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**THE INEFFICIENCY
OF THE APPLICATION
OF THE AMERICAN
CONVENTION ON
HUMAN RIGHTS IN
THE PROTECTION
OF VENEZUELAN
REFUGEES IN BRAZIL**

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Abstract: Venezuela faces a humanitarian crisis that has resulted in the exodus of more than four million people. The reception of thousands of Venezuelans by Brazil allowed the formulation of questions that justified the development of the research, among them, how to guarantee access to the human rights of these individuals through the application of international human rights treaties and internal national legislation. The objective was to examine the crisis in Venezuela and its consequences in Brazil; assess national precedents regarding the incorporation of international human rights treaties; list which rights of established Venezuelans are being disrespected and verify the actions taken by Brazil to ensure the human rights of these refugees. A search was carried out for statistical data and news related to the situation faced by Venezuelans, Brazilian public policies aimed at welcoming these individuals, in addition to a search in doctrines and legislation. It was found that despite the existence of a series of positive norms regarding the protection of the human rights of immigrants and refugees, in practice, these rights are not fully implemented in the protection of Venezuelan refugees in the national territory. The legal-political impact of national and international legislation on the protection of Venezuelan refugees in Brazil is still very small. It was observed that in order to guarantee the effectiveness of the application of the American Convention on Human Rights and of the internal legislation in the protection of Venezuelans in Brazil, the State must prevent, investigate and punish any violation of the rights recognized by the Convention, seek the reestablishment of the right violated and the repair of the damage caused. Both the legal provisions of the constitutional text and the Convention must be applied, so that the rule that best protects the rights of individuals is employed. An

interdisciplinary state public policy must be implemented in order to guarantee assistance to refugees, capable of helping them to restart their lives with dignity.

Keywords: Venezuela. Refugees. American Convention on Human Rights.

INTRODUCTION

Venezuela, a country with a party history essentially linked to socialist ideas, has suffered, for many years, constant reprisals from the United States of America, including the economic blockade that caused the crisis experienced by the country today and the consequent mass immigration that will be discussed in this article. work.

As of 2014, the situation in Venezuela has become so unsustainable that more than 4 million people have left the country, according to data from the UN Refugee Agency (UNHCR). These are directed especially to neighboring countries, namely, Colombia, Peru, Chile, Argentina and Brazil. In this sense, the questions that formed the basis of this research arose.

HISTORICAL-GEOGRAPHIC, POLITICAL AND SOCIOECONOMIC CONTEXT OF VENEZUELA

The historical context that originated the current crisis in Venezuela began when the country developed on a large scale due to the various oil deposits privatized by foreign companies, mainly North American. According to information from BBC News Brasil released in 2019, this apex occurred between the 1960s and 1970s, after the defeat of the military dictator Pérez Jiménez, initiating a liberal-democratic regime. During this period, Venezuela enjoyed one of the best economic moments in its entire history.

However, this context changed when oil was nationalized in 1976, causing increases in public spending and the external debt,

which lasted until the 1980s, when there was a collapse in oil prices that harmed the Venezuelan economy.

Later, with the arrival of Hugo Chávez to power in the 1990s, a constitution of a popular character was established, with several public policies, radically altering the economic, social and political reality of Venezuela, with the nationalization of the oil sectors and other strong sectors of the economy.

As it was a revolutionary anti-imperialist government, Chávez united Venezuela with the other countries of the South American continent and tried his best not to allow any participation and intervention by the United States. As a consequence, Venezuela began to suffer several external and internal reprisals, mainly from the private sectors. The situation worsened considerably in 2013, when Nicolás Maduro, of the United Socialist Party of Venezuela, won the presidential elections.

In the same year, there was a significant increase in the level of violence, food shortages, as well as inflation and currency devaluation, according to Technical Note Number: 3, of 2019, issued by the Ministry of Justice and Public Security of Brazil, resulting in the violation of human rights and the migratory crisis present to the present day.

REALITY FACING VENEZUELAN IN BRAZIL

As of 2015, Brazil began to receive a considerable flow of Venezuelan refugees, who were concentrated, for the most part, in the North region, with emphasis on the state of Roraima. According to data released by UNHCR in early 2020, the flow of Venezuelan refugees is considered the largest exodus in contemporary history. It is estimated that more than 4.7 million people have already left Venezuela.

In order to list the most important

Brazilian public policies for the reception of Venezuelan refugees, as well as their effectiveness, it is essential to analyze how the state of Roraima, the main gateway for these individuals, has been dealing with the situation. Although the flow of Venezuelan immigrants has intensified towards Brazil since 2015, the first shelter for refugees in the municipality of Pacaraima/RR was set up by the local city hall only in 2017, according to data from BBC News Brasil. Over time, public sector investment in welcoming these immigrants grew, so that currently there are eleven official shelters in Boa Vista and two in Pacaraima, managed by the Brazilian Armed Forces in partnership with UNHCR.

According to data from the United Nations Children's Fund, the federal government invested in four significant areas of action in response to the flow of Venezuelan refugees: providing accommodation and basic humanitarian assistance to immigrants in Roraima; support individuals willing to voluntarily return to Venezuela; relocating refugees to other states and integrating them into society and the job market.

However, according to UNICEF, several challenges are opposed to the public policies established in Roraima, such as the inability to absorb local public services, since establishments in the areas of health and education already had significant demands before the entry of these immigrants. In addition, Venezuelan refugees face several humanitarian problems when settling in Brazil: difficult access to the formal job market; lack of decent housing conditions and access to public security; violent and xenophobic attacks; as well as difficulties in accessing the health system. Upon arriving in Brazil, most Venezuelans cannot find a formal job in the first few weeks and use informal work or non-specific activities to obtain their source of income.

In fact, it appears that although Brazil has and is still carrying out a relevant work in welcoming these people, within its available resources, many of the human rights of Venezuelan refugees, provided for in various international treaties and conventions, mainly in the American Convention on Human Rights, are not being respected and safeguarded.

AMERICAN HUMAN RIGHTS CONVENTION

In addition to a historical-social interpretation, this research focused on verifying how international human rights treaties act in order to protect the rights of immigrants and individuals in the condition of refugees in general. Several treaties and documents related to the subject were analyzed, but it chose to focus on the study of the performance of the Commission and the Inter-American Court of Human Rights and the application of the Pact of San José de Costa Rica.

It is worth mentioning that the historical origin of the inter-American system for the protection of human rights stems from the proclamation of the Charter of the Organization of American States, also known as the Charter of Bogotá, in 1948 and the signing of the American Declaration of the Rights and Duties of Man, in the same year. (MAZZUOLI, 2020). Years later, on November 22, 1969, the aforementioned Covenant was created, also known as the American Convention on Human Rights. The text was ratified by Brazil in 1992 and enacted through Decree Number: 678/1992.

The Pact of Saint Joseph lists a series of very important rights, among which stand out the right to life (art. 4th), to personal integrity (art. 5th), to personal freedom (art. 7th), to the protection of honor and dignity (art. 11), circulation and residence (art. 22),

as well as political rights (art. 23), closely related to the issue of the refugee crisis in Venezuela.

The first two articles deal with imperative duties and obligations of the member states. Article 1 determines that Member States undertake to respect all the rights and freedoms recognized in the Pact of San José and to safeguard their full exercise by all human beings, without any type of discrimination. Article 2, in turn, determines that if the exercise of the rights and freedoms provided for in the previous article is not being sufficiently guaranteed by legislative or other provisions, it is up to the States Parties to adopt, in accordance with their domestic legislation, the necessary measures to realize these rights and freedoms.

It is observed that the first two articles of the American Convention on Human Rights constitute the cornerstone on which all of the rights and guarantees provided for in the Treaty are developed, thus being a fundamental norm on which all the protective system provided for in the Covenant is based (FACHIN; MAZZUOLI; PIOVESAN, 2019).

Among the various articles of the American Convention related to the subject, art. 22, which provides for the right of movement and residence. This device guarantees every individual who is legally in the territory of an inter-American country the right to move and reside freely therein, in accordance with the domestic legislation of the country. Also, people who are in a State party to the Convention also have the right to withdraw whenever they want. Fachin, Mazzuoli and Piovesan (2019) observe that the States Parties to the Convention have a legal duty not to expel foreign individuals from their territory when this act may influence their right to life or personal freedom, endangering due to their race, nationality, social status or even political opinions.

It is noted that the Pact of San José de Costa Rica protects both national citizens of each State Party, as well as foreigners and stateless persons, resident or not in one of these nations. Thus, since Venezuelan refugees are in Brazilian territory, they have the right to be protected by the provisions of the American Convention, such as the protection and guarantee of their human dignity by the Brazilian State.

However, often the rights of these individuals are not protected in practice. The blatant disrespect for the rights provided for in the Covenant highlights not only the ineffectiveness of the application of the American Convention in protecting Venezuelans in Brazil, but also raises the need to seek practical solutions aimed at effectively applying the provisions provided for in the Treaty and safeguarding the rights of immigrants and Venezuelan refugees in Brazil.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

According to the Virtual Library of Human Rights (2020), in order to safeguard the rights of individuals in Latin America, the American Convention established two bodies that are part of the Organization of American States (OAS) responsible and competent for investigating violations of human rights: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Commission's objective is to promote respect for and defend human rights, in addition to acting as a consultative body for the OAS. Together with the Inter-American Court of Human Rights, it acts as a body for the realization of the rights provided for in the Pact of San José de Costa Rica, being responsible for promoting and protecting human rights, enunciating, supervising,

receiving complaints, as well as deciding on issues submitted to them (BELMONTE, 2018).

The Commission was inserted as the main body of the OAS in 1967 and exercises its powers autonomously, responsible for formulating recommendations and reports, answering queries, forwarding to the Inter-American Court admissible denunciations of violations of human rights that occurred in the member states of the OAS, act as a control and inspection entity and investigate issues involving violations of human rights (BELMONTE, 2018).

The Court, on the other hand, is one of the regional courts for the protection of human rights and exercises a contentious function, consisting of the resolution of cases submitted to it and the mechanisms for supervising sentences, in addition to exercising an advisory function and issuing provisional measures, according to information made available by the Inter-American Court itself on its official website.

THE INTER-AMERICAN COURT AND INTERNATIONAL LIABILITY

International accountability is a tool that allows punishing countries that have somehow committed illegal acts or violated international treaties in which they agreed to participate, that is, a violation that can be both criminal and contractual. According to Celso Albuquerque Mello (2004), the country to which an unlawful act is imputed, under the terms of international law, has a duty to repair the State against which this act was committed.

International responsibility has three elements: the wrongful act, imputability and loss or damage. For liability to apply, the act must be unlawful under international law; there must be a causal link, which relates the unlawful act to the person responsible for the

violation (imputability) and the unlawful act must result in loss or damage.

Using these concepts in the hypothetical application of Venezuela's responsibility before the Inter-American Court of Human Rights, given that the country denounced the Pact of San José de Costa Rica on 09/10/2012, three requirements would be necessary for proper application. The illicit act would consist in the violation of human rights treaties carried out by Venezuela, which fails to protect basic rights. The causal link would be precisely the various human rights violations that have occurred in the country since 2013 and have generated the immigration of countless Venezuelans to neighboring countries. Furthermore, Venezuela must compensate its citizens for the losses and damages caused.

This way, observes Mazzuoli (2020) the disrespect of the pact has as a consequence the international responsibility of the State, with the possibility of demanding reparation through the inter-American system - Inter-American Commission and Court. In theory, Venezuela's international accountability process before the Inter-American Court appears to be practical and applicable, but the practice is quite different. Inevitable questions arise, including how to apply sanctions for human rights violations to a country without capital to even sustain itself, as well as how to guarantee that the country will stop committing such violations.

LEGAL-POLITICAL IMPACT OF NATIONAL AND INTERNATIONAL LEGISLATION ON THE PROTECTION OF VENEZUELAN REFUGEES IN BRAZIL

Despite much talk about international human rights standards, it must be noted that Brazil also has several laws and provisions in its constitutional text that aim to safeguard

human rights. With regard to the Federal Constitution of 1988, its Title I, which deals with the fundamental principles that govern the State, articles 1, item III and 3, item IV, guarantee the dignity of the human person and the promotion of good to all individuals, without prejudice of origin or any other form of discrimination. Article 5, in turn, stipulates in its caput the equality of all individuals before the law, guaranteeing Brazilians and foreigners residing in the country the inviolability of their rights to life, liberty, equality, property and security.

Regarding the international jurisdiction applied in Brazil, two points must be mentioned. The first is that the protection of human rights provided for in the Pact of San José has complementary application to the protection provided for in the domestic legislation of each Member State. The second is that international human rights treaties are not all received in the same way by Brazil. Constitutional Amendment nº 45/2004, included paragraph 3 in article 5 of the constitutional text, determining that international treaties on human rights approved in each house of the National Congress in two rounds, by three-fifths of the votes of the respective members, are equivalent to amendments constitutional. Thus, it appears that not all human rights treaties are equivalent to the Federal Constitution, varying according to how they were received by the Brazilian State.

CONCLUSION

As the research unfolded, it was noticed that Brazil, although a signatory of several international treaties concerning human rights and creator of vast internal legislation regarding refugees and immigrants, has not been following many of the existing rules concerning human rights with regard to for the reception of Venezuelan refugees.

The development of this work, therefore, concentrated on the social, political and legal areas, made possible a more in-depth study on the consequences of the crisis in Venezuela in the Brazilian context, the internal process of incorporation and the strength of international human rights treaties, especially the Convention American on Human Rights, the verification of which rights established in the convention and in Brazilian legislation are being disrespected in relation to refugees, in addition to listing the main questions related to the problems experienced by refugees in Brazil. The situations experienced daily by Venezuelan refugees show that the legal-political impact of national and international legislation on the protection of Venezuelan refugees in Brazil is still very small.

The responsibility arising from the treaties is precisely intended to be fulfilled within the normative scope and ensure rights, but it is necessary to rethink the issue at a deeper level, in order to guarantee human rights, not only in a criminal sphere in which there is a chance of a penalty, but because there are individuals who are subject to these rights in a vulnerable situation, who need help. This is the main obstacle to the effective application of human rights treaties and legislation in Brazil: it is not possible to oblige a country to properly care for immigrants if those who govern it and even the people themselves have no intention of welcoming them.

It is noted that national and international norms establish a series of rights that are not, in this specific case, complied with by the Brazilian State. Situations of discrimination, violence, xenophobia, difficulty in accessing the formal labor market and in providing services related to the right to health and lack of dignified housing conditions experienced by Venezuelan refugees prove the ineffectiveness of the application of

international human rights treaties and of the Constitution itself in the protection of these rights.

The texts establish equality among all individuals and determine that the State undertakes to respect the rights and freedoms of individuals and adopt the necessary measures to put them into effect. But, in Brazil, these normative devices are nothing more than words little applied in the protection of the human rights of Venezuelan refugees. The legal-political impact of national and international legislation on the protection of Venezuelan refugees in Brazil is still almost minimal.

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