

PARTIALLY DISSENTING OPINION OF JUDGE CARLOS VICENTE DE ROUX-RENGIFO

I am in disagreement with the Court's decision on the amount of compensatory damages to be paid to María Elena Loayza-Tamayo. In my view, the amount should have been greater, as it should have also included a sum of money specifically intended to redress the damage to her life plan. Based on equity considerations, that amount could have been set at 25,000 United States dollars.

The Court has taken an important step forward by regarding damage to one's life plan as a head of damages to be considered in certain cases of human rights violations and has built a good theoretical base to support it. However, it has refrained from using that theoretical platform to make a specific condemnation in the Case before us, a decision with which I am in disagreement.

As the Judgment states, the concept of compensation for damage to an individual's life plan is not yet firmly established in either case law or doctrine. However, it is not an altogether alien concept either, as courts of various kinds, in various parts of the world, have regarded the aggravation of an individual's circumstances as the kind of injury that must be redressed and have, in one way or another, weighed those circumstances from an evolutionary perspective that factors in the injured party's plans and prospects.

Adverse changes of circumstance may be caused by very different facts and events: the death of a loved one, physical disability in oneself or an immediate relative, disruption of one's professional career... In terms of specific categories of damages, such changes have nothing to do with the subjective suffering or affliction of the victim, who is being compensated, as in the case of moral damages, by recognizing a *precium doloris*. Changes to a victim's life plan are changes in his objective surroundings and his relationship with those surroundings, changes that tend to have an effect that goes far beyond the point at which the affliction or distress caused by the injury ceases and that rob the injured party of the affection, satis-

faction or pleasure that makes life enjoyable or meaningful. Strictly speaking, damage to an individual's life plan, although a non-material injury, is not the same as moral damages (which is why, in the instant Case, the Court correctly dealt with the damage to the victim's life plan separately from material damages and moral damages).

Some general provisos, however, are in order.

Not every change in an individual's circumstances merits indemnification. To warrant compensation, they must be very substantial changes that, for example, profoundly alter the affective and spiritual milieu in which the life of the family unfolds, or cuts short a professional career into which great effort and dedication have been poured.

When determining the degree to which an individual's circumstances have changed and, more specifically, the damage to his personal life plan, certain extremes have to be avoided, such as believing that the victim will remain forever entrapped in inertia or desperation, or depicting his condition as a kind of eternal tragedy. Particular care must be taken to weigh this aspect of the issue when establishing, based on principles of equity, the amount of the respective compensation.

Given the specifics of this Case, in my judgment the circumstances of María Elena Loayza-Tamayo and her life plan were profoundly altered, for which she deserves to be compensated under the terms suggested above.

Consequently, I believe that subparagraph a of operative paragraph four of the Judgment should have read as follows:

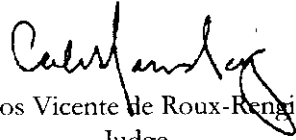
[...]

4. [...]

a. US\$124,190.30 (one hundred twenty-four thousand one hundred and ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, to Ms. María Elena Loayza Tamayo;

[...]

I join with the majority on the remaining subparagraphs of operative paragraph four of the Judgment and with the other operative paragraphs thereof.



Carlos Vicente de Roux-Rengifo
Judge



Manuel E. Ventura-Robles
Secretary