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THE HUMAN RIGHT TO DEMOCRACY: ITS SPECIFICITY

I. From the Democratic Principle to the Right to Democracy

The recognition of the democratic principle, with the juridical-objective significance it possesses, and other similar steps such as the protection of political rights, are not sufficient to establish a human right to democracy, since this requires a subjective dimension specifically referring to a claim that is asserted vis-à-vis others. However, an important foundation for this evolution or transformation lies in the Inter-American Democratic Charter (IDC), the strengthening of which as a legal instrument, by virtue of the jurisprudence of the Inter-American Court of Human Rights (IACtHR), also reinforces the right enshrined in its Article 1: the right of the peoples of the Americas to democracy [1].

Another significant contribution in this regard has been the recognition by the IACtHR of the right to the defense of democracy [2], which constitutes a jurisprudential germ of the right to democracy. The defense of democracy is a right and not merely one of the objectives that political participation may pursue, because democracy is the condition that enables such participation to be exercised freely and without discrimination.

The subjectivization of the democratic principle implied by the recognition of the right to democracy can also be achieved by recovering the individual source of democratic political legitimacy, which lies in the freedom of the person to influence the creation of the political community and the definition of the terms of the lawful exercise of public authority. The legitimation of power characteristic of liberal or representative democracies originates in a process that is both individual and collective, of political self-definition, and the right to democracy represents the closing of the circle of democratic dynamics, through which citizens — protagonists of the genesis of state power and of the determination of its valid scope — demand the preservation and constant recreation of the conditions under which democracy can continue to function.

The jurisprudence of the Inter-American Court of Human Rights promotes an open, evolutionary, and teleological interpretation of the American Convention on Human Rights (ACHR), in general, and of Article 23 of the ACHR, in particular, which takes into account the obligations of States with respect to democracy derived from the ACHR, the Charter of the Organization of American States (OAS), and the Inter-American Democratic Charter (IDC), thereby also paving the way for the emergence of the right to democracy. In the case of *Yatama v. Nicaragua*, Judge García-Sayán issued a concurring opinion in which, after highlighting the interdependence between democracy and human rights, he referred to the identification of “what some have termed the «human right to democracy», which would constitute a manifestation of the evolutionary nature of human rights [3]. More recently, Judge Ferrer Mac-Gregor has further developed this line of argument [4]. In the current state of the Inter-American system and its *corpus iuris*,

there is a basis for taking the decisive step toward the recognition of the right to democracy, with a dual dimension, individual and collective.

In its individual dimension, we not only have a right to defend democracy, but also to claim its effective existence, to demand the provision of opportunities for participation that derive from Article 23 of the ACHR itself, and the removal of undue barriers. In its collective dimension, there exists a right of peoples to democracy, a right that is held collectively, which may be invoked in situations that hinder or seriously endanger democracy.

The dual dimension of the right to democracy corresponds to the dual source of democratic political legitimacy outlined above: one collective, relating to the political self-determination of the community through suffrage and other mechanisms of popular participation; the other individual, linked to the idea of personal freedom, whereby the individual, grounded in human dignity, participates in the formation of political society and in the foundation of State authority. *Human dignity, as the source of all human rights, also lies at the foundation of modern democracy.*

II. Situations in Which This Right May Be Invoked.

It is important to dwell on the consideration of the protected scope or reach of the right to democracy. One way of delimiting it would be to consider that this right affords protection against situations that imply a democratic decline [4].

However, another way of defining this right lies in applying it not only in the face of phenomena of decline — namely, erosion or dismantling of democracy — in what may be regarded as a somewhat negative reading of its sphere of protection, but also in conceiving it positively, as a right that underpins claims for the opening of democratic channels that have been unduly closed. This entails, therefore, a vision that is not only defensive of the ultimate limits of democracy, but also proactive and constructive.

For these purposes, the criteria of the Inter-American Court of Human Rights, grounded in political rights and the freedoms of association and expression, may serve as guidance. According to these criteria: “opposition voices” are “essential in a democratic society,” and therefore “the effective participation of individuals, groups, organizations and opposition political parties in a democratic society must be guaranteed by States, through appropriate laws and practices that enable their real and effective access to different deliberative spaces on equal terms, but also through the adoption of the necessary measures to ensure their full exercise, taking into account the situation of vulnerability in which members of certain sectors or social groups find themselves” [5].

This, therefore, can translate into the duty of the State to adopt positive measures. It should be recalled that, as the Inter-American Court has emphasized, it is sometimes indispensable to ensure “through positive measures that every person who is formally the holder of political rights has a real opportunity to exercise them” [6]. The right to democracy can thus support actions aimed at demanding compliance with these obligations and at promoting the overcoming of concrete situations of exclusion or vulnerability that hinder effective and equal political participation.

Likewise, the definition in negative terms, that is, the defensive dimension of the right to democracy, should not be limited to contexts of decline, erosion, or dismantling of democracy, but should also encompass cases of weakening of

democracy or obstruction of its functioning. This approach is consistent with developments within the Inter-American system and adequately responds to the experiences in the region of regimes that gradually deteriorate towards a non-democratic stage, without it being easy to identify the point at which one is faced with a systemic impairment or a qualitative decline of democracy that would justify referring to decline or other such categories.

This does not mean that any violation of rights that has repercussions in the democratic sphere would allow for invoking the right to democracy. It would not suffice, for example, for there to be occurrences or “isolated instances of violation of the right to freedom of expression” [4]. Due to the transversal nature of the democratic principle itself, and the relevance of democracy within the system of the Convention, it is common for the violation of a right to have a direct and negative impact on democracy. This alone would not constitute a threat to or violation of the right to democracy.

It is equally essential to consider the context and contextual evidence in order to identify situations that amount to a denial of democracy [4], albeit from the broad perspective advocated above. In order to ascertain the existence of such situations, it may be useful to resort to the Inter-American democratic test proposed in the doctrine [7].

The essential elements and fundamental components for the exercise of democracy set out in the IDC (Articles 3 and 4) constitute key parameters for determining the existence of a violation of the right to democracy, together with the other relevant provisions of the Charter. In line with the foregoing, the right to democracy would be undermined not in cases of isolated or occasional violations of a right or of a democratic requirement enshrined in the Charter or derived from the Inter-American *corpus juris*, but rather in circumstances involving a serious obstruction or impediment to the functioning of democracy, understood in the broad sense of interference previously advocated, not limited to systemic decline, and of both a defensive and proactive character.

By way of example, measures involving the decisive participation of the armed forces in the exercise of government, to the detriment of legitimately elected civilian authorities, would seriously infringe democratic principles, as well as political rights, and would constitute a violation of the right to democracy.

III. Mechanisms of Protection

It remains to refer to the means of enforcing the right to democracy. Among these, judicial mechanisms are, of course, included, particularly in light of the broad understanding of the protected scope adopted above, which does not confine the right to democracy to scenarios in which its very existence is at stake, but also extends to those in which preventive or proactive interventions are required, where it may be assumed that there is still a judiciary with sufficient independence to curb deviations or to support claims that revitalize democracy.

However, it is necessary to consider instruments that go beyond those traditionally used in the protection of rights. This includes efforts to reform and strengthen the mechanisms of collective guarantee of democracy, which are particularly appropriate when the threshold of systemic deficiencies has been exceeded or when there are serious threats that this may occur. In such cases, and within the framework of this guarantee, the collective dimension of the right to democracy acquires special significance.

IV. Perspectives

The recognition of the right to democracy offers significant potential for the expansion of the protection of human rights. It is an expression of the progressive development of human rights, which ultimately leverages democracy toward stages of greater substantive density. It is appropriate to distinguish the main ways in which this right may have legal effectiveness within the Inter-American system. In some situations, it will reinforce the guarantee of political rights already enshrined in the ACHR; in others, it will extend the implications of the corresponding specific right with the perspective of the impact on the democratic system of the alleged violation.

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INTERNATIONAL REGULATION OF LEGAL PARENTAGE : FROM NORMATIVE DIVERSITY TO UNIVERSAL HARMONISATION

Origin constitutes one of the foundational elements of a child's legal status, carrying profound significance across their life and serving as the determinative basis for a broad range of consequential legal relationships — including citizenship, family ties, inheritance, and beyond. These questions implicate children's