

SEPARATE CONCURRING OPINION OF JUDGE JACKMAN

I am in total agreement with the decision of the Court in this case, with the orders with which the judgment concludes, and with the *ratio decidendi* of the judgment as a whole.

I must, however, reluctantly put on record my inability to join wholeheartedly in the enthusiasm with which the Court appears to have welcomed, in paragraphs 147 to 154, the so-called *projeto de vida* ("life-plan" or "life project"), a concept which is new to the jurisprudence of this Court, and one which, in my respectful view, is lacking both in clarity and in juridical cogency.

It is to be noted that the Court has refrained from making a specific order for damages in respect of this concept. Nevertheless, the statement at paragraph 153 to the effect that "...the Court recognises the existence of grave damage to the 'life-project' of Maria Elena Loayza Tamayo..." represents a formal acceptance of the concept as a legitimate head of damages which, inevitably, will henceforward form part of the armoury of plaintiffs appearing before the Court in hearings on reparations.

The Court has defined "*projeto de vida*" in paragraphs 147 to 150 in the following terms:

This notion is different from the notions of special damages (*dano emergente*) and loss of earnings (*lucro cesante*).... [T]he so-called [*projeto de vida*] deals with the full self-actualisation of the person concerned and takes account of her calling in life, her skills, her particular circumstances, her potentialities, and her ambitions, thus permitting her to set for herself, in a reasonable manner, specific goals, and to attain those goals...[D]amage to the "life-plan"...implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of [a person's] prospects of self-development.

In this context the Court has identified as "irreparable damage" to the "life-plan" of Mrs. Loayza the proven fact that her illegal arrest, trial, and imprisonment have obliged her to "interrupt her studies and to take up life in a foreign country far from the context in which her life had been evolving, in a state of solitude, poverty, and severe physical and psychological distress" (paragraph 152).

I am of opinion that there is ample precedent in the jurisprudence of this Court, without necessity for the creation of a new head of damages, to permit the Court to assess the damage here identified and to make the appropriate orders in terms of Article 63 of the American Convention on Human Rights ("the Convention"), from which the Court derives its authority to order reparations when it finds that there has been a violation of a right or freedom protected in the Convention.

From the time of its very first decision on reparations (*Velásquez Rodríguez Case, Compensatory Damages (Art. 63(1) American Convention on Human Rights)*, Judgment of July 21, 1989. Series C No. 7) this Court, like other similar international tribunals, has recognised that violations of the protected rights give rise to a right on the part of the plaintiff to "reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial (sc: "material" and "moral" or "pecuniary" and "non-pecuniary") damages, including emotional harm." (**Loc. cit.: para. 26; emphasis added**).

Under the Convention the Court has authority to order "fair compensation" to be paid to a successful plaintiff. In a given case it is thus open to the tribunal, once the standard test of remoteness of the damage is met, to rule on any identifiable damage which the plaintiff has sustained as a result of violations of the rights and freedoms protected under the Convention. A claim for "loss of development prospects" can therefore be examined in precisely the same manner as any other claim, with a determination as to whether and to what extent it is quantifiable; and, if not quantifiable, what fair order may be made with a view to remedying the consequences of the particular violation or violations, as far as is possible in the particular circumstances.

There is, therefore, no call and no room, in my opinion, for new categories of redress to be imported into the jurisprudence of the Court, particularly if such categories are defined in broad and sweeping terms. Article 63 of the Convention authorises the Court to

rule, *if appropriate*, that the consequences of the measure or situation that constituted the breach... be remedied and that *fair* compensation be paid to the injured party". (**Emphasis added**).

Such language already provides the Court with a considerable margin of judicial discretion, wider, indeed, than that enjoyed by the European Court of Human Rights under the corresponding provision of the European Convention (Article 50). If to this is super-added a novel and broadly-conceived head of damages, the juridical security vital to the functioning of the protective system may be put, in my view unnecessarily, at serious risk.



Oliver Jackman
Judge



Manuel E. Ventura-Robles
Secretary