

PRESENTACIÓN

La Corte Interamericana de Derechos Humanos, el Instituto de Investigaciones Jurídicas de la Universidad Nacional Autónoma de México, la Fundación Konrad Adenauer y el Instituto Interamericano de Derechos Humanos han convenido la publicación de una revista que proporcione el panorama de la recepción del derecho internacional de los derechos humanos, y específicamente de la jurisprudencia de la Corte Interamericana de Derechos Humanos, por parte de los más altos órganos judiciales de los países americanos. Fue así como vio la luz *Diálogo Jurisprudencial*, cuyo primer número corresponde al semestre julio-diciembre de 2006.

Uno de los fenómenos más relevantes del actual desarrollo del derecho internacional de los derechos humanos, en lo que toca a su necesaria incorporación de los ordenamientos y las prácticas nacionales, es la recepción judicial que se observa a través de pronunciamientos, de diversa materia, emitidos por las cortes supremas, cortes constitucionales y salas constitucionales de un creciente número de países. De esta forma adquiere verdadera trascendencia —en lo concerniente al plano jurisdiccional, que reviste la mayor importancia— la jurisprudencia de la Corte Interamericana.

Ese tribunal internacional —o supranacional— no constituye una última instancia asociada a las instancias nacionales de conocimiento. Intérprete y aplicador de la Convención Americana sobre Derechos Humanos y de otros textos internacionales que le confieren competencia material, está

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llamado a examinar los derechos y libertades estipulados en aquellos instrumentos y fijar su sentido y alcance. Una vez desarrollada la interpretación del órgano judicial internacional, las instancias nacionales debieran acogerla como criterio autorizado sobre tales instrumentos, que poseen fuerza vinculante para los Estados que los han ratificado, y por ello crean obligaciones a cargo de éstos y definen derechos en beneficio de los particulares.

La publicación de la revista *Diálogo Jurisprudencial* sirve al objetivo de dar a conocer el movimiento que existe en este ámbito en diversas jurisdicciones de nuestra América, para conocimiento y reflexión de funcionarios de la administración de justicia, catedráticos, investigadores y estudiantes de derecho. Esta difusión puede alentar nuevos desarrollos en otros países. El objetivo final es, claramente, consolidar la recepción del derecho internacional de los derechos humanos y brindar mayor extensión y firmeza al “estatuto contemporáneo del ser humano”, beneficiario de normas nacionales e internacionales que le reconocen la titularidad de derechos y libertades, y aseguran el efectivo ejercicio de éstos.

En el décimo séptimo número de la revista aparecen ocho sentencias —expuestas a través de una conveniente selección de párrafos— correspondientes a Argentina, Bolivia, Honduras, México, República Dominicana, Paraguay y la Corte Interamericana de Derechos Humanos. En caso de existir notas a pie de página, éstas se conservan con su numeración original.

FOREWORD

The Inter-American Court of Human Rights, the Institute for Juridical Investigations of the National Autonomous University of Mexico, the Konrad Adenauer Foundation and the Inter-American Institute of Human Rights, have agreed to publish a journal that provides a panoramic view of the reception that international human rights law, and specifically the jurisprudence of the Inter-American Court of Human Rights, has had among the highest judicial bodies in American States. Thus, *Diálogo Jurisprudencial* was born; its first edition corresponds to the July-December 2006 semester.

One of the most relevant trends in the present development of international human rights law, concerning the necessary incorporation of international human rights law into national practice and regulation, is the judicial reception observed through pronouncements of various kinds by Supreme Courts, Constitutional Courts and Constitutional Court rooms in an increasing number of countries.

Accordingly, the Inter-American Court's jurisprudence acquires true transcendence in the jurisdictional sphere, which is of the utmost importance. This international or supranational Tribunal does not constitute an appellate court to decisions made by national courts. As interpreter and applier of the American Convention on Human Rights and other international texts that confer upon it material jurisdiction, the Court is called to examine the rights and freedoms stipulated within those instruments and to es-

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establish their meaning and reach. Once the international judicial body has developed said interpretation, national courts must adopt it as an authoritative interpretation that binds countries that have ratified those instruments, and thus creates obligations for those States and defines individual rights. Another effect of the jurisprudential dialogue between courts is the reference that in some decisions the Inter-American Court of Human Rights has made to national law to give content and interpret international human rights, particularly in the American Convention on Human Rights. To do so, the Court has made use of various decisions mainly from high national courts, as supreme courts or constitutional courts and, taking into account such judicial criteria, the Inter-American Court has developed human rights XIV standards that have served for the analysis of cases submitted to it. This demonstrates both the dynamic character that has acquired the dialogue between the Inter-American Court and the high local courts, as well as the importance of this convergence of efforts towards building regional standards involving the most guarantor possible interpretation of treaties governing the OAS States Members.

The publication of the journal *Diálogo Jurisprudencial* serves to provide an understanding of the developments in this field in an array of America's jurisdictions, in order that judicial authorities, professors, investigators and law students may draw knowledge and reflection from this source. Such diffusion may encourage new developments in other countries as well. The final objective is, clearly, to encourage the integration of international human rights law and to strengthen and improve the "contemporaneous status of the human being" as a beneficiary of national and international norms that recognize these rights and liberties and assure their effective exercise.

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In the sixteenth edition of the journal, eight judgments are provided —transcribed wholly or in part through an appropriate selection of paragraphs when it concerns extensive resolutions— that correspond to Argentina, Bolivia, Honduras, Mexico, Dominican Republic, Paraguay and the Inter-American Court of Human Rights. If there are footnotes, they are retained with their original numbering.