, the HRC said that the prohibition of discrimination established in the article is valid for all the decisions taken by the State, including those linked whit rights regulated in other treaties⁹⁵. This

⁹⁴ The cases were resolved the 16th of April 1987 and appear in the HRC Report 1987.

⁹⁵ In fact the HRC, in the cited cases, held “.... *The International Covenant on Civil and Political Right would still apply even if a particular subject matter is referred to or covered in other international instruments, e.g. the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, or, as in the present case, the International Covenant on Economic, Social and Cultural Rights. Notwithstanding the interrelated drafting history of the two Covenants, it remains necessary for the Committee to fully apply the terms of the International Covenant on Civil and Political Rights. The Committee observes in this connection that the provisions of article 2 of the International Covenant on Economic, Social and Cultural Rights do not detract from the full application of article 26 of the International Covenant on Civil and Political Rights.*

..... *The Committee begins by noting that article 26 does not merely duplicate the guarantees already provided for in article 2. Its basis stems from the principle of equal protection without discrimination, as contained in article 7 of the Universal Declaration of Human Rights, which prohibited discrimination in law or in practice in any field regulated by public authorities. Article 26 is thus concerned with the obligations imposed on States in regard to their legislation and the application thereof.*

Although article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State’s sovereign power, then such legislation must comply with article 26 of the Covenant.

“jurisprudence” has opened a very important and large use of the OP, even if it has not always been followed⁹⁶. But instead what seems clear from the vision of the HRC is that the State can not discriminate while enacting laws or resolutions even if they are about rights protected by other treaties⁹⁷. In this sense, the only fact of the existence of a big differentiation of wealth among the population where some of them are rich and many are poor, should oblige the State to take an affirmative action. Otherwise, it could be considered that there is a discrimination on many grounds, among them “property”. Although, it seems not yet so clear in the practice of the HRC how the “positive” obligation by the State has to be in reference with non discrimination. I think that this is a new step for the HRC and that it is very near to happen⁹⁸. For that reason I believe that a “good” presentation of a “good” case in front of the HRC should receive a positive result.

B) Second Option: The Commission of Human Rights. The rules are established in the 1503 resolution of the UN. In this case it is not necessary that the State against which the claim is presented has ratified any convention or specific instrument: the procedure applies to all States. The complaint (called communication in this procedure) must not be inconsistent with the principles of the UN Charter, the Universal Declaration of Human Rights and the most important treaties and conventions linked with the case. The communication will be admitted only if “*there are reasonable grounds to believe that they reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms*”. The communication has to be presented by individuals or groups (anonymous presentations are not accepted) who claim to be victims of human rights violations. Communications can also be presented by people (including the NGO’s) who have direct and reliable knowledge (not only knowledge received, for instance, by the press) of the violations. Each communication must describe the facts, the purpose of the petition and the rights that have been violated.

If we do not consider procedural matters and go directly to the substantive problems linked with the rights that are violated, I think that *the entire list of rights* (especially those that are in the

The Committee observes in this connection that what is at issue is not whether or not social security should be progressively established in the Netherlands but whether the legislation providing for social security violates the prohibition against discrimination contained in article 26 of the International Covenant on civil and Political Rights and the guarantee given therein to all persons regarding equal and effective protection against discrimination.

The right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within meaning of article 26”. See Mc Goldrick, op. cit., page 164/5.

⁹⁶ For an updated citation of the different cases linked with article 26, see Gandhi, op. cit., pages 167 and ss.

⁹⁷ See *ibid.* See also Mc Goldrick, op. cit., page 165 and ss; Nowak, op. cit., page 466 and ss; and Scott, op. cit.

⁹⁸ An argument in this direction could be the response to the Uruguayan government, even if accepting its point of view and rejecting the communication, in the *Stalla Costa v. Uruguay* case (No. 198/1985). Here the HRC said that the author of the communication (who asked from the State a job as a right) “... *Had made a reasonable effort to substantiate his claim and that he had invoked specific provisions of the Covenant in that respect. The question whether the author’s claim was well-founded should, therefore, be examined on the merits*”. See Mc Goldrick, *ibid.*

UDHR, but also the others particularly if the State has ratified the conventions that include them) can be invoked to present a communication under this procedure. In this mechanism probably the most difficult obstacle seems to convince the Commission that an unequal redistribution of wealth (or in other words the non respect of the right of equal distribution of wealth) is a “*gross violation*” of human rights in the terms of the 1503 resolution. I put this question because violations of economic, social and cultural rights have never been examined seriously under this procedure. But I think that if the 1503 procedure applies to all *situations* revealing violations of human rights wherever they might be committed and if the petitioner proves that there is a “situation” of poverty, marginalization and inequality that involves a big part of the population (it has to be much more than a single or singles individual cases, because of the requirement or exigency of “situation”) since many years and that there are no perspectives of changes through the “normal political ways” (or by the normal predictions that can be done by experts in the different fields) in the short term (5 or 10 years, but this is very subjective), it is clear that the violation of the right enters into this procedure and should receive, at least from a “theoretical” point of view, a positive pronouncement of the Commission.

C) Third Option: The Inter-American Commission of Human Rights. The rules regulating the individual complaints in the Inter-American system has different sources depending on the situation of the State involved. The first group is composed by the states that are members of the OAS but have not ratified the American Convention. In this case the Commission can receive the complaints against the breaches of some rights that are in the American Declaration⁹⁹. The second group is the group of those States that have ratified the American Convention and in this case the rights are those of that instrument but also those of the American Declaration¹⁰⁰. In that case, the Commission can receive individual complaints in reference with all the OAS States but the source and the rights are not exactly the same for all of them.

The decisions of the Commission are not “binding” for the States, even if they are very important. The only “binding” decisions are those decided by the Court in contentious cases and only for those States (that form a third group, or a sub-group among those States that have ratified the American Convention of Human Rights) who have accepted the jurisdiction of it. But individuals can not go directly to the Court, they have to go to the Commission first and after the

⁹⁹ This is in order with Resolution XXII, Second Special Inter-American Conference, Rio de Janeiro, Nov. 1965, Final Act. OEA/Ser.C/I.13, 32-4 (1965). See David Harris and Stephen Livingstone (editors) *The Inter-American System of Human Rights* (Clarendon Press, 1988), Chapter 3.

¹⁰⁰ Article 51 of the Commission Regulations and Article 20 of the Commission Statute. See *ibid*.

whole procedure in front of it, it is only the Commission or the State involved that can go to the jurisdiction of the Court¹⁰¹.

Any person or group of persons or any non-governmental entity can present individual complaints to the Commission. Some few formal requisites have to be respected¹⁰².

Going directly to the argumentation linked with the substantial question, I will present a short overview of the rights involved and the jurisprudence of the Commission. The rights that we can cite are, principally, those that have been presented above in relation with the American Convention and American Declaration: articles 1, 2 and 26 of former and articles 2, 14, 23, 35 and 36 of latter one¹⁰³.

The cases in the Inter-American Human Rights system are not so numerous as in the European system and especially in a topic such as this one, not linked with some specific rights. In fact, until now the majority of the cases have been concentrated in questions linked with the terrible moments lived in almost the entire continent during the repressive governments in the 70's and the beginning of 80's¹⁰⁴. Although it is possible to find some interesting cases that create the hope that a case where the right of equal redistribution of wealth would be involved could be decided in a positive way.

First of all we can see that in the already cited *Velazquez Rodriguez case* the Court established that the State has the duty to “ensure” human rights, specifying that this means *that “the State has a legal duty to take reasonable steps to prevent human rights violations committed within its jurisdiction, to identify those responsible, to dispose the appropriate punishment and to ensure the victim adequate compensation”*, saying that this obligation or duty of the State exists in respect of violations by public and private actors. The Court clarified that *the “duty to ensure implies the duty of the States parties to organise the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights”*. Further, the Court adds that the State is responsible for *the*

¹⁰¹ For the actual situation of the States in the OAS human rights system see Annex 1.

¹⁰² See for the procedural practice, Thomas Buergenthal and Dinah Shelton *Protecting Human Rights in the Americas* (N. P. Engel 1995); Scott Davidson *The Inter-American Human Rights System* (Dartmouth 1997) or David Harris and Stephen Livingstone, op. cit.

¹⁰³ It is important to remember also article 3 of the Additional Protocol (Protocol of San Salvador).

¹⁰⁴ Nowadays the situation is better, in the sense that practically all the countries have at least formal democracy and the most aberrant actions as torture, disappearances, and others exist in a very weak degree. Things, then, are changing and also the topics of interest of the individuals, lawyers, NGO's and the Commission and the Court who begins to be worry for many other rights enlarging the vision of the human rights conception. In reference with this question Mathew Craven says *“The almost endemic problems of torture, arbitrary detention, forcible disappearances, and denial of political participation have all tended to encourage a myopic vision of human rights that has excluded from view problems of a broader nature, and particularly those relating to economic, social and cultural rights”* (the emphasis is mine), in Chapter 9 of Harris and Livingstone, op. cit., page 289.

“*lack of due diligence to prevent the violation to respond to it as required by the Convention*”¹⁰⁵. This implies clearly that the State has to have not only a passive role in the defence of the rights recognised in the American system, it has to have an active role in that task as well. All this is related with article 1 of the Convention.

In reference with discrimination and equality the articles involved are articles 1(1) and 24 of the Convention and article II of the Declaration. In reference to these norms, even if the Court has said that “*not all the differences in treatment are in themselves offensive to human dignity*”, this does not avoid that “*Equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual*”. The Court has said that no group has a right to superior treatment over another, nor must other groups be treated as inferior. Then, the domestic norms have to ensure the rights of the system and have to be implemented without discrimination in any subject area¹⁰⁶. The Court has said that “*...The final section of Article 1 (1) prohibits a state from discriminating on a variety of grounds, among them “economic status”. The meaning of the term “discrimination” employed by the article 24 must, then, be interpreted by reference to the list enumerated in article 1 (1). If a person who is seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigency) prevents him from so doing because he cannot afford either the necessary legal counsel or the cost of proceedings, that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law*”¹⁰⁷. From this affirmation it seems not so difficult to imagine the possibility of asking the State not to discriminate poor people, not only for the right of fair trial, but also in relation with many other rights as could be the right to life. Even more, this “non discrimination” could be presented or required as an active conduct of the State¹⁰⁸.

In strong link with the right to equal redistribution of wealth the Commission has recognised, through the Annual Reports to the OAS, that the implementation of some rights as the economic, social and cultural rights is a “*progressive process, in step with each member country’s*

¹⁰⁵ This position was ratified by the Court in the Advisory Opinion No. 11. The paragraphs of the Velazquez Rodriguez sentence already cited in note 82 are those among the numbers 167 to 174. The AO 11 is from 1990 (I. A. Court H.R. Series A No. 11, para 23).

¹⁰⁶ Advisory Opinion No. 4, I/A Court H. R. Series A. No 4, parts of paragraphs 54, 55 and 56 are cited in the text.

¹⁰⁷ Paragraph 22 of the Advisory Opinion 11 (1990), I/A Court H. R. Series A No. 11.

¹⁰⁸ About this Victor Abramovich says “*En relacion con los derechos economicos, sociales y culturales, el articulo 24, el deber de garantia del articulo 1 y el de adoptar medidas necesarias para hacer efectivos los derechos del articulo 1 (2) de la Convencion podrian justificar en algunos casos vinculados a grupos vulnerables la obligacion del Estado de desarrollar politicas activas y diferenciales*”, citing a large casuistic of the Advisory Opinions of the Court holding this position. See Victor Abramovich Cosarin *Los derechos economicos, sociales y culturales en la denuncia ante la Comision Interamericana de Derechos Humanos*, in *Presente y Futuro de los Derechos Humanos. Ensayos en Honor a Fernando Volio Jimenez*, edited by Lorena Gonzalez Volio, Instituto Interamericano de Derechos Humanos, 1998, page 159 and ss.

*development*¹⁰⁹ but this does not mean that governments “do not have the immediate obligation to make efforts to attain the full realization of those rights”¹¹⁰. And the Commission held that the implementation of economic, social and cultural rights is clearly related with a minimum of redistribution of wealth¹¹¹.

Also concerning with country reports, the Commission has been clear in relation with this topic. As an example of this reaction of the Commission we can refer to the Report on Brazil in 1996¹¹².

In the individual complaint cases there is an interesting case that is related with the example that I will present in the next chapter in relation with Argentina¹¹³.

As it is possible to see, the perspectives of a good presentation to the Commission are good and the result should be positive.

After the analysis of these different avenues it seem clear that the three avenues can lead to a good result in reference with international (or regional, in the case of the american countries) human rights standards. When I say this I am thinking exclusively in a “juridical” way of reasoning but I know that, of course, things can be different. In fact, all the governments are going to “fight” very hard against a negative decision in reference with them. Many other factors (political, economical, diplomatic, or others) that could be very linked with the hypothetical case and its decision can appear. These factors can generate that the different organs in front of a specific juridical decision could take a “polite” decision (in the sense of a reject of the complaint or, eventually, a “soft” and

¹⁰⁹ Status of Economic, Social and Cultural Rights in the Hemisphere, Annual Report 1991, 287, cited in Craven’s article in Harris and Livingstone, op. cit. page 317.

¹¹⁰ Annual Report 1993, 523, cited in *ibid*.

¹¹¹ See *ibid*. In that report the Commission says “...in view to the unequal distribution of wealth within the states in the region.... an increase in national revenues does not automatically translate into an improvement in the general welfare of the entire population. The commitment of states to take steps with the aim of achieving progressively the full realization of economic, social and cultural rights **requires an effective use of resources available to guarantee a minimum standard of living for all**” (emphasis mine, para 151-153).

¹¹² In fact, in the Report (Chapter II Report on the situation of human rights in Brazil, Social, Economic and cultural Rights) the Commission, even still thinking that the public expenditure is an internal question, says “2. *It is incumbent on the State to promote integral development with total sovereignty as regards its policies and strategies. According to that commitment, however, these objectives cannot be avoided. Moreover, studies show the importance of State decisions in any improvement of such situations; and in the specific case of Brazil, it has been found that ‘the significant variation between States (of the federation) with respect to conditions of poverty, which can not be explained by differences in income alone, suggests that economic structure and polices are also important variables’*”. In the point 4 states “*The extent of poverty in Brazil varies according to the many estimates, but all of them emphasize not only its absolute magnitude, but also the extreme inequality of income distribution, which is one of the most inequitable in the world. The twenty per cent of the country’s population with the highest income received thirty-two time more than the 20% in the lowest income bracket between 1981 and 1993. For 1990, ECLAC reports that 9,64% of the GNP went to the poorest 40% of the urban population, while the richest 10% received 41,7% thereof. Official data for 1994 show that the poorest 20% received 2% of the national income, while 49,7% thereof went to the 10% wealthiest group*” (notes omitted).

¹¹³ It is Report No. 90/90, Case 9893 (Uruguay), Annual Report 1990-1, 77.

general recommendation but not a strong decision) even if it is well known that decisions in law, and particularly in international law, very often have these characteristics.

The choice among these three alternatives is principally linked to each specific case and to all the “normal” factors that are in relation with the election of one avenue or the other one. In the case of an American state the possibility of a “binding” decision at the end of the process (with a Court’s decision, even if normally the decisions of the Commission are respected) seems a strong reason to consider this possibility even more. In fact, the effects in relation to individuals are different, especially if they are thinking or receiving some kind of economical compensation for their petition. The Commission and the Court can decide (the last one with binding powers) a specific case that can imply a direct compensation to the victim and, of course, to recommend or even order a change in the policy or laws of the State. In the other two avenues the “effects” are different. In fact, in the “first option” presented, the HRC can also recommend the government to give a remedy to the victim (punishments for the responsible, adequate compensations or other measures to prevent future violations) in the “final views”, but these recommendations are not compulsory for the States even if they usually respect them (it is like the decision of the Commission under the Inter-American system). The 1503 resolution’s effects are even weaker, where the public condemnation of the State is general and the effect for the victim is not direct. The three avenues seem adequate for a claim, but not all of them have the same effects.

In the next chapter I will present a more concrete “hypothetical” case in which I think that it would be possible to present, after all the internal national claims (and if these claims are rejected) an individual complaint in relation with the right to equal redistribution of wealth.

Chapter VI:

The public expenditure (salaries and pensions) for individuals: A case in Argentina?

1) A general social and juridical vision of the country. Argentina is a very big country and with a small population. The territory of the country is 2.780.400 sq. Km. and the population is around 36.000.000 people. The majority of the people live in the urban areas and particularly in the central part of the country.

Argentina is a federal constitutional democracy with an executive branch headed by an elected president, a bicameral legislature, and a separate judiciary. The actual president is called Fernando de la Rúa from the centre-leftist coalition of parties called “Alianza”, formed by the traditional centrist Radical party and the new one Frepaso, more with a left's ideology. He was elected the 24th of October and is in charge since the 10th of December 1999. He continues a “long” democratic period for the country after many interruptions of democracy during the whole century and after the last terrible military coup in 1976 commanded by Jorge Videla. This democratic period was initiated with the presidency of Raul Alfonsín (from the Radical party, 1983-1989) and Carlos Saul Menem (from the “peronist” or “justicialist” party, 1989-1999, with in the middle a re-election

in 1995 after a constitutional reform allowing this possibility that was previously forbidden). In these last ten years the economic policies of the government have been those of the liberalism and “free market” receipt (as practically all the Latin-American countries in the 90’s), generating a growth in the macro-economic situation of the country, but a worse social situation.

The system of government is a “presidentialism” in which the president has a very strong power, even if he has to share it with the Legislative Power, the Judiciary Power and some other organs. The Judicial Power has always, for historical factors, been very linked with the Executive power. The federalism is very weak but has increased after the mentioned constitutional reform and the President has to share the power with the local authorities.

The country has a mixed agricultural, industrial, and service economy. An economic reform and structural adjustment program, which included privatisation and trade and financial sector liberalisation, led to an increase in average annual gross domestic product of 6 percent during the period 1991-97, with low inflation (after decades of big inflation rates). Growth slowed to an estimated 4.8 percent in 1998, however, due in large part to a reduction in foreign capital flows into the country, and a high unemployment persisted.

After this short presentation I would like to show some “indicators” of the social and economic situation of the country. These indicators are very linked with the “existence” of the right to equal redistribution of wealth, as I have already said in the precedent chapters and are important in relation with the examples that I will present in this chapter in the following point. *“The purpose of indicators is to capture two key factors: the willingness and the capacity of a government to protect and promote human rights. The difference between the two, particularly regarding economic and social rights, is crucial to assess government performance. An important objective of indicators is thus to dissociate unwillingness (that is the lack of commitment) from incapacity”*¹¹⁴. I will try to show that, in principle, the Argentinean Government does not seem to have the willingness -or, at least, did not- (even if it is difficult to fix and even more to prove the exact line of differentiation among unwillingness and incapacity) to change the situation in reference with inequality and poverty in the country and, therefore, with the redistribution of wealth. Nevertheless, it has to be considered that these indicators make reference to the society in general and implies an average of it, not considering the individual cases that are those who could complain in the examples that I will present in point 2.

If we take the last years to investigate the evolution of these social and economic indicators we have to consider that it is not easy to measure them because it is not possible to find statistics, or

when it happens in many cases they are not serious or comprehensive¹¹⁵. It is important to consider this limitation.

The following are, then, only a short summary of those indicators that I have considered the most important. They are related to the principal items linked with the right in analysis. I will cite the sources for allowing to the reader to have more information about them.

From CEPAL¹¹⁶, the numbers for the unemployment (only urban) are: 1990: 7%; 1994: 11,5% and 1997: 14,9 %. The Gini coefficient (only Great Buenos Aires¹¹⁷) in 1990 is: 0.423; in 1994 0.439; in 1997 0.439. The participation in the income of the poorer decil (only urban) is 9,3% in 1980; 8,4 in 1990; 6,8 in 1994 and 7,5 in 1997 while the participation of the richest decil (urban only too) is 29,8% in 1980; 34,8 in 1990; 34,2 in 1994 and 35,8 in 1997.

From the INDEC¹¹⁸, the number of unemployed is 9,6% of the people in conditions of working in October 1993; 11,1 and 13,1 on May and October 1994; 20,2 and 17,3 on May and October 1995; and 18,0 and 18,8 on May and October 1996.

From the last “Concluding observations” of the Committee on Economic, Social and Cultural Rights on Argentina (cited in note 115) we can read, in reference to the last five years, “*While the Government has succeeded in stabilizing the value of the currency, the implementation of the structural adjustment programme has hampered the enjoyment of economic, social and cultural rights, in particular by the disadvantaged groups in society*” (point 10), and among the subjects of concerns it is possible to read, among many other interesting points, that “*The Committee is concerned about the very high unemployment rate in Argentina (almost 15 per cent) and in particular about the large number of the new poor (nuevos pobres), who had traditionally belonged to the middle classes*” (point 12); “*It is particularly concerned about the large number of workers who fall within the informal economic sectors. Approximately 37 per cent of urban workers in the country are not registered which, according to the Government’s own estimates, implies that*

¹¹⁴ Katarina Tomasevski, in *Indicators*, chapter 25 of *Economic, Social and Cultural Rights* edited by Eide, Krause and Rosas, op. cit., page 390.

¹¹⁵ In fact, for instance the National Center of Statistics (called INDEC) was involved recently in a very big scandal because one of the researchers denounced that he received an order in the sense of changing the numbers with the aim of presenting a better situation for the government. See about this the newspaper *Pagina 12*, the article written by Maximiliano Montenegro *Retoques para que la economia sea rosa*, 21st of October 1999. About this question the Committee on Economic, Social and Cultural Rights, for example, observed in its last Concluding Observations on Argentina the 8th of December 1999 (E/C.12/1/Add.38) in point 19 about a specific topic but that is generally valid “*The Committee has had difficulty in evaluating the Government’s programmes for training workers and the impact of these programmes owing to the absence of comprehensive statistics*”.

¹¹⁶ CEPAL is the “Comision Economica para America Latina y el Caribe” (Economic Commission for Latin America and the Caribbean, ECLAC) that depends on the UN. The numbers are from the report *Panorama Social de America Latina*, op. cit., Statistic Annexes, Tables 1 and 23.

¹¹⁷ Great Buenos Aires is the zone that includes the big urban suburbs of the capital city, Buenos Aires, where a very important part of the population of the country lives. Together with the people of the city of Buenos Aires constitutes almost one third of the population of the whole country.

some 3 million workers have no social security coverage” (point 13); “The Committee is also concerned that **unemployment benefits reach only some 6 per cent of the unemployed population and that some categories of workers are excluded, such as rural domestic and construction workers and public employees**” (point 14, the emphasis is mine); “The Committee is concerned that the right to health is not being fully implemented in the State party. In particular, it is concerned about the conditions in public hospitals in general and with psychiatric hospitals in particular” (point 23).

From other sources it is possible to see that in the last year the unemployment rate grew up from 13,2 to 14,5%, which means 200.000 people without job (the reference is linked with the 1999 year) while the number of partially occupied workers (people who would like work more) was in the same rate, that is 13,5/14%. This means that almost the 30% of the labour force in Argentina has big problems linked with jobs, a situation that was duplicated in the last 10 years¹¹⁹. In reference with the tax situation it is possible to see that the evasion of taxes is incredible, but it is especially high among the rich people. For instance, the income tax to individuals was presented only for 420.000 people while the estimations consider that at least 2.000.000 people should pay the contribution in different scales¹²⁰. And this situation occurs even if the level of the tax is not high and it has decreased trying to make the cash more effective. But as it is possible to see, the level of cash is not good yet¹²¹. At the same time, there are taxes such as the VAT (IVA in the Argentinean terminology), that do not generate redistribution and do not affect the rich people very much¹²². Nevertheless, even if the tax system is still “regressive”, the tax cash has improved in the last years¹²³. In reference with the “return” of the taxes through the public expenditure, it is possible to see that in this field the effect on the redistribution of wealth in Argentina is very low¹²⁴.

¹¹⁸ I have got these dates from the web site from this national statistic institution, in the following address www.indec.mecon.ar/default.htm that was visited the 11 of November of 1999.

¹¹⁹ See *En un año hay 200.000 desempleados mas* and *Empleo: casi 4 millones de personas con problemas*, both articles written by Ismael Bermudez the 6 and 8 October 1999 in the newspaper *Clarín*.

¹²⁰ See *Reino de la evasión impositiva* in the newspaper *Página 12* from 15 December 1999.

¹²¹ In fact, in the Report *América Latina frente a la desigualdad*, op. cit, we can read “Las tasas de los impuestos a la renta en América Latina son actualmente las menores del mundo. Hasta hace una década, las tasas máximas de impuestos a las personas eran del 40% o más en prácticamente todos los países de la región, y en 10 países eran cuando menos del 50%. Esos niveles se han reducido a un promedio que en la actualidad se sitúa en 25%, y que es menor al de cualquier otra región: en los países desarrollados las tasas máximas de tributación superan en promedio el 40% y en los países asiáticos están apenas ligeramente por debajo de esa cifra..... Aunque las reducciones de las tasas impositivas tuvieron por objeto mejorar la efectividad del sistema tributario, ésta aún es muy reducida” (page 203). In that page it is possible to see the reduction made by Argentina which is from 45% (more or less) in 1986 to 30% in 1997.

¹²² “En Argentina (después de la reforma de 1996) o en Chile, donde el IVA tiene tasas planas y muy pocas exenciones, se encuentra efectivamente que la incidencia es regresiva. En Argentina, la carga del impuesto se reduce del 9% del ingreso en los cuatro primeros deciles a cerca del 7% en el noveno y menos de 4% en el decil más rico”, *ibid* page 207.

¹²³ “Sin embargo, el impacto sobre la distribución del ingreso no depende sólo del grado de progresividad del impuesto, sino también del monto recaudado. Argentina aumentó sustancialmente el potencial distributivo del IVA con la reforma de 1996, puesto que si bien en la situación anterior su progresividad era mayor (el cuasi-Gini de la recaudación era 0,53) [Se denomina Cuasi-Gini porque es el Gini del impuesto pagado, pero calculado con base en el ordenamiento de los ingresos de las familias], la recaudación era muy baja. Teniendo en cuenta la recaudación efectiva, el potencial redistributivo del IVA (siempre con el supuesto de distribución igualitaria del gasto) pasó de 1,2

At the same time, the situation in relation with corruption continues to be in a bad situation. In fact, corruption is a frequent practice in the economic and political field¹²⁵.

In relation with poverty I have already presented some numbers in the first part of this work but I will repeat some of them here. At the moment it seems that 29% of the Argentinean people is poor and 7% is indigent, what means that almost 11 million people are poor and 2,6 million are indigent. These numbers have notably increased in the last years. In fact, in 1994 the number of people under the poverty line amounted more or less to 20% of the population¹²⁶.

In an interesting article in which an analysis was made about the social situation of the last decade in Argentina (1991 to the end of the 1999) the following figures appear. The number of unemployed people has grown from since 6% to 17,4% in 1996 at the highest level, being of 14,5% in August 1999. The people who work in “black” (“asalariados en negro”, that means that are not effectively in the job and do not have social security and are not included in the pension system) goes from 31,5% in 1991 to 34,9% in 1996 being the tendency in up. In reference with the income distribution, the article says that the 10% richest of the population had 34,1% of the income, while the 30% poorest of the population had only 8,8% in 1991, being the same indicators in 1997, 36,6% and 7,7% respectively. In reference with the number of poor people it says that 21,5% of the population were poor (“pobreza critica”, people who did not have enough to buy the normal minimum products and services for living) in 1991, and that number raised almost 26% of the population in 1998. In the same period the number of people who were indigent (whose incomes do

de reducción del Gini antes de la reforma a casi 2 puntos posteriormente. La reforma tributaria argentina también afectó el impuesto a la renta, donde el grado de progresividad mejoró ligeramente (de 0,56 a 0,63). Pero el mayor efecto distributivo (que pasó de 2,2 a 3,2 puntos de reducción potencial del Gini), se debió al aumento en la recaudación, que fue del 25%” (Ibid, page 210).

¹²⁴ *“Pero el impacto redistributivo del gasto social no depende exclusivamente del volumen de gasto que recibe cada grupo de ingreso. Mucho más importante es el hecho que el gasto sea eficiente y se concentre en los servicios que pueden influir en los factores que reproducen la desigualdad. Por una parte esto significa que los gobiernos deben aumentar la eficiencia de los sistemas que proveen educación, salud y seguridad social. Por otra parte, exige que dichos sistemas se reorienten en forma más eficaz hacia los objetivos de mejora de los resultados en materia de educación y salud. Con demasiada frecuencia, los gobiernos cometen el error de considerar que para lograr ‘un nivel más alto de salud’ o ‘una mejor educación’ basta con construir ‘mas hospitales’ y mas ‘escuelas’” (Ibid, page 211). And the report adds “Desafortunadamente el impacto redistributivo de las políticas fiscales es pequeño en relación con los altos niveles de desigualdad en el ingreso que registra la región..... En Argentina el impacto es sumamente moderado según las estimaciones: tan sólo 0,5 puntos [per cent of points of the Gini coefficient of distribution of income]” (page 213).*

¹²⁵ In fact, Argentina is now even in a worse situation in the list of the most corrupt countries elaborated by the firm Transparency International. The country ranks 72nd in the level of corruption (among 99 countries, which the last one is the worst) and its qualification continues being very bad in the sense that its grade is 3, which means that it is a country with a very high level of corruption. See the articles published by the newspaper *La Nación Sube la Argentina en la lista de corrupcion* and *La Argentina entre los países mas corruptos* (by Maria O’Donnell this one), published the 28th of May 1998 and the 27th of October 1999 respectively.

¹²⁶ See the note in the newspaper *Página 12, El deficit no es tan solo fiscal* published the 22nd of November 1999.

not cover the food expenses) changed from 3% in 1991 to 7%. In other fields as health, housing, education and public security the article is very critic too¹²⁷.

In another recent article it is said that the “*society is becoming more a more inequitable*”. It says that “*60 per cent of those living below the poverty line in Argentina are poor due to their low incomes*” and adds that “*The wealthiest Argentineans earned 22 times more than the poorest in 1997, and 25 times more in October 1998. In 1975, that ratio was 7,9 to one. The richest stratum’s share of wealth rose 35,3 to 36,9 percent from October 1997 to October 1998, while the poorest sector’s share shrunk from 1,6 to 1,5 per cent*”¹²⁸.

I could continue with many and many other numbers, articles and statistics but now I would like, instead, to present a very short and general view of the juridical constitutional picture linked with the right in analysis (the reader interested in them can see the sources that are cited in the notes and go directly there).

The Constitution of the country was adopted in 1853. It has had some modifications in 1860, 1866, 1898, 1957 and a very important one in 1994. The formal Constitution’s ideology is based in the two classical (and, in same sense, “tense”) principles: liberty (article 19) and equality (article 16) to which it is possible to add the “iusnaturalistic” approach to have then the three main orientations of the Constitution: the liberal, the “iusnaturalist” (for the strong influence received from the naturalist and catholic theistic vision of the law, particularly in the XIX century) and the social. “Equality”, which is the main idea linked with the social orientation (but not the only one, because there are many other articles linked with that, particularly those articles included in the reform of 1957 and, especially, in 1994) is also regulated in other articles like 15, 20 and 75. The reform of 1994 has incorporated many norms “protecting”¹²⁹ some special sectors of the population, for instance “*the children, the women, the elder and disable people*” (article 75 paragraph 23). The same paragraph establishes that the National Congress has to adopt “*positive measures to guarantee the real equality of opportunities and of treatment.....*” of those peoples. There are other articles linked with equality but less close to our topic, as for instance political rights of participation of

¹²⁷ The article has been cited in note 27. It was written by a sociologist who is also researcher of the Conicet (the national institute of research) and professor at the University of Buenos Aires.

¹²⁸ The article is *Economy-Argentina: Growing gap between haves and have-nots*, published by World News, 9th of January 1999 and written by Marcela Valente based upon dates given by the sociologist Artemio Lopez. Web Page www.oneworld.org/ips2/jan99/17_27_078.html visited the 6th November 1999.

¹²⁹ This “protection” is included in the article that establishes the mandate for the National Congress to enact laws. This is due to particular reasons linked with the political, historical and procedural matter of the reform agreement in 1994. For a brief vision of the new norms incorporated in the recent reform (enacted the 25 of August 1994 and entered that day into force) see my two articles in the magazine *Quaderni Costituzionali* (Bologna, Ed. Il Mulino) *La riforma costituzionale di 1994 in Argentina: il processo storico* (1996 Number 3) and *La riforma costituzionale di 1994 in Argentina: il suo contenuto* (1997 Number 1). For a complete vision of the constitutional law in Argentina see German

women and some “quotas” in the electoral list of candidates (article 37 and 2nd transitory clause). There is a very important clause that “constitutionalizes” (i.e. gives constitutional level) some of the most important international and regional documents of human rights (article 75 paragraph 22)¹³⁰. The Constitution establishes mechanisms to require from the judicial power the protection of the people’s rights (as the “amparo” in article 43) that have been regulated in the different procedural national and local codes. Despite this, it is important to remember the traditional lack of independence of the Judicial Power in the country and the difficulties for poor people to have access to the courts.

After this short presentation of the situation of the country I will present two cases in which I think it could be possible to claim against the Argentinean State for the violation of the right to equal redistribution of wealth. It is important to note that after the change of government the 10 of December 1999, this one has promised to fight strongly against corruption and poverty. The De La Rúa’s government, in fact, has promoted a change in the tax laws trying to generate some redistribution of wealth and affirms that it will try to improve the situation of the more disadvantaged people but it will maintain the same economic policy of the precedent government. These facts could be used as some of the “justifications” by the government, even if I think that the cases are valid even in the new reality. At the same time, the cases that I have chosen are related with Argentina, which is not the worse country in terms of inequality in Latin-America¹³¹ (even more, in some way it is one of the best or less unequal countries of the region) and they are dealing with the public expenditures. Therefore, the cases are focused in Argentina but can be used for many other realities, because they are only examples trying to confirm in a practical and concrete way all that I have said in the precedents chapters.

2) The public expenditure (salaries and pensions) in Argentina and the income situation of other persons. Analysis.

Bidart Campos *Manual de la Constitucion Reformada* (Ediar, 1998, 3 vol.) or Nestor Sagues *Elementos de Derecho Constitucional* (Astrea, 1999, 3rd. Edition, 2 vol.)

¹³⁰ The documents that have been “constituzionalited” in the Constitution are: The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child. To these documents the National Legislative Power can add other treaties or international documents in reason to a special mechanism which has been used to elevate to the constitutional level to the Inter-American Convention on the Forced Disappearance of Persons of 1994.

¹³¹ See the report *America Latina frente a la desigualdad*, op. cit., especially chapters 2, 3 and 4.

A) Some clarifications: Before going to the cases I think that it is important to clarify some questions.

The first one is related with the importance that salaries have in the increasing of wealth. In fact, it is well known that salaries, in many cases, make up the most important income of the people. Particularly in Latin America, where the difference of salaries is practically the highest in the world, the high salaries are usually received by the richest people because they are the most educated, being this one of the elements that makes inequality increase even more. Another reason, for instance, is the sociological fact of the size of the family and the number of children among rich and poor people. The rich have few children while poor have many, in the majority of the cases linked with ignorance in the methods of birth prevention. Thus, salaries are an important factor of inequalities in their selves but there are also many other factors, that –linked with these unequal salaries- increase the inequality even more¹³².

A second question to analyse is related with the comparisons of the salaries and pensions. Do we have to compare them among the highest and lowest or does the comparison have to be made in relation with the “average”? There are different visions about this question. I have chosen to show the violation of the right to equal redistribution of wealth (and “discrimination” and “inequality”) through the comparisons among some of the extremes on salaries. This choice does not mean that the analysis and comparison could not be done through other variables (for instance the “average” and the distance to it).

A third question is to explain why the analysis is only concentrated in the *public* salaries and pensions. The reason of this choice is linked with the fact that even if in the private sphere it can be possible to find bigger differences among the salaries, the role of the State in that case seems less clear and it seems more difficult to find the direct responsibility of the State for the violation of the right. In fact, as it is the State that pays the salaries and pensions, its behaviour is direct and active as an eventual violator of the right if it does not respect the right. On the contrary, if the differences of salaries come from the private sphere, the State could also be responsible, but in that case its responsibility would be linked with a more passive behaviour of control, and then it would seem less directly involved in the non-fulfilment of the right. In other words, if it is the State that pays the salaries with big differences, the proof of the violation by the State is clearer; if those who pay the salaries with big differences are private individuals

or societies, the proof of the violation and the State's responsibility are harder to prove. Then, this does not mean, of course, that it is not possible to present a complaint against a State for the lack of control in reference with the big differences of private salaries, but the level of difficulty for the fundamentals of the case are bigger¹³³.

Another important question to clarify is the big problem of knowing the real income of the people in Argentina. It is almost impossible to know it, because of different reasons. The first one is the lack of information. In fact, I have tried many sources, particularly but not exclusively through Internet, and it is not possible to find the exact numbers. Another reason, this one concentrated exclusively in salaries, is that many of the people who work in the public sphere (principally those who are called "funcionarios", that means executives offices) receive an amount of money as "normal salary" (that includes many items) but also receive money (sometimes "in black way") for "protocol expenses" ("gastos protocolares" in Spanish) and "reserve expenses" ("gastos reservados" in Spanish) that normally is used for personal matters. To all these items it is necessary to add, in some cases, that some "funcionarios" do not have to spend any money for living expenses, because –as in the case of the President and Governors- they live in official houses with all the "normal living expenses" for free (rent, car, restaurants, clothes, flight tickets, etc.), which implies that the actual "salary" is much higher.

The fifth clarification is that the problem seems not only to be the difference of salaries as an isolated question. In fact, this is a part of the general picture in the inequality problem. For instance it can be clearly justified that a person receives four or five times more than another person does, when his or her necessities are clearly and "objectively" justified for "accepted" arguments. A difference of salaries between people that live alone and people that have to maintain a big family can be justified. It is possible to imagine many other cases as for instance handicaps or health problems that "objectively" imply more consumption. Also it is clear that it is possible to justify some differences in relation exclusively with the job itself, allowing differences in reason of

¹³² In the report *America Latina frente a la desigualdad*, op. cit., it is possible to see a very accurate explanation of the causes and effects of the inequality incomes in those countries and among them, Argentina.

¹³³ The differences in the salaries in the private sphere are even more unequal than in the public sphere (and, at the same time, the low level of the private worker receive less money for working in worse conditions than people who is in the public sphere). For instance we can see that "...en 1994 el mas alto ejecutivo de una gran empresa ganaba 28 veces mas que el operario de produccion, en 1999 esa brecha salto a 44 veces, segun la encuesta mundial de remuneraciones que elabora la consultora internacional Towers Perrin. Este aumento de la brecha entre los ingresos del numero uno y los del operario de produccion es, desde 1995, constante. Ya en 1996 esa distancia trepo a 29; en 1997 a 30; en 1998 a 35, y el año pasado escalo a una diferencia de **44 veces mayor**". See the article *Crece la brecha entre los sueldos altos y los mas bajos* published in the newspaper *Clarín* by Ismael Bermudez the 10 of January 2000.

the effort, the studies, the responsibilities, etc. Then, I clarify that I will consider that the salaries and the numbers presented are, more or less, in relation with people that have more or less the same “basic” necessities.

The last question to clarify is to remember that, as it has been already said, Argentina is a federal country. The public salaries and pensions are very different, depending if they come from the centralised national administration or from the different public administrations of the “provinces” (or States) and of the “municipalities” (the “town halls”). The difficulty to know “local” salaries is even bigger.

B) Two examples of the public expenditure in salaries and pensions in Argentina. I want to show only two examples of the situation of inequality in relation with the money that State transfers to its population as salaries or pensions. The first one is going to be linked with salaries and the second one is going to be linked with pensions.

It is well known that in Argentina many people in the public sphere receive, nowadays, salaries (in their general sense) that are higher than US\$ 15.000 dollars or 15.000 pesos¹³⁴. Normally these people are the functionaries of the executive power (national and locals), legislative power (national and locals) and judicial power (national and locals) who receive also other benefits from the State, as “protocol expenses” and “reserve expenses”. There are also some specific and incredible situations, as for example the cases of the national or provincial judges, who do not have to pay any kind of taxation on their incomes as judges because of a ridiculous interpretation of one constitutional clause¹³⁵.

Going to a “documented” recent example, a Secretary of the State (that is an important functionary under the Ministry in the Executive Power) declared that she received US\$ 17.917 each month during her function¹³⁶. The contrast between this salary (that should be considered even higher for the reasons mentioned above in the clarifications) and those of the other public workers of the State (at National and Local

¹³⁴ I will use the US dollar as the normal way of citing the amount of money, because in Argentina since 1991 by law approved by the National Congress, the local “peso” is linked with the US dollar having an official convertibility of one to one.

¹³⁵ The interpretation is made by the same Judicial Power. In these cases the decisions are taken by lawyers in the role of judges, but they, naturally, do not want to generate “animosity” against them from judges, who are, often and generally, very worried and sensible to these economic “personal” matters.

¹³⁶ See the Argentinean newspapers of 26 of December 1999. In *Clarín* of that day it is said that Maria Julia Alsogaray (the secretary involved in the question) “...declaró un ingreso mensual como Secretaria de Recursos Naturales y Desarrollo Sustentable de 17.917 pesos..... Sin dar detalles, la mujer llenó tres renglones distintos con estas cifras: 3.367 pesos, 4.250 pesos y 10.000 pesos, lo que redondea el total de 17.917 pesos. Según los técnicos que custodian las 30 mil declaraciones juradas que dejaron los funcionarios del menemismo, se trataría del sueldo básico, los gastos

level) with similar antiquity in the job and other conditions that generate an increase of the salary, the differences of income are incredible. In fact, it is possible to find that some people, with the same antiquity, dedication and other benefits in the salary than the Secretary involved in the example have the lowest salaries receiving –roughly- more or less U\$ 300 each month, even if the average can be higher (U\$ 500 or U\$ 600 each month more or less). The dis-proportion is incredibly high; it is in the worst cases more or less, 1 to 60! But if the comparison is made with the “non-salary” of hundreds and thousands of people from the country that do not have any kind of help or retribution from the State, the difference seems even more incredible. Here the violation of the human rights standards appears to be absolutely evident. In fact, is it “reasonable” that one person receives 18.000 dollars each month from the State (but that it is more and that usually these salaries are received for people with good education and that belong to the middle and rich classes) while many others receive absolutely nothing and while the social security system, the public education, the health system and the tax system do not function well for different reasons (not good or not efficient, lack of resources, etc.)? In fact, in Argentina, almost the 30% of the people considered to be in conditions to work have problems of lack of jobs (almost 1.912.000 people) or sub-occupation (almost 1.964.000 people)¹³⁷. This happens while the insurance for people without job practically does not exist or, in the few cases that it exists, it is a very little amount of money and almost impossible to be included in the system. This disproportional treatment among “human beings” by the State¹³⁸ seems to me a clear example, in the Argentinean actual reality, of a violation of the right of equal redistribution of wealth by the State. A difference of 18.000 to none is incredible and not reasonable in my opinion. I have cited only this case as one example but it is possible to find many other people who receive or received these kind of high salaries from the State.

The second example that I want to present here is linked with pensions. In Argentina, as in many other countries, the pensions are very different, coming from different sources and with different amounts. The public pensions, in particular, are also

protocolares y los gastos reservados, pero en la planilla no figura ningun elemento que lo aclare. Ademas, estos gastos, en teoria, son para cumplir funciones en el Estado y no para utilizarlos en provecho propio....”.

¹³⁷ Source: the Argentinean newspaper *Clarín* of 8 October 1999. In that note, *Empleo: casi 4 millones de personas con problemas*, written by Ismael Bermudez, these numbers in reason to a poll made by INDEC (The national center for statistics, see about it the commentary made in the note 115) are presented. In the article there are many other interesting numbers, as for example the information that unemployment increased (duplicated) in the last 10 years from 7,1% in October 1989 to 14,5% in October 1999.

¹³⁸ I say only “human beings” in a general way but that includes only the national and legal residents in the State. I will analyse in this last chapter only them (and not, for instance, people who do not reside in the State or that reside in an illegal way) because this is a very difficult problem linked with human rights and I do not want to analyse it here.

linked with many factors and they depend on the contribution done during the period of working, the years that the person has worked, etc. This system has changed in Argentina in the last years during the Menem's administration, in which a system of personal savings in private or semi-private financial companies controlled by the State, called AFJP was established. However, there is a very big disproportion among the pensions that are received. In the case of the public pensions, the differences are also very big, probably derived from the same situation that we have seen in the case of normal public workers. In fact, the situation here is more or less the same than there.

Probably the most famous and "irritate" case is linked with the "well known" (for the bad fame) "jubilaciones de privilegio" (privileged pensions). These pensions are received by former public workers that have worked in special places of the public administration, normally for those who have been at the head of the public powers. The most incredible question is that these pensions are received by people who has worked even only few days or –as very often happens- together with another salary or pension of the State to the same person¹³⁹.

For instance, a former President during the last military dictatorship has one of these pensions and receives U\$ 9.626. It is calculated that, at least 8.424 people receive this kind of pensions, which cost U\$ 450.000.000 by year to the State¹⁴⁰. This situation contrasts clearly with the situation of many other people of the country that do not receive any kind of pension from the State (and, as it has been said, the public services are or bad or do not exist). In fact, from a total of 4.936.000 people who are more than 60 years old, 1.703.000 of them –the 34,5%- do not receive any kind of pension from the State. At the same time those who receive a pension from the State because they have worked and contributed during their whole life, receive more or less U\$ 300 each month, but some of them receive only U\$192 each month¹⁴¹. As can be seen from these few numbers, the situation in relation with the pension's field is not better than in the salary's field. We can see that a person receives almost U\$10.000 each month while many others received nothing to survive in one of the most difficult moments of life, as old age is. At the same time those who have the "privilege" of receiving some money, receive more or less 50 times less than others do, even if probably they have worked much more and

¹³⁹ See, about this question, for example: *La Nacion* of 11th off November 1999 *Cobra una jubilación y un sueldo a la vez* or *Aval a una jubilación de privilegio* in *Clarín* of 26 of December 1999.

¹⁴⁰ The former military president is Reynaldo Bignone. See the information in the note published by the Argentinean newspaper *Página 12* of the 11 October 1999 *En casa de herrero cuchillo de palo. Un funcionario encargado de investigar las jubilaciones de privilegio tiene una a su favor* written by Irina Hauser and Laura Vales.

¹⁴¹ Source: The article published by the Argentinean newspaper *Clarín* the 16th of December 1999 *Casi dos millones de ancianos no cobran jubilación ni pensión*.

harder than the person who receives the higher pension. Is this a new situation of the violation of the right to equal redistribution of wealth? I think that, in principle, yes but I will come back to this question.

3) Is it possible to present an individual complaint? After the two examples presented, the questions to analyse are many. I will analyse one of them in this point and some in the next one. In this one the question is if from a juridical point of view it would be possible to present a complaint against the State. In the next one, that is very linked with this one, I will go to the arguments and rights that would make it possible to complain against the State for the big difference of treatment among the people who live in that State. After that I will analyse who would have this subjective right and the best avenues for that.

Concentrating the problem with the possibility of presenting a claim, it is important to clarify that it will be supposed that the claim has already been presented before the local tribunals; that all the domestic remedies have been exhausted and that all the other specific procedural requirements for the different avenues have been fulfilled. Of course I will suppose, as most probably could happen, that the claim has been rejected otherwise the question would be abstract. However, I am not going to have the different hypothetical juridical pronouncements of the State rejecting the claim, pronouncements that normally are very useful for making an international or regional claim. This is the main reason why I am not going to write the claim.

It seems acceptable to have differences in the salaries and pensions that the State pays to his or her employees. But it is not “reasonable” and it does not respond to any “objective criteria” to make such a *big differentiation* in the treatment of the public workers, particularly if the law system and the moral value of the society understands that all the jobs have to be considered important for the society. Even more, it seems more “unfair” and “unreasonable” to pay so high salaries while a very big part of the population does not receive (or almost not) any kind of help from the State. The reasons of efficiency and incentive are not enough to justify this difference. It is thus possible to complain. In other words, (always concentrating on the analysis in the first example even if it is valid the same way or reasoning for the second one too) it is possible to argue that the jobs are different because the responsibilities in one case or in another are different, the dedication or number of hours of work are different, the preparation and effort to reach the job is different, etc. And therefore this way of thinking would justify the different retributions by the State to its workers or public servants. Yes, but the question is until where? 1 to 2, 1 to 3; 1 to 10; 1 to 50; 1 to 100; 1 to 1.000? I can not give a unique, abstract and objective answer to this question; because that answer needs to be linked with the many other factors that we have analysed in the precedent chapters. But

it seems that in this Argentinean case it is obvious that the differences can not be “so big” for the reasons linked with the general social situation of the country that I have briefly shown in the first point of this chapter.

In fact, it is sure that the difference in salaries is one of the most important factors that generate inequality. In the examples that I have shown, the differences are extremely high but are not necessary sufficient to generate the violation of the right to equal redistribution of wealth. It could happen, for example, that this big difference in the receiving of the salary would be only formal because of the fact that the taxes could ask a repetition proportionally in relation with the higher amount, generating a “reasonable” difference. This is not the case in Argentina, particularly because of the very high tax evasion in the income tax. But, if to the big differences in the salaries (“objective” indicator) we add that the State does not provide any kind of help (or very little and bad) to those who receive less or directly no money; that the level of corruption is high too (providing “economic benefits”, in many cases, to those who receive the benefits of the high salaries); that the tax system does not function well and does not generate real redistribution of the wealth generated by the incomes; that the public education does not function well and that this generates even more differences in the future of the sons and daughters of the rich and poor people; that the health system is bad and many people do not have even basic food, etc.; then it seems that these specific big differences in the amount of salaries provided by the Argentinean State to their “employees” and the rest of the people who live in the country in this moment are not only unfair, but it is also against the law and particularly against regional and international human rights law, as it has been showed in the precedents chapters.

Which should be, in this context, a reasonable difference? I can not give an exact amount but in my opinion in this context a difference bigger than 10 to 1 seems not proportional for those who work in similar conditions of dedication and other factors (could be a bit bigger for “reasonable” extra factors as the number of children) and a bit bigger in relation with normal workers without any job. However what is important is not “my opinion”. What is important is the opinion of one international or regional organ of human rights that can establish a proportion in the relation of salaries (in reference with these cases, but could it be another proportion in relation with many other aspects in different cases). If that proportion would be established it would begin to be valid, considering the specific characteristics of the different states, for the future. Once that one standard of proportion has been established by a tribunal or organ, the new cases are already facilitated by that precedent.

In the next point I will analyse, briefly, some aspects linked with this possibility of complain against Argentina because the violation by this State of the right to equal redistribution of wealth in relation with the cases presented in the precedent point.

4) The individual complaint and the “best” avenue. Who can complain and where? The human rights (regional and international) law. The juridical arguments and the hypothetical defence of the State: After I have said what I think about the possibility of complaining and if it is supposed that all the procedural requirements have been fulfilled in Argentina, it is time to think where to complain.

In principle, the three avenues that I have presented in chapter 5 (Human Rights Committee under the 1st Optional Protocol; Commission on Human Rights under the 1503 Procedure and the Inter-American Commission on Human Rights under the American Convention on Human Rights) are available to receive complaints against the Argentinean State for the examples mentioned above¹⁴².

If the final aim is to go to an international or regional organ for the defence of human rights, it is necessary to have a person able to complain in those organs, even if normally who can claim in the internal sphere can also claim in the external sphere. For complaining against the State, (normally the victims of the violation of the right) people who can do depend on the different avenues or procedures to follow. However, it seems that for this case (“salaries case”) all the persons who live regularly in the State and that do not receive any kind of help of the State, in principle, could be in conditions to complain against the State in the three avenues that I have chosen in the precedent chapter. (Non-nationals who do not live in the State or that live in an illegal way could be excluded and those nationals that do not live in the territory could be in the same situation). It seems, also, that even the public workers who receive a very low salary could complain. Nevertheless, even if they are the victims (people who do not receive any “cash” help from the Argentinean State or even those who receive a very little help or retribution from the State) there are other subjects that can complain in the Inter-American system and the 1503 because the options are wider and not only the victims are able to complain. In this case the role of Non Governmental Organisations is very important¹⁴³. In relation with the second example presented in

¹⁴² In the cases of salaries and pensions the ILO mechanisms could also be considered. In these examples I am not going to consider them. I did not analyse before these mechanisms and Argentina has not ratified the most important conventions in this field. For instance, among all the ILO documents cited at page 33, the country has ratified only the conventions 100 and 111.

¹⁴³ See, in reference with the people that can complain, the precedent chapter where the three options are analysed. In presenting the complaints, the role of the Non Governmental Organisations seems particularly important because in many cases they have the economic and juridical possibilities to defend a case, that individuals in the majority of the cases, do not have. Even if until now the vision of the NGO's in Argentina has been concentrated in the violations of

point 2 (“pensioners case”), a pensioner who receives the minimum pension from the State or, even more, one old person (more than 65 years old, which is the legal age for retirement, without considering exceptional cases) resident in the State who does not receive any help could apply in the three avenues. The case can be more problematic because it can be considered that pensions are in relation with the money that the former worker has given to the State during his/her whole worker life.

Among the three avenues, for these hypothetical cases the best one seems to be the regional one. In fact, Argentina has ratified the American Convention and it has accepted at the same moment the jurisdiction of the Court¹⁴⁴. Nevertheless, it is important to insist that a case like this one could be presented also in the other two avenues because Argentina has ratified the ICCPR and the Optional Protocol¹⁴⁵ in the case of the HR Committee, while for the procedure 1503 it is not necessary to ratify any document or convention. But I think that the best avenue is the Inter-American system (with a complaint in the Inter-American Commission, after the presentation and rejection of the case in the local courts and all the procedural formalities respected) even if the other two possibilities could be used too (especially the one in of the HR Committee seems very tempting and interesting, particularly for the jurisprudence and the content of the rights involved). The reasons of this choice (which is a subjective choice) are related with the “effects” of the decision. In fact the decisions of the Commission are stronger than those of the HR Committee, in the sense that even if both are not binding, the first can be forwarded –principally by the same Commission- to the

the rights during the military dictatorships and all their consequences, things are changing. In fact, in the 90's and almost sure in the new century, the NGO's care about some of the social and economical problems of the population, which are in this moment the most crucial violations in Argentina and all Latin America. An example of this change could be the presentation made by the *Centro de Estudios Legales y Sociales* (CELS), an Argentinean non governmental organisation that presented a request to the Inspection Panel of the World Bank (the request was presented the 28th of July 1999 in reference with the loan 4405-AR) for the controversial use done by the national authorities in relation with a loan of the World Bank to Argentina that included, among other aims, a special protection and help for a programme for the poor people. Even if finally the Inspection Panel considered that it was not necessary to make further investigations, the claim was well presented and shows that the civil society can check and control the authorities in front of the mis-use of the public expenditure, in this case in reason of the administration of a loan. To this claim other claims can follow in other organisations and with different procedures, trying to improve and protect the bad situation, the marginalization and discrimination that poor people receive from governments. The two examples presented in this chapter could follow this direction.

¹⁴⁴ Argentina has signed the American Convention on Human Rights the 2nd of February. The ratification of the convention and the acceptance of the jurisdiction of the Court were done the same day, the 5th of September 1984. At the moment of the ratification the Argentinean Government made a reservation and interpretative statements. While the interpretative statements seem not important for the topic, the reservation, instead, is more or less linked with the right to equal redistribution of wealth, in the sense that it says, in reference with article 21 of the Convention, the following: “*The Argentine Government establishes that the questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of 'public utility' and 'social interest', nor anything they may understand to be 'fair compensation'*”

¹⁴⁵ Argentina ratified both the ICCPR and the 1st. Optional Protocol the 8th of September of 1986, accepting also the disposition established in article 41 of the Convention. Argentina did not present any kind of reservation or interpretative clause.

Inter-American Court which decision it is binding to the State¹⁴⁶. At the same time, as has been showed in the precedent chapter, the jurisprudence should accept the question and analyse it. Also the jurisprudence of the HRC is strong and present possibilities of a good result, but, in my opinion, the regional sphere seems better and “nearer”.

The rights involved are those that we have already cited in the precedent chapters (3 and 5, even for the other avenues).

The objections or exceptions of the State could be linked with different topics. Among them the stabilization of the economy in the country, that since years (1991) is without a high inflation and with an increase in the macroeconomic numbers; the improvement in the cashing of the taxes particularly after the reform of 1996; the importance of paying high salaries to some persons of the government to avoid corruption and to compete with the private sphere; and the *new situation* of the new national government in charge since few months. Another tool for the defence of the State could be linked, in case of the inter-American avenue, with the reservation made by the country in the sense that a condemnation of the State in relation with the public salaries is linked with the economic policies. The State did not accepted to be controlled on “economic policies”.

Let’s analyse briefly each of the arguments of the hypothetical defence.

In reference with the stabilization of the economy and the improvement of the national economy, even if it is true, it did not imply an improvement for the poor people. On the contrary, this stabilization and improvement of the national economy has generated more inequalities and a worse distribution of the wealth, as it has been showed in point one of this chapter. In the same situation it is possible to put the improvement of the tax entrances, because they have been in relation, principally, with the middle and poor classes. However, the improvement of the cash of taxes seems a very important and necessary tool to initiate some kind of redistribution of the wealth, even if it has to be improved.

In reference with the third hypothetical argument of the government linked with “efficiency” (high salaries are good because they avoid corruption and facilitate the choice of the best in particularly in front of the private sector, then differences are justified in the sense that the benefits are for the whole society), it is not valid in the case of the Argentinean State. In fact, the public offices who receive the highest salaries are not those people (at least the big majority of them) that

¹⁴⁶ About this question I would like to say two things. The first one is that Argentina, since it entered into the American system of protection of human rights, has respected and has been very careful in relation with it. In fact, even during the Menem administration –in which administration some juridical internal questions have been very polemic-, kept the country's behaviour in this orientation. The second one is linked with the “new” problem in front of the eventual non-respect of the decision of the Court by the States that are obliged to do it. In fact, last year the government of Peru rejected the jurisdiction of the Court in a very polemic decision because it was not in accordance with the decision of the tribunal, and that has generated a very worrisky and complicated problem in the whole system. See about this

could receive a good salary in the private sector. Nevertheless, the argument is not valid also because the State has to establish a proportion in salaries not only in the public sphere, but also in the private sphere.

In reference with the new measures adopted or to be adopted by De La Rúa's government, in fact, it seems that it is trying to change the unequal situation of the society in reference with the wealth distribution, particularly through a new reform that will probably be implemented in the tax system making it less regressive and with control of the tax evasion, and trying to control the high level of public corruption. Even if this seems true, it could be a defence of the State in relation with the factual situation at the moment of the complaint if the reality would have really changed. But if there would have been a real change, the complaint would not be necessary anymore and the internal organs would agree with it. In this supposition, the international or regional complaint would not exist. But this is only one hypothetical case that was thought of other political reality. The political authorities have changed but reality is until now the same, because it has already not changed (the big differences of salaries exist even today, reform of the tax system is not yet concluded and all the other items have not been, logically, changed yet). Thus, at the moment the case is still valid. In the future, in the Argentinean case and in reference with the examples presented, the possible person who would like to claim should evaluate if it is "reasonable" to claim or not. At the same time, it seems important to clarify which is the aim of a claim in reference with this right. Normally, the aim of the "victim" (individuals) when complaining is to have a reparation of the violation of his or her rights. This reparation can be done in different ways but it is usually done through some economic compensation and with the elimination of the factors impeding the enjoyment of the rights linked with the question. Besides that, there is the possibility to give recommendations to the State (eventually one order by the Court in the Inter-American system, order that even if it is normally related only with that specific case, always generates the possibility of receiving many other cases of the same type, which means that it is necessary to change for the whole cases in a general way) of changing the factors (laws, practices, etc.) that are in relation with the case and the violation of the rights involved. In the case of the 1503 procedure there is not an individual interest and then the aim is only to reach a condemnation of the State. This condemn has a similar effect than recommendations in the other two cases.

In reference with the "reservation" made by Argentina to the American Convention, I think that the claim is not only linked with the economic policy of the country. Even more, this would be a secondary topic in the complaint and then I think that the defence would not function well.

Peru withdraws from the Court: Will the Inter-American Human Rights System meet the challenge? by Douglas Cassel in *Human Rights Law Journal* Vol.20 No. 4-6, 29 October 1999, pages 167-175.

In sum, the perspectives in front of the Inter-American Commission (and in the other two also, as it has been said) for these cases should be good. I have shown in the precedent chapter the main jurisprudence linked with the right to equal redistribution that is also valid for these specific cases. I would like to add an interesting case of the Inter-American Commission that is in reference with a case that is strongly linked with this one. It is the Report 90/90, Case 9893 (Uruguay) in which the substance of the petition was essentially focused on a decree of the Government of Uruguay that set increases in retirement pensions for the year 1986. Doing that, the petition states that the decree had employed discriminatory scales and therefore it was in breach, among others, with articles II, XVI and XXIII of the American Declaration and article 24 of the American Convention¹⁴⁷. In this case the Commission, even if it rejected the claim for procedural matters, said that it “*is not possible to establish adjustment of pension payments owed that are lower than a common index, in this case, the Average Wage Index, without creating discriminations that would violate the principle of equality before law as embodied in Art. 24 of the Convention*”¹⁴⁸ and with this the Commission is thinking is some kind of equity between the whole pensions in the country, in a similar way of thinking that I have proposed here in reference with “no big differences in the amount of salaries and pensions”.

¹⁴⁷ Many other articles of other international documents were also mentioned in the claim.

¹⁴⁸ See about this case Mathew Craven’s article in the book of Harris and Livingstone, op. cit. page 305/6. It is interesting to see his vision and opinion of the case, because I consider the case in a positive way while he is critical about it. He says there that “*The main concern was that for the majority of beneficiaries, retirement payments were to increase at a rate considerably lower than that of the Average Wage Index (IMS) of the preceding year. Although the Commission came to the conclusion that all available domestic remedies had not been exhausted, and that the petition was therefore inadmissible, it did consider it appropriate to add a number of comments on the case before it. It noted that the matter concerned ‘a sizeable social group that is particularly sensitive and economically weak to which the society should extend special protection’, and that despite its formal lack of competence the Government had impliedly admitted the justice of the complaint. It went on to comment that ‘it is not possible to establish adjustments of pensions payments owed than a common index, in this case, the Average Wage Index, without creating discriminations that would violate the principle of equality before law as embodied in Art. 24 of the Convention’. Noting that a satisfactory solution would ‘depend on the amount of resources available and in the final analysis, steady economic growth’ the Commission appended a recommendation to its formal finding inadmissibility ‘for reasons of moral order and social justice..... to the extent that the economical-financial resources of the state allow, [the government] consider the adoption of legislative or other measure that revoke decree 137/85 and its effects and make it possible to set the adjustments of pension payments owed for 1985 as a function of the Average Wage Index to all retired and pensioned persons and the they be adjusted to the amounts received at present....’. Apart from the highly unusual procedure of discussing the merits of a case which was to found to be formally inadmissible, the Commission’s determination that the implementation of retirement rates below the Wage index would be discriminatory is a curious one. In coming to this conclusion, the Commission was clearly concerned with establishing some for of equity between pensioners and society as a whole, by stipulating that increases in retirement pensions should not fall below the percentage increase in the average wage of the previous year. Whilst this might seem an appropriate and just stipulation (it indeed being one that the State itself came to accept) one might question whether such a policy is one which logically derives from the terms of Art. 24 of the Convention. Art. 24 is concerned with the ‘equal protection of the law’ which, as such, would naturally prohibit laws which were in purpose or effect discriminatory. This may prohibit differential rates of retirement payments being imposed (such as were imposed in decree 193/86 but a flat rate would not necessarily discriminate within the group. What the Commission appears to suggest is that Art. 24 prohibits the disadvantagement of the retired vis a vis those who earned the average national wage. If this is the case, the Commission would also logically oppose any difference between the actual rate of the average wage and the retirement pension. It also suggests that the Commission would similarly oppose the idea of compulsory retirement” (citations are omitted).*

It seems, thus, that the Inter-American Commission on Human Rights (but the other two organs too) is prepared to accept this kind of questions nowadays. In fact, it is important to note that I have only presented examples in relation with one country and one specific topic. Different realities and different topics for complaining for the implementation of the right to equal redistribution of wealth can be found in many other countries. This affirmation is valid, of course, also in relation with differences in salaries and pensions, particularly in other countries of Latin America. Then, as many other countries have similar situations to Argentina, complaints can be made in those realities similarly to the examples mentioned here.

Chapter VII:

Conclusions

I have tried in this thesis to show basically two things: the existence of the right to equal redistribution of wealth as a human right and the fact that this right can be claimed by individuals through the individual complaint mechanisms that nowadays exist in the world and at the regional American level. I think and I hope that I have reached these aims.

I think that the big inequalities that exist in the world and in Argentina have been shown. It is difficult to find arguments to defend them, even if everything can be said and we can find many people that, conscientiously or not, do it. Otherwise the reality would be very different. In many cases people who “think” that an unequal redistribution of wealth is not unfair are trying to defend

their privileges, their “comfortable situation” or “not so bad” situation (always it is possible to find some one that is worse off than us), or even it is a behaviour linked with fear, ignorance or insecurity. But I think that the fact that “international human rights law” is against this vision is a very positive question. In fact it has been showed that the right is part of the international and regional standards of human rights. This is very important because it is a “strong” tool (or, at least, a tool) to “fight” against those mentalities and behaviours. But “the enemy” is very heterogeneous. Some of the “enemies” are very strong and powerful: they have strong links with very important and potent interests that decide about life, trade and communication in the world, and they have also a very strong influence, of course, in the human rights field¹⁴⁹. And no one wants to loose anything in this “egoistic” world, not even them.

Despite this, the existence of the right is clear and the possibility of claiming the respect of the right to equal redistribution of wealth to international or regional organs of human rights seems very important. Possibilities of a good pronounciation are growing day by day. Of course that this fact is not going to change the actual reality of poor people, marginal people and the unequal redistribution of wealth and incomes that already exist in the world, in the regions and at the national level which, unfortunately, will probably continue increasing in the future. But if an individual complaint about a case in which this right of equal redistribution of wealth receives a positive result, this result can generate a minimum of resistance to this “wave of inequality” in which we are living. Seems to be a very small step, but instead I think that it can be very important for a change. Total changes and big ideals are good but their realization is almost impossible. Small changes sometimes generate a big and important general change. In fact, if one international or regional organ of human rights in a specific case says to one State “you have to make a better redistribution of the wealth of your population” and adds some specific recommendations linked with that case (for instance in the cases that I have presented in chapter VI that in Argentina the

¹⁴⁹ I like to cite a fragment of Upendra Baxi linked with this idea. He says, “*My thesis requires a brutally frank statement. I believe that the paradigm of the Universal Declaration of Human Rights is being steadily supplanted by a trade-related, market-friendly, human rights paradigm. This new paradigm reverses the notion that universal human rights are designed for the dignity and well being of human beings and insists, instead, upon the promotion and protection of the collective rights of global capital in ways that ‘justify’ corporate well-being and dignity over that of human persons. The Universal Declaration of Human Rights model assigned human rights responsibilities to states; it called upon the state to construct, progressively and within the community of states, a just social order, both national and global, that could meet at least the basic needs of human beings. The new model denies any significant redistributive role for the state. It calls upon the state (and world order) to free as many spaces for capital as possible, initially by fully pursuing the ‘Three-Ds’ of contemporary globalization: de-regulation, de-nationalization, and disinvestment. Putting an end to national regulatory and redistributive potentials is the leitmotif of present-day economic globalization, as anyone who has read several drafts of the Multilateral Agreement on Investment (MAI) knows. But he programme of rolling back the state aims at the same time for vigorous state action when the interests of global capital are at stake. To this extent, de-regulation signifies not an end of the nation-state but and end to the redistributionist state*” (notes omitted) in *Voices of suffering and the future of human rights* (pages 163/4), paper presented in the conference on *Conditions for Implementing Human Rights* held at the Lund University, March 22-23, 1999.

State can not pay salaries with a bigger difference than 1 to 10 or 15 times) it means that at least in the internal level, in that country and in relation to that case things can begin to change. But after that case new cases can appear thanks to that decision, and so on. Then, even if in the first moments only big and extreme inequalities can be considered and receive a positive result, after some cases others “less extreme” inequalities can be accepted too later on. Some internal realities in some states could change, generating more egalitarian societies. Inequalities could continue at the external level, but the mentality and the way of thinking of many people can begin to change at the internal level with the inevitable influence that this change generates on the external level. Probably it is only an illusion, but I hope that the illusion can be real very soon and with this tool to help for that change.

To establish the proportions and levels of redistribution of wealth is very difficult and do not “objective” and “absolute” criteria exist to do it because of the differences in the conception of wealth in the different cultures and places. The “margin of appreciation” of the organ or tribunal that has to decide one case has to be very wide and wise. The cases have to be very “extremes” (at least in the starting moment, after which everything begins to be easier because of the fact that the conceptions are more developed) and the cases have to be very clear, otherwise could be better not to interfere. If we begin to change some of the extreme inequalities at the internal level in a State, we begin to “open the door” for the fight against inequality on wealth. There are also risks, because this tool can be used in the future as an element of more control, dependence and intervention of the powerful states in relation with the poor states. I think that the risk is very little compared to the benefits. The step forward, instead, is not so little and the change of reality could be really big. How big: small or big change of the reality could be the question? It depends on the visions of the dimensions and of the reality. But it seems better, if we are in the human rights field and we are lawyers, to fight for the change of an unfair world and its injustices even if we know that the result can be very little, than not to try, isn't it? If we can change a little of injustice, we have reached a big change.

Annex 1

The OAS States (35 States) and their situation in reference with the American Convention of Human Rights

1) States *belonging to the OAS but who have not ratified* the Convention

10 States:

Antigua y Barbuda
Bahamas
Belize
Canada

Cuba
Guyana
Saint Lucia
Saint Kitts and Nevis
St. Vincent and Grenadines
United States

2) *States belonging to the OAS and who have only ratified the Convention (between brackets the year of ratification)*

5 States:

Barbados (1982)
Dominica (1993)
Dominican Republic (1978)
Grenada (1978)
Jamaica (1978)

3) *States belonging to the OAS, who have ratified the Convention and have accepted the Court's jurisdiction (between brackets the year of ratification and the year of acceptance of the jurisdiction of the Court)*

20 States:

Argentina (1984 – 1984)
Bolivia (1979 – 1993)
Brazil (1992 – 1998)
Chile (1990 – 1990)
Colombia (1973 – 1985)
Costa Rica (1970 – 1980)
Ecuador (1977 – 1984)
El Salvador (1978 – 1995)
Guatemala (1978 – 1987)
Haiti (1977 – 1998)
Honduras (1977 – 1981)
Mexico (1981-1998)
Nicaragua (1979 – 1991)
Panama (1978 – 1990)
Paraguay (1989 – 1993)
Peru (1978 – 1981)
Surinam (1987 – 1987)
Trinidad y Tobago (1991 – 1991)
Uruguay (1985 – 1985)
Venezuela (1977 – 1981)

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