ANDEAN LIS PENDENS

Juan Manuel Indacochea Jauregui[1]

ABSTRACT: The legal system of the Andean Community (CAN) is ruled by its own principles, from which its supranational character is derived, which also reaches Andean bodies, such as its jurisdictional body: the Court of Justice of the Andean Community. On the one hand, the preliminary objection of "lis pendens" responds to the criteria applied by the same procedural exception in the field of domestic law, although extended to a subregional scope with a supranational character. On the other hand, the preliminary objection of "Andean lis pendens" or "parallel litigation" has a certain correspondence with the so-called preliminary objection of "duplication of procedures" or "pending international litigation", the closest to the preliminary objection of "Andean lis pendens" in the Inter-American System for the Protection of Human Rights, however, with particularities of the Andean legal system that will be analyzed in this study.

KEYWORDS: Andean Community, Andean Court of Justice, Andean lis pendens, Lack of legitimacy, Preliminary objection, Parallel litigation.

SUMMARY: I. INTRODUCTION. II. THE SUPRANATIONAL CHARACTER OF THE ANDEAN LEGAL SYSTEM. III. THE LEGAL INSTITUTION OF PRELIMINARY OBJECTIONS. IV. THE PRELIMINARY OBJECTIONS IN THE ANDEAN COMMUNITY. V. THE PRELIMINARY OBJECTION OF "ANDEAN LIS PENDENS". VI. CONCLUSIONS. VII. BIBLIOGRAPHICAL REFERENCES.

I. INTRODUCTION

The jurisprudence emanating from international courts has been acquiring increasing relevance, mainly as a result of its inclusion in Article 38-1[2] of the Statute of the International Court

[1] Master in International Law (Paris-Nanterre). Master in Intellectual Property Law (Strasbourg). Professor at the Cientifica University and at the UCSS. E-mail: <jmindacochea@gmail.com>. ID: https://orcid.org/0000-0002-4103-6638.

[2] *Statute of the International Court of Justice*.-

of Justice (ICJ) as a typical source of international law. As such, the jurisprudence stablished by the Court of Justice of the Andean Community is an important reference at the international level, being cited by national jurisdictional bodies and even by Doctrine from non-European Union countries.

This article will address the issue related to preliminary objections, at the international level, in order to compare them with the preliminary objections ("excepciones previas") proposed before the Andean Court of Justice and the preliminary questions proposed before the General Secretariat of the Andean Community, in order to identify the similarities and particularities of treatment, especially, in relation to the preliminary objection of "lis pendens", also called "parallel litigation".

The preliminary objections of "lis pendens" or "parallel litigation" excludes the possibility of simultaneously sue before the national and the community dispute resolution systems. Indeed, as established in Article 61 of the Statute of the Court of Justice of the Andean Community, approved by Decision 500 of the Council of Ministers of Foreign Affairs of the Andean Community, it is not possible to file the aforementioned preliminary objections in the event of a pending and simultaneous proceedings between the same parties and on the same matter in the community level and in the national or internal jurisdiction.

In this sense, the preliminary objection of "lis pendens" responds to the same criteria applied to identify the exception with the same name conceived in procedural law. However, it also responds to particular characteristics of integration law, derived from the supranational nature of its legal system.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The principle of prohibition of "duplication of international proceedings" is the closest to the preliminary objection of "lis pendens" in the Inter-American System for the Protection of Human Rights, in the proceedings initiated before the Inter-American Court of Human Rights (I/A Court H.R.), although with certain particularities of the Andean legal system, which will be explained in the following section.

In this way, the reference to the "supranationality" of the Andean legal system will be developed in first place. Next, the main preliminary objections that have been subject of important decisions by the competent bodies of the Andean Integration System will be discussed in second place. Finally, the analysis will focus on the preliminary objection of "Andean lis pendens", which is subject of this study.

II. THE SUPRANATIONAL CHARACTER OF THE ANDEAN LEGAL SYSTEM

In the field of integration processes, "supranationality" refers to the transfer or transfer of sovereign powers from Member Countries to international bodies that were created through autonomous and sovereign decisions[3]. "Supranationality", in the Andean Community, derives from the principles that govern the Andean legal system.

In accordance with the jurisprudence of the Court of Justice of the Andean Community, the Andean legal system is governed, among others, by the principles of "Presumption of Validity of the Community Norm", "Primacy" (also called "Preeminence", "Prevalence" or "Supremacy"), "Autonomy", "Indispensable Complement", "Direct Effect" and "Immediate Application".

Among the principles mentioned above, it is necessary to highlight the one related to the "Presumption of Validity of the Community Norm", which would be derived from principles of internal law, such as the "Principle of Legality", the "Principle of Presumption of Validity of an Administrative Act" and the "Principle of Conservation of the Administrative Act". By virtue of this principle, the Community norm in force and applicable to the specific case must be of

---

[3] GÓMEZ APAC, Hugo. "El Ordenamiento Jurídico Comunitario Andino". AA.VV., *Apuntes de Derecho Comunitario Andino. A propósito de los 50 años de la Comunidad Andina y los 40 años de creación de su Tribunal de Justicia*. Ecuador, Portoviejo: Editorial San Gregorio, 2019, p. 137.

obligatory compliance by all Member Countries, in accordance with the provisions of Article 4 of the Treaty Creating the Court of Justice of the Andean Community (TC-CJAC).

The principle of "Presumption of Validity of the Community Norm" is of utmost relevance if one takes into consideration the atypical norms derived from the Andean legal system, *i.e.*, those not included in the non-exhaustive list (*numerus apertus*) of Article 1 of the TC-CJAC.

In this regard, it should be noted that the atypical norms of the Andean legal system consist of provisions that are mandatory but hierarchically inferior to primary law, which, being "derived" are subjugated by the primary law of the Andean Community[4].

The norms of derived or secondary law of the Andean Community included in Article 1 of the TC-CJAC would not be the only ones, since there are atypical norms not included in the non-exhaustive list (*numerus apertus*) of the aforementioned Article 1, such as the Constitutive Treaty of the Andean Parliament, its General Regulation, the Guidelines of the Andean Presidential Council, the decisions of the Court of Justice of the Andean Community, the provisions that recognize a "clarified act", the Internal Regulations approved by Agreements of the Andean Court of Justice, among others[5].

Likewise, it is necessary to mention the sources not included in Article 38-1 of the Statute of the ICJ. Since more than a century has passed since the enactment of Article 35 of the Statute of the Permanent Court of International Justice (PCIJ), which listed the "classical" sources of international law that were subsequently reflected in Article 38-1 of the Statute of the ICJ, there is undoubtedly sufficient evidence to support the thesis of Becerra Ramírez, formulated in his renowned work "Contemporary Sources of International Law", which mentions other atypical sources not included in the aforementioned Article 38-1 of the Statute of the ICJ, such as the agreements of internal organs (internal executive agreements), the Gentlemen's Agreements, Soft

---

4 ZÚÑIGA SCHRODER, Humberto. "Jerarquía e interacción de fuentes en el marco del derecho comunitario andino". *Revista de Economía y Derecho*, Vol. 11, nº 41, Perú, Lima: Editorial UPC, 2014.

5 INDACOCHEA JAUREGUI, Juan Manuel. "El recurso por omisión en el derecho comunitario andino", GÓMEZ APAC, Hugo *et al*. *Tribunal de Justicia de la Comunidad Andina: 1979-2024. 45 años de creación y 40 años al servicio del derecho y la integración*. Part II, Chapter IX, Ecuador, Quito: Editorial San Gregorio, 2024, pp. 283-284.

Law, the resolutions of specialized organizations (*e.g.*, IMF), the unilateral acts, the *opinio communitatis* of some resolutions of the United Nations General Assembly or the resolutions of its General Council[6]. Equally, it is possible to consider other atypical norms in the field of international economic law or international trade law such as "letters of understanding" or Memorandums of Understanding (MoU).

Regarding the principle of "Primacy" of the Andean Legal System, the Andean Court of Justice has indicated in the prejudicial interpretation issued in Process 546-IP-2015 that in case of antinomies between Andean Community law and the internal law, as well as between Community law and international law, the former prevails. Likewise, on the same prejudicial interpretation, the Andean Court of Justice explained that the norm, internal or included in a treaty signed by a Member Country, that is contrary to an Andean norm, although not repealed, will cease to apply in the specific case, whether prior or subsequent to the Community norm[7].

In relation to the aforementioned principle of "Autonomy", the Andean Court of Justice has stated that, by virtue of the said principle, the Community legal system does not derive from the internal legal system of the Member Countries, as well as the fact that the Andean legal system – both primary and derived laws– does not depend on or is subordinated to the internal legal system, of international origin, of said Countries[8].

The principle of "Indispensable Complement" implies that it is possible to legislate on those matters on which the Andean legal system has remained silent and when the Andean norm regulates a matter in general terms and authorizes that some aspect of it must be developed in a more detailed or concrete manner by the internal legislation of the Member Countries[9].

---

6 BECERRA RAMÍREZ, Manuel. *Las Fuentes Contemporáneas del Derecho Internacional*. Chapter Four. Ciudad de México: Instituto de Investigaciones Jurídicas (IIJ) – UNAM, Estudios Jurídicos nº 316, 2017, pp. 91-134.

7 Court of Justice of the Andean Community – CJAC (2016). Process 546-IP-2015. Preliminary Ruling of August 18, 2016.

8 Court of Justice of the Andean Community – CJAC (2001). Process 1-AN-2001. Judgement of June 26, 2002.

9 Court of Justice of the Andean Community – CJAC. Accumulated Processes 01-AI-2016 and 02-AI-2016. Ruling of December 15, 2017.

The principle of "Direct Effect", envisaged in Article 2 of the TC-CJAC; as well as the principle of "Immediate Application", included in Article 3 of the TC-CJAC; are similar to those of the European Union, although with their own particularities. It is necessary to take into consideration that Article 4 of the TC-CJAC provides, in a similar way to that established in Article 291 of the Treaty on the Functioning of the European Union, that Member Countries are obliged to adopt the necessary internal legal measures to ensure compliance with the norms that make up the Andean legal system; as well as not to adopt any measures contrary to said norms or that hinder their application, an obligation not to do, so that would be somewhat consistent with that established in Article 18 of the Vienna Convention on the Law of Treaties of 1969.

In the case of the jurisprudence developed by the Andean Court of Justice, the supranational character acquires greater relevance, particularly when they constitute sentences that follow a certain Andean jurisprudence and reiterate "jurisprudential criteria"[10]. The supranational nature of the Andean Court of Justice and its jurisprudence constitutes an essential factor in order to understand the importance of the Andean jurisprudence that will be explained in the following sections.

III. THE LEGAL INSTITUTION OF PRELIMINARY OBJECTIONS

In France, for example, this procedural figure is called "exceptions préliminaires" or "exceptions de procédure"[11], while in Italy is known as "eccezioni di forma"[12]. In the Alglo-Saxon tradition is called "procedural exceptions" or "preliminary objections"[13].

---

[10] GÓMEZ APAC, Hugo R.; RODRÍGUEZ NOBLEJAS, Karla Margot. *Nuevos criterios jurisprudenciales del Tribunal de Justicia de la Comunidad Andina (Junio 2016 – Junio 2019). Propiedad intelectual, libre competencia, comercio internacional, derecho tributario, telecomunicaciones, transporte y minería ilegal*. Ecuador, Quito: Editorial San Gregorio S.A. – Universidad San Gregorio de Portoviejo, 2019.

[11] *Code de procédure civile:* (articles 73-121).-
Chapitre II: Les exceptions de procédure
Article 73
"*Constitue une exception de procédure tout moyen qui tend soit à faire déclarer la procédure irrégulière ou éteinte, soit à en suspendre le cours*".

[12] *Articolo 1993 Codice Civile* (R.D. 16 marzo 1942, Nº 262) *Eccezioni opponibili*.

[13] DINU, Gheorghe. *Procedural Exceptions Governed by the Civil Procedure Code and their Characteristics. Contemporary Readings in Law and Social Justice*. Part 5, n° 2, New York: Woodside, 2013, pp. 613-617.

Preliminary objections are the second incidental proceedings contained under section D of Part III ("Proceedings in contentious cases") of the "Rules of Court" (1978) of the ICJ. The "*object of a preliminary objection is to avoid not merely a decision on, but even any discussion of the merits*"[14].

In accordance with Paragraph 1 of Article 79 of the "Rules of Court" of the ICJ "*if the circumstances so warrant, that questions concerning its jurisdiction or the admissibility of the application shall be determined separately*".

The Rules of Procedure of the I/A Court H.R. establish the formal requirements required for a State to raise a preliminary objection, as well as the rules for its processing. The I/A Court H.R., for its part, has stated in repeated jurisprudence that the purpose of a preliminary objection is to obtain a decision that prevents the analysis of the merits of the questioned aspect or of the case as a whole[15].

The preliminary objections that a State may raise before the I/A Court H.R. are limited to two aspects: jurisdiction and admissibility. Jurisdiction is questioned based on the subject matter, the person, the place and the time. On the other hand, admissibility refers to the lack of formal requirements necessary for the processing of the claim, such as the failure to exhaust domestic remedies, the existence of international duplication, late submission, the lack of determination and individualization of the victims, among others[16].

The preliminary objections of "failure to exhaust domestic remedies" is similar to the preliminary objections of "lis pendens," but they have different purposes since, in the Inter-American System for the Protection of Human Rights, they are conceived by the I/A Court H.R. as a guarantee provided by the State to the alleged victim so that he or she can resolve his or her

---

14 ICJ. *Barcelona Traction*, Belgium *Vs* Spain, 1964, p. 44.

15 I/A Court H.R. Castañeda Gutman *Vs* Mexico. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 6, 2008, par. 39. I/A Court H.R. Tristán Donoso *Vs* Panama. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009, par. 15. I/A Court H.R. Escher *et al. Vs* Brasil. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 6, 2009, par. 15.

16 FAÚNDEZ LEDESMA, Héctor. *El sistema interamericano de protección de los derechos humanos aspectos institucionales y procesales*. 3 ed. Costa Rica: Instituto Interamericano de Derechos Humanos, 2004.

conflict in domestic courts, through different judicial or administrative remedies that are contemplated in the national legal system[17].

On the other hand, the preliminary exception of "lis pendens" seeks to prevent the simultaneous existence of two or more procedural legal relationships on the same subject matter and, consequently, decisions that may eventually be divergent or even contradictory. This is without mentioning the uniqueness of the Inter-American System for the Protection of Human Rights, like the preliminary objection of "failure to exhaust domestic remedies" included in Article 46.2 of the American Convention on Human Rights.

In relation to the preliminary objection related to the prohibition of the existence of international duplication, the I/A Court H.R. has stated that a petition will be declared inadmissible when, in essence, it reproduces a claim already presented or examined before another international body. In turn, this preliminary objection includes, in the Inter-American System for the Protection of Human Rights, two perfectly individualizable objections: the preliminary objection of "res judicata" and the one of "pending international litigation." Although both are comparable to the preliminary objections of "res judicata" and "pending proceedings between the same parties and on the same matter," provided in Paragraphs 8 and 7, respectively, of Article 61 of the Statute of the Andean Court of Justice, approved by Decision 500[18]; it is fundamentally the latter, also called "Andean lis pendens" or "parallel litigation", that is subject of this study.

According to the jurisprudence of the I/A Court H.R., the preliminary objection of "pending international proceedings", although intended to prevent the same case from being pending

---

[17] I/A Court H.R. Muelle Flores *Vs* Peru. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of March 6, 2019.

[18] Decision 500 of the "Consejo de Ministros de Relaciones Exteriores" (CAMRE), "Statute of the Court of Justice of the Andean Community".-
"Artículo 61.- Excepciones previas
El Tribunal resolverá, con carácter previo, las siguientes excepciones:
(…)
7. Proceso pendiente entre las mismas partes y sobre el mismo asunto.
8. Cosa juzgada.
(…)
Las excepciones previas se formularán conjuntamente con el escrito de contestación de la demanda, con expresión de las razones que las justifiquen. Una vez admitida a trámite, el Tribunal dará traslado a la otra parte por el término de diez días, concluido el cual dictará el auto que corresponda".

simultaneously between the same parties on the same subject-matter, refers specifically to a parallel proceeding in another international body; as occurs on the African Continent in relation to the proceedings initiated before the African Commission on Human and Peoples' Rights regarding the preliminary objection of "res judicata"[19].

On the contrary, the preliminary objection of "Andean lis pendens" or "parallel litigation" in the dispute resolution system in the Andean subregional level is aimed at questioning admissibility due to the existence of a "*pending process between the same parties and on the same matter*" in the national or internal sphere of the Member Countries of the Andean Community, a particularity that will be subject of analysis in the following sections.

IV. THE PRELIMINARY OBJECTIONS IN THE ANDEAN COMMUNITY

Although the alternatives offered by this figure vary according to each jurisdiction –both national and supranational– they generally coincide in certain characteristics. This is the case of "lack of jurisdiction", "lis pendens" and "lack of object", exceptions or objections that have also been included in the Andean legal system.

The Statute of the Andean Court of Justice, approved by Decision 500, provides in its Article 61 for preliminary objections ("*excepciones previas*"). However, it does not develop neither delimit any of them, leaving it to a certain extent to the discretionally jurisprudence of the adjudicating bodies of the Andean Community. In this regard, it is pertinent to mention the most relevant jurisprudence in relation to the matter.

However, it should be noted that, by analogous application of the Andean norm, the General Secretariat must resolve in first place the preliminary questions ("*excepciones previas*") raised in the prejudicial phase of the Infringement Proceedings, as will be explained below.

IV.1. The preliminary questions before the General Secretariat

[19] PIZARRO SOTOMAYOR, Andrés. *The Rule Against Duplication of Procedures in the Regional Systems of Human Rights Protection*. Notre Dame: University of Notre Dame, Center for Civil and Human Rights, Working Paper 2, Spring, 2009.

The General Secretariat of the Andean Community has issued several rulings on the so-called preliminary questions (objections) in the prejudicial phase. In fact, the General Secretariat applies, by analogy, the provisions regarding preliminary objections envisaged in the Statute of the Andean Court of Justice (Decision 500) in the prejudicial phase in the form of preliminary questions ("*cuestiones previas*").

In this regard, the General Secretariat of the Andean Community, in Dictamen 07-2012, highlighted that, although the rules governing the prejudicial phase of the Infringement Proceedings provided in Decision 623 and those included in Decision 425 on the Regulations of Administrative Procedures of the General Secretariat do not contain specific provisions on preliminary objections; taking into account the Statute of the Andean Court of Justice (Decision 500), the General Secretariat considers that preliminary questions ("*cuestiones previas*")are acts by which the admissibility of a claim or the jurisdiction of the General Secretariat is objected (in the case of the prejudicial phase of the Infringement Proceedings), but not those that require a ruling on the merits of the claim[20].

Consequently, the General Secretariat addressed as preliminary questions ("*cuestiones previas*") those related to its jurisdiction to hear the case and, subsequently, those related to the lack of compliance with the requirements established in Article 14 of Decision 623, provided that they do not imply a pronouncement on the merits of the claim[21].

It is therefore possible to ensure that the General Secretariat of the Andean Community applies the same rules established by the jurisprudence of the Court of Justice of the Andean Community in relation to the preliminary objections ("excepciones previas") contemplated in Article 61 of its Statute to the so-called preliminary questions ("cuestiones previas") when they are alleged in the procedures initiated before the General Secretariat.

---

[20] General Secretariat of the Andean Community – GSAC. Dictamen 07-2012, p. 9.
[21] *Ibidem*.

Among the main preliminary objections on which the General Secretariat has ruled are the "lack of legitimacy", which also implies the "lack of a condition of the action". Indeed, in accordance with the provisions of articles 13 and 14 of Decision 623; article 25 of the TC-CJAC; and the requirements established by the Andean Court of Justice in an emblematic decision of November 24, 2017 in Process 03-AI-2017: Infringement Proceeding initiated by FLORES MARAVILLA S.A. against the Republic of Colombia. In sum, the Court stated that in order for a claim to be admitted, the claimant must demonstrate the "*affectation of a current, immediate and direct right*"[22].

A unique case in relation to the lack of active legitimacy was "EXPOMOTORS", where the General Secretariat, in a decision dated August 5, 2021, stated that the complaining party demonstrated a "*legitimate, immediate, concrete interest*" in relation to the measure that was subject of the claim; however, "*this interest would not be real, current, and opportune*", *sine qua non* requirements for filing an Infringement Proceeding, according to the Andean Court of Justice; since the contested resolution was issued in 2017, not having been the subject of a direct claim, and the claimant has been on leave due to inactivity in foreign trade since August 2, 2018. Consequently, the General Secretariat concluded that a substantive analysis was not appropriate in said case, declaring inadmissible the claim filed by EXPOMOTORS S.R.L. against the Plurinational State of Bolivia for failing to demonstrate any infringement of its subjective rights[23].

A recent case in which the General Secretariat declared a claim inadmissible due to lack of legitimacy is Dictamen 003-2023. Thus, in the context of the claim filed by the National Society of Industries and Ms. Susana Esperanza Ruiz Chang against the Republic of Peru, the General Secretariat declared the preliminary question ("cuestión previa") of "lack of legitimacy" founded because the claimants had simultaneously appealed to the General Secretariat and to the competent national courts, being mutually exclusive alternatives, that is, both "parallel litigation" cannot coexist with respect to the same issue[24].

---

[22] Court of Justice of the Andean Community – CJAC. Process 03-AI-2017. Ruling of November 24, 2017.
[23] General Secretariat of the Andean Community – GSAC. Dictamen 003-2021.
[24] General Secretariat of the Andean Community – GSAC. Dictamen 003-2023, par. 106-109.

In relation to the preliminary objection of "lis pendens" or "parallel litigation", referring to the impossibility of simultaneously resorting to the national and community proceedings, it is appropriate to point out that the second paragraph of Article 25 of the TC-CJAC establishes that: "*The action brought in accordance with the provisions of the preceding paragraph excludes the possibility of simultaneously resorting to the internal proceeding provided for in Article 31, for the same cause*."

Additionally, Paragraph 7 of Article 61 of the Statute of the Andean Court of Justice (Decision 500) prevents the existence of a pending proceeding between the same parties for the same matter. Likewise, Paragraph c) of Article 49 of the Statute of the Andean Court of Justice establishes that claims for Infringement Proceedings made by natural or legal persons must be accompanied by a "*declaration under oath that the same facts are not being litigated before any national jurisdiction*".

Similarly, the final Paragraph of Article 14 of Decision 623, Regulations of the Prejudicial Phase of Infringement Proceedings, a phase in charge of the General Secretariat of the Andean Community, requires an identical requirement, although, in other words: "[The natural or legal person who presents the claim must also present] *the declaration that no recourse has been made simultaneously and for the same cause before a national court*".

In this regard, it is appropriate to mention Dictamen 005-2023 of the General Secretariat, through which this community body declared inadmissible the claim filed by Empresas Comerciales S.A. and/or EMCOMER S.A. against the Republic of Peru, due to the existence of a procedure in progress before the National Superintendence of Customs and Tax Administration (SUNAT) for the same cause and same foundations of the aforementioned claim, that is, for "lis pendens" or "parallel litigation" (national and supranational); despite the fact that the claimant expressly stated in its claim that it had not *simultaneously* appealed to the national courts for the same cause of action[25].

In a relatively recent case of tariff classification, known as the "Zinc Balls" case, in Dictamen 001-2022 of December 14, 2022, the General Secretariat declared founded the claimant's

[25] General Secretariat of the Andean Community – GSAC. Dictamen 005-2023, par. 80.

preliminary question ("cuestión previa") of lack of interest to act due to "lis pendens" or "parallel litigation", declaring the claim filed by IEQSA against the Republic of Peru inadmissible because it had been presented simultaneously and for the same reason before a national court. In effect, the General Secretariat stated that the preliminary question of lack of interest to act due to "lis pendens" formulated by the respondent must be declared founded. Consequently, it must be concluded that there is no breach by the Republic of Peru, because the claimant declared in its claim the same case has not been filed simultaneously before a national court for the same cause of action, when there are proceedings before the Peruvian Judiciary in progress; therefore, the General Secretariat of the Andean Community will not rule on the other points of the claim[26].

More recently, in Dictamen 001-2024, published in the GOAC ("Gaceta Oficial del Acuerdo de Cartagena") on June 21, 2024, the General Secretariat declared inadmissible the claim filed by the companies ViiV HEALTHCARE COMPANY, SHIONOGI & CO., LTD and GLAXOSMITHKLINE COLOMBIA S.A. against the Republic of Colombia, without carrying out the substantive analysis, since the same matter was pending for review at the national jurisdiction[27].

In Dictamen 002-2024, published in the GOAC on October 18, 2024, the General Secretariat declared the claim filed by the company HT LOGISTICS S.A.S. against the Republic of Ecuador inadmissible, without carrying out the substantive analysis, because the contentious tax process of the Impugnation Action claim being carried out before the District Court of Tax Litigation of the Republic of Ecuador "*has the same parties and measures claimed*" with the cause that the claimant intended to be resolved by means of the aforementioned "Dictamen"[28].

Likewise, in Dictamen 003-2024, published in the GOAC on October 30, 2024, the General Secretariat declared the claim filed by the company COPACIFIC ZOMAC S.A.S. against the Republic of Colombia inadmissible, without carrying out the substantive analysis, given that the claim in the community proceedings deals with acts that are subject to review at the national level,

---

[26] General Secretariat of the Andean Community – GSAC. Dictamen 001-2022, par. 115.
[27] General Secretariat of the Andean Community – GSAC. Dictamen 001-2024.
[28] General Secretariat of the Andean Community – GSAC. Dictamen 002-2024.

that is, it is impossible to simultaneously resort to the procedure provided for in Article 31 of the TC-CJAC for the same cause of action[29].

It is important to note that in its response, the Colombian Government argued that, although COPACIFIC ZOMAC S.A.S. had declared that it had not filed simultaneously and for the same reason before the National Courts of the Republic of Colombia, it could be verified that the AGENCIA DE ADUANAS MERCANDINO LTDA, had appeared as an intermediary for COPACIFIC ZOMAC S.A.S., presenting claims against the National Tax and Customs Directorate (DIAN), in order to request the annulment and restoration of rights against resolutions that were unfavorable[30].

Consequently, it is essential for the claimant not to have any type of judicial process or administrative procedure pending in the internal jurisdiction of a Member Country, between the same parties and for the same cause of action, otherwise the preliminary question ("cuestión previa") of lack of interest to act by the claimant due to "lis pendens" or "parallel litigation" could be configured.

IV.2. The preliminary objections before the Court of Justice of the Andean Community

The Andean Court of Justice has issued numerous decisions resolving preliminary objections. In this regard, it is appropriate to classify the decisions issued by this international court with respect to the preliminary objections they resolve. Thus, it is possible to develop the Andean jurisprudence that addresses the main preliminary objections filed before the Andean Community jurisdictional body, such as the preliminary objections of "lack of jurisdiction", "lack of competence", "lack of formal requirements of the claim" and "lis pendens" or "parallel litigation".

IV.2.1. *The preliminary objections of lack of jurisdiction and lack of competence*

[29] General Secretariat of the Andean Community – GSAC. Dictamen 003-2024.
[30] *Ibidem*.

First of all, in order of enumeration, it would be appropriate to address the issue concerning the first two preliminary objections contemplated in Paragraphs 1 and 2 of the aforementioned Article 61 of the Statute of the Andean Court of Justice, referring to the lack of jurisdiction and the lack of competence of the Court, taking into consideration that generally both preliminary objections are raised together. Thus, we have, for example, the decisions of May 20, 2022, September 5, 2022, and December 13, 2022, which resolve the preliminary objections of "lack of jurisdiction" and "lack of competence" of the Court –that are generally formulated jointly by the defendant–; arising in Processes 1-AI-2021, 1-AI-2022, and 3-AI-2022, which declared the preliminary objection of "lack of jurisdiction" of the Court to be well-founded[31].

From the aforementioned decisions, that of May 20, 2022, in Process 1-AI-2022; and, that of December 13, 2022, in Process 3-AI-2022; it was concluded that there was no control parameter, that is, general and specific legal commitments and obligations established in the Andean legal system in criminal matters, that allows the Andean Court of Justice to control the legality of the act issued by the defendant Member Country and its correspondence with the Andean legal system; consequently, the Court did not have jurisdiction to resolve the merits of the Infringement Proceeding[32].

The most important conclusion that we must retain from these pronouncements of the Court of Justice of the Andean Community is that an express reference or referral to the Andean norm in criminal matters is required, which was absent in the aforementioned cases[33].

Consequently, disputes in criminal matters are in principle excluded from the jurisdiction of the Andean Court of Justice, unless there is an express reference or referral by the national criminal law to the supranational Andean law, in which case the dispute could be within the jurisdiction of the Court.

---

[31] Court of Justice of the Andean Community – CJAC, Process 1-AI-2021, Ruling of May 20, 2022, p. 30; CJAC, Process 1-AI-2022, Ruling of September 5, 2022, p. 30; CJAC, Process 3-AI-2022, Ruling of December 13, 2022, pp. 28-29.

[32] Court of Justice of the Andean Community – CJAC, Process 1-AI-2021, Ruling of May 20, 2022; CJAC, Process 3-AI-2022, Ruling of December 13, 2022.

[33] Court of Justice of the Andean Community – CJAC, Process 1-AI-2021, Ruling of May 20, 2022; CJAC, Process 1-AI-2022, Ruling of September 5, 2022; CJAC, Process 3-AI-2022, Ruling of December 13, 2022, Second Conclusion.

IV.2.2. ***The preliminary objection of lack of formal requirements of the claim***

The preliminary objection contemplated in Paragraph 5 of the aforementioned Article 61 of the Statute of the Andean Court of Justice, relating to the "lack of formal requirements of the claim" is related to the condition of the action referred to as the so-called "interest to act" that the plaintiff must possess.

In this regard, the Andean Court of Justice has stated, in the first Paragraph of its conclusions, in the decisions of December 13, 2022, which resolved Processes 04-AI-2021 and 02-AI-2021; as well as in the decision of October 5, 2022, which resolved Process 03-AI-2021. The aforementioned conclusions state that it is appropriate to declare the preliminary objection of "lack of requirements of the claim" founded, regarding the point relating to the requirement that "*the affectation must be current, immediate, real and concrete*", which is not susceptible to rectification, so it is meaningless to rule on the other preliminary objections invoked by the defendant[34].

If the aforementioned criteria are not met, the burden of proving a "substantial interest" would not be met either, which is consistent with the provisions of Article 72 of the Statute of the Andean Court of Justice, which provides for the procedural figure known as "permissive joinder", according to which it is not necessary for the third party intervening to have a "substantial legal interest" in the process but may be adversely affected if the party seeking to intervene is defeated; thus incorporating the procedural figure of "permissive joinder", as opposed to the "necessary joinder", which requires having a "substantial legal interest".

In this regard, the Andean Court of Justice has ruled on numerous occasions, including the decision of November 17, 2017, issued in Process 03-AI-2017: "*the affectation to the subjective right or legitimate interest must be current and immediate, real and concrete, and direct (...) given that the affectation must be current and immediate, the response of the affected party must be opportune*.[35]"

---

[34] Court of Justice of the Andean Community – CJAC, Process 04-AI-2021, Ruling of December 13, 2022; CJAC, Process 1-AI-2022, Ruling of September 5, 2022; CJAC, Process 03-AI-2021, Ruling of October 5, 2022.

[35] Court of Justice of the Andean Community – CJAC. Process 03-AI-2017. Ruling of November 24, 2017.

Indeed, the affectation on the subjective right or direct interest must be current and immediate, real and concrete, and direct. The Andean Court of Justice ruled in the same way in the decision of October 3, 2017, in Process 03-AI-2017, in which it highlighted that "*said affectation must be concrete, real, and direct*". To the extent that the affectation has these characteristics, Andean law grants special legitimacy to act in response to that affectation. It is clear that said response must be opportune, since it must be in accordance with the nature of the affectation. In other words, if the affectation is concrete, real, and direct, the response by the affected party must be opportune so that there is a natural correspondence between the two[36].

The so-called "substantial interest", understood as the procedural interest at the community level, is more similar to the "interest to act" at the national level than to the "substantial interest" that, for example, third parties who wish to be associated with consultations or arbitrations within the scope of the dispute settlement mechanism of the World Trade Organization (WTO) must have, in which it is conceived in a broader and more flexible manner[37].

IV.2.3. *The preliminary objection of lack of object of the claim*

Another preliminary objection constantly raised before the Andean Community jurisdiction is the one referring to the "lack of object of the claim". In fact, on exceptional occasions, when faced with the formulation of the preliminary objection contained in Paragraph 12 of Article 61 of the Statute of the Court of Justice of the Andean Community, by the respondent governments of the Member Countries, the Andean Court of Justice has had the opportunity to rule on the matter and to develop, to a certain extent, a line of jurisprudence around the aforementioned preliminary objection.

It should be noted that the preliminary objection under analysis not only includes the case of "lack of object of the claim" in the strict sense, but also that of "subtraction of matter". According to the General Secretariat, the difference between the two lies solely in that while the "lack of

---

[36] Court of Justice of the Andean Community – CJAC. Process 03-AI-2017. Preliminary Ruling of October 3, 2017.

[37] OMC (WTO). *Manual sobre el Sistema de Solución de Diferencias de la OMC. Las etapas de una diferencia típica en la OMC*. 2 ed., WTO: Génève, 2017.

object of the claim" constitutes a preliminary objection by decision of the Andean legislator, and must therefore be expressly invoked by the defendant, the "subtraction of matter" proceeds for the same reasons, but as a mechanism for early termination of the procedure that can be invoked by the defendant or considered *ex officio* by the Andean Court of Justice at any stage of the procedure.

In this way, the "subtraction of matter" is applied to acts that have been repealed or replaced by others, that have ceased to be in force or that have produced all their effects, all of which situations determine that it is useless and innocuous to issue a ruling on the merits since it would lack practical purpose given that the act that is the object of the virtual judgment has disappeared from legal life.

For example, in the judgment of March 14, 2001, published in the GOAC of May 29, 2001, issued in Process 28-AI-2000[38], which follows the jurisprudential line traced in Process 26-AI-2000[39], the Andean Court of Justice indicated that it is clear that when it comes to raising a breach due to the issuance of internal law regulations of a Member Country that contradict those of Community law, it must be assumed that both extremes are in force. If this is not the case, there is a "subtraction of matter", either because the internal act, supposedly infringing, disappears from legal life before the judicial decision, or because the superior community norms supposedly contradicted have been repealed or replaced.

Likewise, the Andean Court of Justice, in the judgment of June 1, 2001, published in the GOAC of August 21, 2001, issued in Process 52-AI-2000, indicated that since Ecuador had agreed to comply with the Andean Law, the judgment would refrain from declaring infringement due to "subtraction of matter" at the time this occurred; although, as stated, when the claim was filed it had full grounds and reason since the alleged infringement was then occurring[40].

Thus, the cessation of the infringement due to "subtraction of matter" occurs when the Member Country repeals, replaces or modifies the national norm (in terms of its material, territorial

---

[38] Court of Justice of the Andean Community – CJAC. Process 26-AI-2000. Judgment of March 14, 2001.
[39] Court of Justice of the Andean Community – CJAC. Process 28-AI-2000. Judgment of March 14, 2001.
[40] Court of Justice of the Andean Community – CJAC. Process 52-AI-2000. Judgment of June 1, 2001.

and temporal scope); and, consequently, puts an end to the antinomy with respect to the community norm.

Furthermore, in its Judgment of June 27, 2001, published in the GOAC of April 10, 2002, issued in Process 44-AI-2000, the Andean Court of Justice stated that based on everything set forth herein and in view of the fact that there are sufficient elements of judgment to conclude that the situation of infringement initially alleged had disappeared prior to the filing of the claim, since the Republic of Bolivia has agreed to comply with the determinations specified in Dictamen 49-99 on Infringement, supported by Resolution 317 of the General Secretariat of the Andean Community, the Court concluded that in its judgment it must refrain from declaring infringement because "subtraction of matter" had occurred at the time of its issuance[41].

In the aforementioned case, the then-named Republic of Bolivia had already agreed to comply with the recommendations issued in Dictamen 49-99 of the General Secretariat of the Andean Community, prior to the issuance of the corresponding judgment of the Court of Justice of the Andean Community, for which reason the Court determined that the "subtraction of matter" had occurred.

Additionally, it is important to highlight, in relation to the "Action for failure to act" ("Recurso por Omisión" – RO), the Judgment of December 5, 2006, issued in the 1-RO-2006 Process, in which the Court of Justice of the Andean Community decided to declare founded the preliminary objections of "improper nature of the action" and "lack of object of the claim"[42]. Consequently, it is possible to oppose preliminary objections before the Andean Court of Justice, with relative success, not only the preliminary objection of "lack of object of the claim".

Consequently, the preliminary objection ("excepción previa") of "lack of object of the claim" is applied at the Andean Community level in the same way as it was conceived in the field of procedural law, that is, it is admissible given its *ex ante* configuration, as "lack of object of the claim"; or, *ex post*, as "subtraction of matter" ("sustracción de la materia").

---

41 Court of Justice of the Andean Community – CJAC. Process 44-AI-2000. Judgement of June 27, 2001.
42 Court of Justice of the Andean Community – CJAC. Process 1-RO-2006. Ruling of December 5, 2006.

V. THE PRELIMINARY OBJECTION OF "ANDEAN LIS PENDENS"

In relation to the preliminary objection ("excepción previa") referring to the existence of a "pending process between the same parties and on the same matter", commonly known as "lis pendens" or "parallel litigation", it is possible to compare it to the preliminary objection of "pending international litigation" or "duplication of proceedings" that can be presented before the I/A Court H.R., although with certain particularities.

According to procedural Doctrine, "lis pendens" is used in two senses. In a general sense, it refers to the fact that a procedural legal relationship is pending with all its effects; and, in a more restricted sense, it expresses one of those effects, namely: the right of the defendant to oppose the "lis pendens" to prevent two or more procedural legal relationships from existing simultaneously on the same subject-matter. In the same way that a litigation cannot be decided more than once (*exceptio rei iudicatae*), several procedural relationships between the same persons cannot be pending simultaneously on the same subject-matter[43].

In sum, "lis pendens" in International Litigation is conceived as "parallel litigation" between the same parties on the same subject-matter or the same cause of action, in other words, it must have the identity of action in order to be considered, in substance, the same claim[44].

At the Andean Community, in addition to the preliminary objection of "pending proceedings between the same parties and on the same matter" or "lis pendens", provided for in Paragraph 7 of the aforementioned Article 61 TC-CJAC; Article 25 of the TC-CJAC provides that the filing of an infringement procedure excludes the possibility of simultaneously resorting before the competent national authority.

---

43 CHIOVENDA, Giuseppe. *Instituciones de Derecho Procesal Civil*. Part II, Argentina, Buenos Aires: Valletta Ediciones, 2005, p. 241.

44 MCLACHLAN, Campbell. *Lis Pendens in International Litigation*. Leiden/Boston: Hague Academy of International Law, Martinus Nijhoff Publishers, 2009, pp. 117-127.

In this regard, the Andean Court of Justice, by decision of March 16, 2021, issued in Process 02-AI-2019, recalled that it had already established in uniform jurisprudence that the infringement procedure initiated by individuals, constitutes a parallel and exclusive alternative to the possibility of going, for that same reason, to the competent national –jurisdictional or administrative– authorities.

In this way, it is necessary to highlight that the Court of Justice of the Andean Community has repeatedly confirmed the exclusive and alternative nature of the infringement procedure, when for the same reason the individual affected in his rights goes to a "national court", be it of a jurisdictional or administrative nature.

Additionally, it is important to take into consideration the analysis carried out by the Andean Court of Justice in its decision of December 1, 2017, issued in Process 01-AI-2017 (TJCA, 2017d), when it clearly differentiated between what it called "*parallel but exclusive proceedings*": Going to the General Secretariat and the Court of Justice of the Andean Community subject to the procedure provided for in Article 24 of the TC-CJAC (infringement procedure); or, going to the competent national courts in accordance with domestic law when affected by infringement according to Article 4 of the TC-CJAC[45].

In short, the Andean Court of Justice emphasizes that individuals have two options: to go to the community jurisdiction (the General Secretariat and the Court of Justice of the Andean Community); or, to the corresponding competent national court. Thus, the supranational jurisdictional body explained that this rule is also consistent with the admissibility requirement contemplated in Paragraph c) of Article 49 of the Statute of the Court of Justice of the Andean Community, a rule that provides that the plaintiff in the infringement procedure must attach a declaration under oath that he or she is not litigating the same facts before the national jurisdiction[46].

---

[45] Court of Justice of the Andean Community – CJAC. Process 03-AI-2017. Ruling of November 17, 2017, p. 12.
[46] Court of Justice of the Andean Community – CJAC. Process 03-AI-2017. Preliminary Ruling of October 3, 2017.

In this regard, the second Paragraph of Article 25 above establishes that the presentation of the infringement procedure before the Court of Justice of the Andean Community excludes the possibility of simultaneously going before the competent national courts.

In this sense, natural or legal persons who consider their rights affected due to an infringement by a Member Country may go, "*alternatively but exclusively*", before the community jurisdiction or before the competent national courts.

In this way, Andean Law provides, for the case of individuals, two non-simultaneous possibilities of action; that is, the community path of the General Secretariat and the Court of Justice of the Andean Community, in accordance with the first Paragraph of Article 25 of the TC-CJAC; and, the competent national courts, by virtue of the provisions of Article 31 of the TC-CJAC.

Indeed, Paragraph c) of Article 49 of the Statute of the Court of Justice of the Andean Community (Decision 500) establishes the requirement to attach a declaration under oath that the same facts are not being litigated before national courts.

In this regard, the decision of December 15, 2017, issued by the Court of Justice of the Andean Community in the accumulated Processes 01-AI-2016 and 02-AI-2016, also refers to the "*declaration made by the claimants regarding the non-existence of lis pendens between the same parties and on the same matter*"[47].

In other words, the Andean Court of Justice highlights the correlation between the preliminary objection under analysis and the admissibility requirement referring to the fact that the actor –or claimant before the General Secretariat– of the infringement procedure must attach a declaration under oath that he or she is not litigating the same facts before the national jurisdiction, in accordance with the provisions of Paragraph c) of Article 49 of the Statute of the Court of Justice of the Andean Community[48].

---

[47] Court of Justice of the Andean Community – CJAC. Accumulated Processes 01-AI-2016 and 02-AI-2016. Ruling of December 15, 2017, p. 18.

[48] Treaty Creating the Court of Justice of the Andean Community (TC-CJAC).-

The aforementioned decision of December 15, 2017 strongly reiterates what was stated above, that the second Paragraph of the mentioned Article 25 establishes that the filing of the infringement procedure before the Court of Justice of the Andean Community excludes the possibility of simultaneously going before the national courts[49].

Consequently, the Court of Justice of the Andean Community may not hear about an infringement procedure that is being pursued simultaneously before national courts or administrative bodies by virtue of the "Andean lis pendens" preliminary objection.

In this regard, in the decision of October 19, 2018, issued in the aforementioned accumulated Processes 01-AI-2016 and 02-AI-2016, the Court of Justice of the Andean Community adds an example to the above: faced with an administrative act that violates or fails to comply with an Andean norm, the affected party may resort to the administrative litigation procedure (national path) or initiate the community infringement procedure; in the latter case, the interested party must first go to the General Secretariat of the Andean Community[50].

Consequently, any individual may claim the infringement of his or her rights –provided that they are enshrined in the legal system of the Andean Community– before the community jurisdiction (the General Secretariat or the Court of Justice of the Andean Community) or before the competent national jurisdictional authority, exclusively; thus configuring an additional requirement of not having resorted simultaneously to the national and community paths; that is, the preliminary objection ("excepción previa") of "Andean lis pendens" or "parallel litigation", which constitutes a particularity of the Andean dispute settlement system with respect to other systems in comparative international law.

"Artículo 49.- Requisitos adicionales de la demanda en acción de incumplimiento
La demanda de incumplimiento deberá llevar anexa, además de lo determinado en el artículo 46:
(…).
c) Si el actor es una persona natural o jurídica, deberá, además, adjuntar declaración bajo juramento de que no se está litigando por los mismos hechos ante ninguna jurisdicción nacional."

[49] Court of Justice of the Andean Community – CJAC. Accumulated Processes 01-AI-2016 and 02-AI-2016. Ruling of December 15, 2017, pp. 19-20.

[50] *Ibidem*, p. 16.

VI. CONCLUSIONS

As a consequence of the principles that govern the Andean legal system, its "supranational" character is derived, as well as that of certain bodies of the Andean Community, such as the Court of Justice of the Andean Community, since its jurisprudence constitutes an atypical source of Andean Law, not expressly included in Article 1 of the TC-CJAC.

The "supranational" nature of the Andean legal system, which includes the jurisprudence of the Court of Justice of the Andean Community; as well as the Court itself by virtue of its greater functional hierarchy with respect to the internal jurisdictional and administrative authorities of the Member Countries, due to the delegated powers in the exercise of its sovereign power; presuppose the preponderance of community jurisprudence.

In International Litigation, "lis pendens" is conceived as "parallel litigation" between the same parties on the same subject-matter or the same cause of action, in other words, it must have the identity of action in order to be considered, in substance, the same claim.

Although the preliminary objection ("excepción previa") of "Andean lis pendens" has the same purpose as that conceived in the field of procedural law, at the Andean Community, it is governed by the principles developed *ab initio*, which endow it with certain particularities, such as its prevailing and autonomous nature with respect to the national law of the Member Countries of the Andean subregional integration process.

In the contentious jurisdiction of the I/A Court H.R, the preliminary objection of "pending international litigation" or "duplication of proceedings", although intended to prevent the same litigation from being pending simultaneously, that is, the same matter between the same parties on the same cause of action, refers specifically to a parallel proceeding in another international body. On the other hand, in the Andean Community, "lis pendens" refers to the existence of a pending proceeding between the same parties and on the same subject-matter at the national or internal level of the Member Countries.

Additionally, it is important to note that it is possible to raise preliminary objections ("excepciones previas"), not only in infringement procedures, but also in "Action for failure to act" ("Recursos por Omisión" – RO). Likewise, by analogous application of the Andean norm, it is feasible to raise similar preliminary questions ("cuestiones previas") before the General Secretariat of the Andean Community.

The second Paragraph of the aforementioned Article 25 of the TC-CJAC establishes that the filing of infringement procedures before the Andean Court of Justice excludes the possibility of simultaneously going before the national courts or internal administrative bodies for the same cause of action, thus configuring the "Andean lis pendens".

Although the terminology used in Article 25 of Decision 500 and Paragraph 7 of Article 61 of Decision 500 differs from that used in the wording of Article 14 of Decision 623, it is necessary to understand that both –same subject-matter and same cause– refer to the same requirement, that is, the impossibility of the same parties having recourse simultaneously to national proceedings and to the Andean dispute settlement system, in other words, to "parallel proceedings", for the same subject-matter or the same cause of action.

This requirement corresponds to the admissibility requirement provided for in Paragraph c) of Article 49 of the Statute of the Court of Justice of the Andean Community, which provides that the plaintiff in an infringement procedure must attach a sworn statement declaring that he or she is not simultaneously litigating the same facts before the national jurisdiction.

Finally, it is important to highlight emblematic cases, relatively recent, in which Member Countries have been able to take advantage of raising the preliminary objection ("excepción previa) of "Andean lis pendens" or "parallel proceedings", thus translating it into a condition of action at the Andean Community.

VII. BIBLIOGRAPHICAL REFERENCES

AZULA CAMACHO, Jaime. **Manual de derecho procesal**. Part II, 6. ed. Bogotá: Editorial Temis, 2000.

BECERRA RAMÍREZ, Manuel. **Las Fuentes Contemporáneas del Derecho Internacional**. Chapter Four. Ciudad de México: Instituto de Investigaciones Jurídicas (IIJ) – UNAM, Estudios Jurídicos nº 316, 2017.

CHIOVENDA, Giuseppe. **Instituciones de Derecho Procesal Civil**. Part II, Buenos Aires: Valletta Ediciones, 2005.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 26-AI-2000**. Judgment of March 14, 2001, 2001.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 28-AI-2000**. Judgment of March 14, 2001, 2001.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 52-AI-2000**. Judgment of June 1, 2001, 2001.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 44-AI-2000**. Judgement of June 27, 2001, 2001.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 1-AN-2001**. Judgement of June 26, 2002, 2002.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 1-RO-2006**. Ruling of December 5, 2006, 2006.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 546-IP-2015**. Preliminary Ruling of August 18, 2016, 2016.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 03-AI-2017**. Ruling of November 24, 2017, 2017.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 03-AI-2017**. Preliminary Ruling of October 3, 2017, 2017.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 03-AI-2017**. Ruling of November 17, 2017, 2017.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 01-AI-2017**. Ruling of December 1, 2017, 2017.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Accumulated Processes 01-AI-2016 and 02-AI-2016**. Ruling of December 15, 2017, 2017.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 1-AI-2021**. Ruling of May 20, 2022, 2022.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 1-AI-2022**. Ruling of September 5, 2022, 2022.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 3-AI-2022**. Ruling of December 13, 2022, 2022.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 04-AI-2021**. Ruling of December 13, 2022, 2022.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 02-AI-2021**. Ruling of December 13, 2022, 2022.

COURT OF JUSTICE OF THE ANDEAN COMMUNITY – CJAC. **Process 03-AI-2021**. Ruling of October 5, 2022, 2022.

DINU, Gheorghe. **Procedural Exceptions Governed by the Civil Procedure Code and their Characteristics. Contemporary Readings in Law and Social Justice**. Part 5, n° 2, New York: Woodside, 2013.

FAÚNDEZ LEDESMA, Héctor. **El sistema interamericano de protección de los derechos humanos aspectos institucionales y procesales**. 3 ed., Costa Rica: Instituto Interamericano de Derechos Humanos, 2004.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 07-2012**, 2012.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 003-2021**, 2021.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 001-2022**, 2022.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 003-2023**, 2023.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 005-2023**, 2023.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 001-2024**, 2024.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 002-2024**, 2024.

GENERAL SECRETARIAT OF THE ANDEAN COMMUNITY – GSAC. **Dictamen 003-2024**, 2024.

GÓMEZ APAC, Hugo. **El Ordenamiento Jurídico Comunitario Andino**. AA.VV., *Apuntes de Derecho Comunitario Andino. A propósito de los 50 años de la Comunidad Andina y los 40 años de creación de su Tribunal de Justicia*. Ecuador, Portoviejo: Editorial San Gregorio, 2019.

GÓMEZ APAC, Hugo R.; RODRÍGUEZ NOBLEJAS, Karla Margot. **Nuevos criterios jurisprudenciales del Tribunal de Justicia de la Comunidad Andina (Junio 2016 – Junio 2019). Propiedad intelectual, libre competencia, comercio internacional, derecho tributario, telecomunicaciones, transporte y minería ilega***l*. Ecuador, Quito: Editorial San Gregorio S.A. – Universidad San Gregorio de Portoviejo, 2019.

INTERNATIONAL COURT OF JUSTICE – ICJ. **Barcelona Traction, Belgium *Vs* Spain**, 1964.

INDACOCHEA JAUREGUI, Juan Manuel. **El recurso por omisión en el derecho comunitario andino**; Gómez Apac, Hugo *et al*. *Tribunal de Justicia de la Comunidad Andina: 1979-2024. 45 años de creación y 40 años al servicio del derecho y la integración*. Part II, Chapter IX, Ecuador, Quito: Tribunal de Justicia de la Comunidad Andina, 2024.

INTER-AMERICAN COURT OF HUMAN RIGHTS – I/A Court H.R. **Castañeda Gutman *Vs* Mexico**. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 6, 2008.

INTER-AMERICAN COURT OF HUMAN RIGHTS – I/A Court H.R. **Tristán Donoso *Vs* Panama**. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009.

INTER-AMERICAN COURT OF HUMAN RIGHTS – I/A Court H.R. **Escher *et al. Vs* Brasil**. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 6, 2009.

INTER-AMERICAN COURT OF HUMAN RIGHTS – I/A Court H.R. **Muelle Flores *Vs* Peru**. Preliminary Objection, Merits, Reparations and Costs. Judgment of March 6, 2019.

MCLACHLAN, Campbell. **Lis Pendens in International Litigation**. Leiden/Boston: Hague Academy of International Law, Martinus Nijhoff Publishers, 2009.

ORGANIZACIÓN MUNDIAL DEL COMERCIO – OMC (WTO). **Manual sobre el Sistema de Solución de Diferencias de la OMC. Las etapas de una diferencia típica en la OMC**. 2 ed., WTO: Génève, 2017.

PIZARRO SOTOMAYOR, Andrés. **The Rule Against Duplication of Procedures in the Regional Systems of Human Rights Protection**. Notre Dame: University of Notre Dame, Center for Civil and Human Rights, Working Paper 2, 2009.

ZÚÑIGA SCHRODER, Humberto. **Jerarquía e interacción de fuentes en el marco del derecho comunitario andino**. *Revista de Economía y Derecho*, Vol. 11, nº 41, Lima: Editorial UPC, 2014.