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COMPENSATING HUMAN DIGNITY: "JUST SATISFACTION" AND INTEGRAL REPARATION APPROACHES.

A Comparative analysis between the Jurisprudence of the European Court of Human Rights and the Inter-American Court Human Rights.

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Abstract

Reparations are intimately related to the effectiveness of the Regional Human Rights Protection System. For the adequate protection of human dignity, it is crucial that every system provides the right to reparation within its conventions. In response to the lack of an integral system for reparation, the United Nations created the *"Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law"* as a standard guide to the international human rights law on reparations. However, the jurisprudence's practices and developments in the Inter-American Court of Human Rights and the European Court of Human Rights, have made notable differences in recognition of the right to reparations. The Inter-American System has opted to establish and grant an integral reparation, providing a broader catalogue of measures and remedies that states must adopt in specific cases for proper redress. While the European System has differed substantially, and the right to reparation has been based on the principle of subsidiarity, limiting its action, letting the states decide the means and the form in which they will compensate the victim. Nevertheless, the essential objective of reparation is to restore human dignity, which is recognized as the guiding principle of human rights by international law and the regional systems. Therefore, a theoretical and practical comparison between both systems is made to visualize the most effective way to protect and human dignity.

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List of abbreviations

ACHR- American Convention on Human Rights

CoE- Council of Europe

CoM- Committee of Ministers

ECHR- European Convention on Human Rights

ECOSOC- The United Nations Economic and Social Council

ECtHR- European Court of Human Rights

IACtHR- Inter-American Court of Human Rights

IAComHR- Inter-American Commission of Human Rights

ICC-International Criminal Court

IHL-International Humanitarian Law

IHRL-International Human Rights Law

ICJ- International Court of Justice

ICL-International Criminal Law

ILC-International Law Commission

OAS- Organization of American States

PCIJ-Permanent Court of International Justice

UDHR-Universal Declaration of Human Rights

UN- The United Nations

Introduction

Human dignity should not be measured by financial compensation. However, in the European system of Human Rights and its corresponding Court, the non-pecuniary reparations are highly uncommon in practice. Though, in theory, they should follow the established by the universal system, where both are contemplating the pecuniary and non-pecuniary remedies. On the other hand, in the Inter American Human Rights System, damages to human dignity are addressed in a more sophisticated way, involving the non-pecuniary measures as satisfaction.

The direct attack of human dignity, loss of trust in the State, the trauma, anxiety, and others mental pain are the most common harms caused when a human rights violation happen. However, it is striking that practice of ECtHR provides almost always a monetary reparation as an appropriate redress. Nevertheless, the principle limitation of this project is the Art. 41 ECHR stipulates the figure of just satisfaction, but in a different meaning than the Inter-American Court of Human Rights does. The interpretation regarding reparation measures is more restricted.

Thus, the main research question that will guide the thesis is**: How can the ECtHR repair the damages to human dignity more comprehensively?** The focus will be put on the equity principle and whether it is sufficient when treating these serious violations. Furthermore, why are the symbolic reparations being rejected most of the time in the European system, when they could be much more effective than monetary compensation? To clear out the point, the European system will be compared with Inter-American system, that seems to have different values and approaches towards such violations. Moreover, the discussion on the potential of integral reparations to the improvement of European system will be held in relations to the more proper evaluation of human dignity.

Methodology

The comparative analysis is going to be the first methodology to be applied in this project, comparing the way to repair the human dignity in the Inter-American System by the integral reparation between the European Human Rights system by monetary compensation. The theories to be used in this project are going to be the theory of human rights reparations, where the international and regional system could be compared. The sources to be used, are going to be law sources as Inter-American jurisprudence and European jurisprudence, as well as legal codes and international treaties as primary sources.

Limitation of the work

Since, there is no consensus, not even of the basic terminology like a gross violation, harm, and dignity, the main limitation of this work is the ambiguous meaning of each term. Therefore, the analyses of how to provide an adequate and effective remedy become harder and muddle. Hence, if the aim is to offer redress to dignity for the damage caused in a gross violation, and the concepts are confusion, it could expect that the result will be confused as well.

Even when international jurisprudence is invoked for clarification and proper interpretation of this fact; each human rights protection system has a different comprehension and analysis of these principles. It is true that they have supported each other in the development of their respective jurisprudence, but in the absence of a consensus on the terminology, doubt persists, and there are more probabilities that the remedy to apply will not be the more adequate.

I. Theoretical Conceptualization

A. Concept of Dignity

Dignity is a common word that finds in the universal language of human rights, it is inserted in most of the laws and international treatments. However, what is the exact meaning of human dignity? What is the clear and strict definition of this concept? These are the unsolved questions that surround this precept. Etymologically, the word dignity derives from the word Latin "Dignitas" which mean worthiness, "from dignus" worth[1]. As well according to the Oxford English dictionary, human dignity means "The State or quality of being worthy of honour or respect".[2] Nonetheless, since human dignity is the ruler principle of human rights, this notion goes further than the etymological and literary meaning. Therefore, it deserves an in-depth analysis.

Despite find a definition of dignity could represent a big challenge, as many authors proposed who have been tried to settle through the years a concrete meaning of this concept. Though, as they have argued tried to establish a precise definition about it, is a job every time more complicated since the principles, rules and way to live of the society are in constantly changing.[3] Consequently, this conception gives a subjective connotation to this idea.

Though it is undoubtful, and most of the academics coincide that human dignity is the base of all societies and if it does not know its value, the treatment becoming a simple thing or object. They agree that the value of dignity is an intrinsic value of the human being, which means that it does not give by anyone, on the contrary,

[1] Etymonline.com. (2019). dignity | Origin and meaning of dignity by Online Etymology Dictionary. [online] Available at: https://www.etymonline.com/word/dignity [Accessed 7 April 2019].
[2] Oxford Dictionaries | English. (2019). dignity | Definition of dignity in English by Oxford Dictionaries. [online] Available at: https://en.oxforddictionaries.com/definition/dignity [Accessed 18 May 2019].
[3] Karla I Quintana Osuna, ¿Superposición de Las Reparaciones Otorgadas Por Comisiones de La Verdad y Tribunales Regionales de Derechos Humanos? Una Aproximación a La Realidad Interamericana (Comisión Nacional de los Derechos Humanos 2013).

the person has this value for the only fact to be a person, is acquired this value from birth, without regard to race, nationality, religion, sex, sexual orientation or other conditions.[4]

Consequently, the inherent interest of every person by the mere fact of being so could be understanding as an essential core. Although, it is also this concept what limits the behaviour of every particular, instituting the treatment and respect to person as a person[5] and not like an object. As well prohibiting acts that lead to being humiliated, degraded or disdained.

However, there are some periods in life where the protection and respect of dignity have been harder. It is the case that two world wars had to happen to consider the adoption of the conception and introduction of human dignity as the guiding principle of any system of protection of human rights. Thus, the need to recognize dignity not only as an ethical principle but also as a legal norm arose. As well, giving it of the broadest legal protection, establishing and tutoring it both in domestic law and in the highest international standard.[6]

Therefore, the legal framework establishment is guided by the Universal Declaration of Human Rights (here and after UDHR) wherein it preamble determines:

> *"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (…)Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people"*[7]

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[4] Universal Declaration of Human Rights 1948 63, ART. 2.
[5] Matsuda, M. (2005). Human Dignity as a Normative Concept. [online] Cambridge.org. Available at: https://www.cambridge.org/core/services/aop-cambridge-core/content/view/F5C2D6F4C7A31D7DE2F6AD55670C24D4/S0002930000071074a.pdf/human_dignity_as_a_normative_concept.pdf [Accessed 17 May 2019] P.3.
[6] Montoya, O. (2019). Dignidad humana. [online] Diccionario Jurídico. Available at: http://www.diccionariojuridico.mx/definicion/dignidad-humana/. [Accessed 17 May 2019].
[7] Universal Declaration of Human Rights, Preamble.

Likewise, the Article I establishes:

> *"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."*[8]

Regardless of the above lines, where are not provide a clear definition of the concept of human dignity. Both the Preamble and Article one, highlight the importance and the impact of human dignity. At first, as the guiding principle of society, from which they emanate the other essential principles as freedom, justice and peace in the world. Thus, society could develop gently and respectfully.

Afterwards, this development began to see reflected in diverse international bodies, which affirmed the importance of the recognition of human dignity, such as the Helsinki Final Act. According to, with this international body "civil, political, economic, social, cultural and other rights and freedoms derive from the inherent dignity of the human person and are essential for its free and full development."[9] This argument is crucial because the value of dignity becomes invaluable as being recognized as something inherent to the person, something that born with the person, so as the human rights principle.

Due to the different conceptions and interpretation of the notion of human dignity; it lets to conclude that human dignity is a spiritual and moral value, inherent of the person. Nevertheless, the legal norm has to recognize this value, with the aim of guarantee the freedom and respect of the human's integrity as an ideal of social good[10]. As well, it is based on the principle of autonomy of each person, without exceeding limits or affecting the rights of third parties. Consequently, and once following the criteria previously established, it can be in aptitude to carry out the conceptualization and subsequently the materialization of dignity.

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[8] Idem. Art. I.
[9] Art. 7 Osce.org. (1975). Conference on Security and Co-operation in Europe Final Act. [online] Available at: https://www.osce.org/helsinki-final-act?download=true [Accessed 18 May 2019].P 6.
[10] Matsuda, M. (n 5) 2.

B. Concept of gross violation

The right to provide reparation arises from the fact to have suffered a serious violation of human rights. This violation in International Law calls gross violation or massive human rights violations[11]. This perception has been developing and gaining strength in the domestic and international jurisprudence within the international human rights law and humanitarian law.[12] Nonetheless, in the beginning, the conception of this term was complicated to agree, as the Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights Theo Van Boven argued in 1993.[13] This notion acquired special attention by the UN thanks to the principle's guidelines that he provided as a way of the recommendation in one of his studies.[14]

Due to this, the UN began to consider and cover broader protection in this topic, distinguishing and conceptualizing the notion of gross and systematic violation of human rights.[15] Even if, before Theo van Boven's recommendations, the UN had already contemplated human rights violations, as reflected in ECOSOC resolutions 1235[16] and 1503.[17] However, it was not until the implementation of this guideline that more countries accepted the term gross violation and therefore constituted a significant step forward in UN bodies by being addressed more broadly.[18]

[11] High Commissioner for Human Rights, Rule of Law Tools for Post Conflict States: Reparations Programmes (2008) 7.
[12] REDRESS, Implementing Victims ' Rights (2006) 12.
[13] Theo Van Boven, 'Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms.' (1993) 287.
[14] Idem. 342, point 4.
[15] Geneva Academy of International Humanitarian Law and Human Rights, What Amounts to 'a Serious Violation of International Human Rights Law'? An Analysis of Practice and Expert Opinion for the Purpose of the 2013 Arms Trade Treaty (2014) 9.
[16] ECOSOC Resolution 1235 (XLII), 6 June 1967. The object of this resolution was mandated to the Commission on Human Rights to examine relevant information on serious violations of human rights and fundamental freedoms.
[17] ECOSOC Resolution 1503 (XLVIII), 27 May 1970. This resolution aimed to establish a procedure for examining communications concerning violations of human rights and fundamental freedoms.
[18] Geneva Academy of International Humanitarian Law and Human Rights (n 15) 11.

On the other hand, some diverse authors propose that elements as quality, quantity, time, and planning have to be taken into account to qualify a violation as a gross, as well the type of the rights violated, the characteristics of the victims, among others.[19] However, there are some others which differ in this approach. For instance, Bassiouni argues that the UN understands and implements the term of gross violation, no as a particular category of violation of human rights. Instead, the UN implements this term to describes situations that involve human rights violations, referring the way that the damage or harm may have been committed or their gravity.[20]

In parallel with this, the jurisprudence of the ICC strengthens this argument, which provides in its definition of war crimes, genocide and crimes against humanity a description of the situations and acts that cause serious violations of human rights, mainly to the right to life and the right to the physical and moral integrity of the human person.[21] Such as murder, torture or other cruel, inhuman or degrading treatment, slavery, enforced disappearances, deportation or forcible transfer of population, prolonged arbitrary detention, violation of sexual and reproductive rights, discrimination, deprivation of essential foodstuffs, essential primary health care or basic shelter and housing.[22] Ergo, the analysis of international jurisprudence and doctrine shows that most of the human rights violations have a criminal origin or criminal elements. Consequently, the jurisprudence of the ICC has made significant contributions to the conceptualization of the gross violation term.[23]

Another legal instrument who can be a useful reference for this concept is the Vienna Declaration and Programme of Action, defining the ways of gross violation and systematic violation, such as:

[19] C. Medina Quiroga, The Battle of Human Rights, Gross, Systematic Violations and the Inter-American System, (1988) 16.
[20] Bassiouni, 'Economic and Social Council' (2000) 10236 The Complete Reference Guide to United Nations Sales Publications, 1946–1978 18.
[21] REDRESS (n 12) 13.
[22] High Commissioner for Human Rights (n 11) 1–2.
[23] Van Boven (n 13) para 13.

> "(…)violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law"[24].

Therefore, both instruments coincide that there is no hierarchy regarding violation of human rights. Adding that due to the principal characteristic is the obstacle of the right's enjoyment, there is no distinction between violation simple and grave. So, the terms gross, abuse, massive, flagrant serious are used as a synonym indistinctly. In addition to, both conceptions go beyond, and they do not limit to consider the acts that affect only right to life or the prohibition or torture, but also contemplate the economic, social and cultural rights, as the right to food and essential primary health care. Hence, they offer a broader and more detailed interpretation of this concept.

C. Concept of victim

Another essential element within the framework of the reparation theory is the concept of victim. As it has established by international law, recognition of the victim is essential for prompt, adequate and integral redress, for the harm that they have had.[25] However, as happened with the above-defined terms, the concept of victim has been subjected for a terminological debate. Part of the difficulty in defining this concept is due to the consensus absence of harm's term.[26] Likewise, to find an exact definition of the term harm could represent a further step in the consensus of the victim's terminology.[27] For practical purposes, some authors proposed using the term "harm" as a synonym of injury, suffering, pain, anguish; and its nature may be physical, psychological or economic.[28]

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[24] LM Singhvi, 'Vienna Declaration and Programme of Action' [2009] A tale of three cities 5, point 30.
[25] Van Boven (n 13) 296 para 33.
[26] Heidy Robouts, 'Reparations for Victims of Gross and Systematic Human Rights Violations : The Notion of Victim SYSTEMATIC HUMAN RIGHTS VIOLATIONS ': (2003) 16 Third World Legal Studies 89, 95. <http://scholar.valpo.edu/twls/vol16/iss1/S>.
[27] Idem, 96.
[28] Cherif Bassiouni, 'The protection of "Collective Victims" in International Law' (1988) 187.

Besides that, there are many international human rights treaties, that conceive the notion of the victim, for instance, article 85 Rome Statute of the International Criminal Court, article 9(5) ICCPR. Nevertheless, they seldom provide a precise definition.[29] Likewise, each system of human rights protection has had a diverse approach to the victim concept. Not all systems agree that only the victim of human rights violations will be entitled to adequate reparation; instead of that, they focus on providing reparation of an injury party.[30] Thus, the international jurisprudence will clarify, on a broader way, this topic.

Consequently, the UN establishes a clear definition of this concept in principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation. Where victims are describing as:

> "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. (….)"[31]

According, with this definition, there are three essential elements to highlight. The first is the understanding that the victim could be any persona or collectivity of person. The second the damage could be physical, emotional, economical, or physiological. Third, acts or omissions can cause damages.

Moreover, this principle embraces the protection not only to the person who was the direct target of the violation but also of any person affected indirectly by the direct victim's suffered. These people could be the immediate family or dependents of the direct victim and person who have suffered harm in intervening to assist

[29] International Commission of Jurists, The Right to a Remedy and Reparation for Gross Human Rights Violations (2nd edn, International Commission of Jurists 2018) 32.
[30] Robouts (n 26). P. 35
[31] United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/C.3/60/L.24)' (2005) 24 International & Comparative Law Quarterly 1, 10 <http://www.journals.cambridge.org/abstract_S0020589300000063> principle 8.

direct victims or their relatives. Furthermore, these principles stipulate, the obligation to provide fair treatment to the victim at all times, without discrimination and respecting their dignity.[32]

Even, if the international jurisprudence does not maintain a homogeneous criterion regarding the concept of victim — the majority of human rights protection systems agreed that anyone who has been affected by human rights violation should be considered a victim.[33] Likewise, it is essential to highlight that the concept of a victim is not limited only for a natural person. Also, a legal person is included and recognized in the context of gross and systematic violation of human rights and consequently entitled to be redress of this harm.

a. Direct victim

A direct victim as has been established in a general idea above is the natural or legal person; individual or collective. That has suffered harm or loss of a physical, economic, mental or phycological nature; in other words, any human rights injury or risk that have been recognized by the domestic and international law. Also, it is crucial to highlight that both the European[34] and Inter-American[35] system include this idea within their jurisprudence.

The gross and systematic violation of human rights affected not only one person but also communities or groups of people. Collective victims, as Bassiouni describes, are “the groups of individuals linked by special bonds, considerations, factors or circumstances which, for these very reasons, make them the target or object of victimization.”[36] Thus, there are also standard collective procedures that are provided by the international human rights law and allow finding effective

[32] Idem, Principle 10.
[33] Robouts (n 26) 112.
[34] Marckx v. Belgium. ECtHR, 13 June 1979, para 22.
[35] Fornerón and daughter v. Argentina. (Merits, Reparations and Costs), IACtHR, 27 April 2012, para 15.
[36] Bassiouni (n 28) 183.

remedies to these kinds of violations. One clear example of this could be the human rights violations of indigenous and tribal peoples.[37]

b. Indirect victim

On the other hand, Principle 2 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, includes within the definition of "victim", the immediate family, affective or economic dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.[38] This category has been adopted, after the made recognition of the pain and suffering of the immediate family or dependents, caused by the direct victim's harm.

Even when this legal instrument clear stipulates that immediate family and dependants (where appropriate) are indirect victims. The interpretation of this conception by each UN body is different. Therefore, a profoundly and exhausting analysis has to be made to demonstrate the precedence of this right. Because, according to some of them, not all the immediate family might be contemplated as a victim. Elements, as the affective or economic dependency with the victim, has to be proved. As well, the direct damage suffered as a consequence of the human rights violation of the victim.

Moreover, regional systems have also accepted this concept. Regarding the Inter-American system, it could be exemplified in the case of the Gómez-Paquiyauri Brothers v. Peru[39], where a victim's family experienced anxiety and impotent in the face of the authorities, due to the torture suffered by the direct victim. Therefore, the Court determined that there was a violation of article 5 of the ACHR, as the

[37] International Commission of Jurists (n 29) 49.
[38] Member States, 'Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power' 7, Principle 2. <https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.29_declaration victims crime and abuse of power.pdf>.
[39] Gómez-Paquiyauri Brothers v. Perú. (Merits, Reparations and Costs), IACtHR, 8 july 2004.

family members suffered cruel and inhuman treatment. As well, the jurisprudence of the ECtHR has made an exhaustive analysis of this concept, as it could note in the case Koolen v. Belgium.[40]

Likewise, is contemplated the other notion of the indirect victim, which refers the people who had suffered harm in intervening to assist direct or indirect victims of human rights violations or preventing the victimization — for instance, lawyers, psychologist and doctors. The most common situation that this kind of victim experimented is harassment or extortion suffered by the victims' lawyers or legal defenders.[41] Besides that, the international jurisprudence affirms that indirect victims of human rights violations can become recognized as a direct victim of another human rights norm violated. An example of this can be appreciated, in those cases where there is still being a lack of action taken by the State responsible for the first violation.[42]

Finally, due to both direct and indirect victims have the same right to redress their human dignity by the harm suffered. There should not exist any substantial difference between these categories.[43] The differentiation has to make it with the sole aim to get the victim's status recognition because this recognition constitutes per se a sort of repair.[44]

D. Concept of reparations

In a literary and straightforward definition, according to the Cambridge English Dictionary, the concept of "reparation" could include two meanings. The first one is

[40] Klass and others v. Germany. (Merits), ECtHR, 6 september 1978.
[41] REDRESS (n 12) 19.
[42] Robouts (n 26) 111.
[43] Working Group on Enforced or Involuntary Disappearances, 'General Comment on Women Affected by Enforced Disappearances' (2012) para 38.
[44] Robouts (n 26) 112.

referring to the act of making up for something wrong that has been done, while the second one indicates money to pay for this purpose.[45]

However, within the framework of human rights, this definition may embrace a broader concept. Before delving the study of this precept, it is essential to mention the three crucial obligations of the State: the obligation to respect, to protect and to fulfil. The duty to respect means that the State must not interfere with the enjoyment of the right. The responsibility to protect refers that the State must safeguard the people for maltreatment and violations of human rights. The obligation to fulfil infers that the country has to take the measures necessary for the development and enjoyment of human rights.[46] Thus, when the State does not comply with these obligations, the legal order is damaged, provoking a new responsibility in charge of the country, the obligation to repair.

In this way, the extinct Permanent Court of International Justice established for the first time in the judgement "The factory at Chorzów" the positive obligation to repair.[47] In other words, the States duty to repair when a breach of international law occurs, deleting all the consequences of the crime and returning the condition to the original situation before the violation's has happened.[48] Hence, this case law has been made essential contributions not only in building and improving the responsibilities of the States but also to the development of reparation's theory in international law.

Due to this, it has served as a base of many international treaties and reports of the UN. The International Courts have also taken this case as a starting point for the establishment of reparations in their jurisprudence. First, to determine the

[45] Cambridge Dictionary (ed), "Meaning of Reparation" (Cambridge University online) Available at: https://dictionary.cambridge.org/es/diccionario/ingles-frances/reparation [Accessed May 14, 2019].
[46] OHCHR, "International Human Rights Law" (OHCHR) Available at: https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx [Accessed May 14, 2019].
[47] "Chorzów Factory" Germany v. Poland (Jurisdiction), PCIJ, 26 July 1927.
[48] Zoraida Lucia and Becerra Becerra, 'La Obligación de Reparar Como Principio Del Derecho Internacional Público' 83, 89.

responsibility of States for possible human rights violations and then for the award of compensation for that injury.

Despite the paradigmatic meaning of the first judgment of reparation, there were not any legal instrument in charge to redress the human rights violation. The only existing reparation's codification in the epoch was focused exclusively on redressing the violations between the States. Nevertheless, in 2005 the Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of gross violation of International Human Rights Law and Serious Violations of International Humanitarian law was proclaimed by the General Assembly resolution 60/147 (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law).[49] This instrument was promulgated as the international instrument in charge to guide the redress in the human rights field.

Therefore, these Principles and Guidelines has the primary function to codify the right to reparation in international law. It is denoting the concept of repair, as the set of measures aimed at remedying a serious and gross violation of human rights. These measures must be adequate, prompt and effective, for the successful redress. At the same time, the guidelines, provide in a substantial and detailed way the different types of remedies and the procedure through which it may access.[50] Likewise, it is essential to highlight that the principal and essential aim of the reparation is healing human dignity. Consequently, these guidelines instituted

[49] Jan Schneider, 'Reparation and Enforcement of Judgments A Comparative Analysis of the European and Inter-American Human Rights Systems' (University of Mainz 2015) 59; UN General Assembly, 'Resolution 60/147 (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law)' (2005) 147 1.
[50] REDRESS (n 12). P.8

the restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as a form of redress the harm and restore the dignity. [51]

Even so, there is not mandatory that a case has to contain all the redress measures. Instead of, to grant appropriate and effective measure the different circumstances of each case have to take into account. Though, full reparation may require reconsidering taking as many actions as possible, if the situation so requires. Additionally, the reparation cannot be represented the enrichment to the victim neither the impoverishment to the perpetrator. As well, part of this notion includes, the necessity to not only provide justice to the people who have been affected by a violation of human rights. Also, an effective system of reparation must contribute to the reestablish the legal order, justice in the society and the rule of law[52] by overcoming the stigmatization and restoring the rupture between victims and society, which typically underpins harm.

E. A General Idea of the Evolution of the right to reparation in the International Public Law.

The article 8 of the Universal Declaration of Human Rights provides that *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."* [53] This affirmation has been essential in reparation's theory, because, even if the above paragraphs have affirmed that the Principles and Guidelines is the exclusive legal instrument to provide the principle and procedure of remedies. This one had would not be possible without the recognition in article 8 of the Universal Declaration.

[51] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2006 (The United Nations) 10, para 18.
[52] High Commissioner for Human Rights (n 11) 10.
[53] Universal Declaration of Human Rights 3; Art.8.

Because as is established in the guideline's preamble, the creation of those has been guided by the Universal Declaration.[54]

As well, article 8 of the UDHR is distinguished for opening the door to the internalization of human rights.[55] In other words, human rights were no longer a matter of exclusively domestic jurisdiction and, at the same time, the international level was no longer focused on disputes and issues between States. It conceded direct participation as actors to every person who was the victim of a human rights violation.

Moreover, as also detailed in the previous concept, the first jurisprudence to include State responsibility and consequently, the concept of reparation has been the case of the Chorzow Factory. Where the PCIJ determined, among other things, that the principle of reparation is a fundamental principle of international law and, therefore, any contravention of a commitment, made by the State entails the responsibility to repair it.[56] It is worth emphasizing that this jurisprudence served as the basis for the subsequent creation of the International Law Commission Draft Articles, from which the codification of the responsibility of the State can be inferred. Besides, this legal compilation of State responsibility is seen as a codification of valid customary international law.[57]

However, both the Principles and Guidelines and the ILC Draft Articles[58], can only serve as a guideline, because they do not have binding force. Despite this, the aim that follows both legal instruments are essential, and therefore, both must be applied in a national and international scope. The ILC Articles must be taken as the

[54] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law para 2.
[55] High Commissioner for Human Rights, Rule-of-Law Tools for Post-Conflict States: Reparations Programmes (2008) 5.
[56] "Chorzów Factory" Germany v. Poland (Jurisdiction), PCIJ, 26 July 1927, 29.
[57] Karl, "Der Vollzug von EGMR-Urteilen in Österreich" 42; Shelton, "Righting Wrongs: Reparations in the Articles on State Responsibility", 4 AJIL 96 (2002), 833.
[58] Dinah Shelton, 'Remedies and Reparation' in Oxford University Press (ed), Remedies in International Human Rights Law (2nd edn, 2005).

starting point on issues of State responsibility concerning breach of any primary obligation, including duties imposed in the field of economic, social and cultural (ESC) rights,[59] whereas the Basic Principles and Guidelines should be taken as a useful tool to identify modalities, procedures and methods for the implementation of existing legal obligations.[60]

On the other hand, there are more UN instruments also contemplate the right to a remedy.[61] They contribute with their provision to strengthening and broadly protect this right at the international level. Every instrument has a different interpretation for the meaning of this term; or sometimes they have the same connotation, and they apply a different synonym of the vocable. The concept of reparation might be establishing like “redress”, “remedy”, and another synonymous. Despite that, the aim and the analysis that all of them have about this principle it is the same “the restoration of human dignity when there is a human rights violation”.

Consequently, the International Human Rights Law has developed an extensive roof of reparations that seeks to repair the vulnerable situation of the victim. These reparations can understand in two important categories measures pecuniary and non-pecuniary. The pecuniary measures are those measures that focus on repairing the material and moral damage. While the not pecuniary measures are base in other subcategories: restitution and rehabilitation, satisfaction and guarantees of non-repetition.[62]

a. Pecuniary

[59] ibid, 367.
[60] ibid.
[61] Article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of International Humanitarian Law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court.
[62] Quintana Osuna (n 3).

i. Compensation

This measure is applicable in the case where are principally involve economic and material damages, like loss of earnings or legal expenses, but also it should be applied to redress appropriately and proportionally the cases where moral, phycological or mental damages exists. As well in cases of lost opportunities, including employment, education and social benefits, will be involved.

Hence, this measure has not a punitive objective; instead of, it aims to calculate in monetary terms the harm suffered by the injured party.[63] Even if these measures include moral and immaterial damages, according to principle 20 of the Basic Principles and Guidelines, its proper application is pointed at material damage. Therefore, this constitutes a clear differentiation between satisfaction and compensation because satisfaction is focused on redress moral damages while compensation will be responsible for restoring the material damage.[64] At the same time, it should note that compensation offers the possibility of transmitted the amount of reparation to the victim's heirs in cases where this party has died.

b. Not Pecuniary

i. Restitution

Restitution is the ideal of the remedies in the theory of the reparation because it aims is to reestablish the situation as it was before the violation occurred. The judgement of Chorzow Factory established this measure as a principle of international law, essential for those who looked for redress as a consequence of an act against international law.[65] Also, this judgment proposed for the first time, the restitution of the situation to the circumstances that would have existed if the violation had not occurred.

[63] REDRESS (n 12) 35.
[64] Schneider (n 49) 64.
[65] Lucia and Becerra (n 48).

However, according to the article 36 of the ILC Draft Article, in the situations where the victim dies, and consequently, it is not possible restoring the situation as it was before the violation occurred. The State or the perpetrator must compensate in money for the damage caused. This legal instrument envisages a limited conception of this remedy that it does not cover losses suffered due to the situation. Thus, to achieve an integral reparation, it has also to contemplates a diverse remedy to redress the harm.[66]

ii. Satisfaction

Satisfaction is the measure that will be applied in cases where neither restitution nor compensation is sufficient to remedy the damaged right, covers a wide range of non-monetary measures. The principal aim is a cessation of continuing violations by measures tending in memory, justice and truth. Point 22 of the Basic Principles and Guidelines, provides an example's list of measures that contribute to a broader and long-term to restore the dignity and the right of the victim.[67]

Moreover, three particular components should highlight in this measure: a) the acknowledgement of the violation, b) the right to know the truth, and c) the declaration of the wrongfulness of the act by the State.[68] The acknowledgement of the violation refers that, some victims of human rights violations, after had suffered the harm they enfaced the process of not being believed of what really happened, therefore the hearing of the victims also constitutes a way to reparation, because as Griswold says, "the human rights violations victims have a strong necessity to be heard, telling their story".[69]

The right to know the truth includes the State's obligation to take all appropriate measures leading to the reconstruction of the facts and the clarification of the truth.

[66] Schneider (n 49) 63.
[67] REDRESS (n 12) 38.
[68] Idem, 38.
[69] Quintana Osuna (n 3) 21.

States must seek the whereabouts of missing persons or their remains to be returned to their relatives when there is no doubt of his death.[70]

On the other hand, the declaration of the wrongfulness of the act by the State could be made by an official declaration to restore dignity. It aims to alleviate the personal suffering of the victims; in some way, both parties may engage in a joint reconstruction of the social fabric.

iii. Rehabilitation

Rehabilitation aims to guarantee victims of human rights violations the restoration of their psychological or mental health. Victims have the right to and should receive the necessary medical, psychological and social assistance and support in the cases of had suffered harm.[71]

iv. Assurances and guarantees of non-repetition

These guarantees have the purpose of assuring the victim that human rights violations will not be repeated. Special Rapporteur Arangio-Ruiz noted that even when this type of remedy does not repair the harm caused by an unlawful act, they are focusing on the reconstruction of the confidence in the society after a breach has occurred.[72] Assurances are usually given orally, while guarantees may require the implementation of practical measures to prevent further breaches of the State obligation.[73]

On the other hand, the regionals human rights protection systems have joint efforts with the universal human rights protection system. This effort can be noted in the jurisprudence of each one. However, this recognition has not constituted the adoption of a standardized approach to reparations. Thus, it is a priority the

[70] United Nations General Assembly (n 31) point 22.
[71] REDRESS (n 12) 36.
[72] Schneider (n 49) 63.
[73] Christian Walter and others, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001)' (2011) II 1465, 89.

analysis of each mechanism's vision. For the purposes of this paper, the European and Inter-American systems will be analyzed.

II. The System of Reparation in the Jurisprudence of the Inter-American Court of Human Rights

The American Convention of Human Rights, as well as the other human rights treaties, are inspired by higher common values focusing on the protection of the human being. These bodies can differentiate from other treaties due to their particular nature endowing with specific monitoring mechanisms. They are implemented following the notion of collective guarantee, enshrine obligations of an inherently objective character, and regulate mutual interests between States Parties.[74] The right of the victims to claim about violations of human rights and in consequences to get an appropriate remedy as the UN basics principles establish is a right that is also contemplated by the Inter-American Human Rights system. This right has recognized by the American Convention of Human Right in article 63, which reads:

> *"If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission."*[75]

Since the beginning, this article provides a broader interpretation of the concept of reparation. The Inter-American human rights protection system has characterized for its notable and developed jurisprudence, in remedies subject, which has made

[74] Constitutional Tribunal v. Peru. (Reparations and Costs), IACtHR, 24 September 1999, para 41; Ivcher Bronstein v. Peru. (Reparations and Costs), IACtHR, 24 September 1999, para 42.
[75] American Convention on Human Rights 'Pact of San José, Costa Rica' 1967 626.

remarkable contributions not only to the national ordinance of their States parties but also in the international. This contribution may understand as the broader and creative catalogue of remedies generated to heal the human dignity of victims who have suffered gross injuries to their fundamental rights. The Inter-American Court of Human Rights has been the body of this system in charging of making these improvements.

Likewise, the Court has established a critical criterion regarding the victim's obligation to ask for a remedy. This mean, the State must repair the violations of human rights, but also the victim should ask for a remedy. As well, besides the primary role that the Court has to condemn States who fail to comply with their human rights obligations. The Court also has expanded the power to guarantee the restoration of the enjoyment of the injury party right conferred by Article 63(1) of the ACHR. In other words, besides the judge's power, the Court also may order an effective redress, if it determines that any of the rights established by the convention have been violated.

Furthermore, this development has served as a breakthrough by the rule of law's consolidation in Latin-American. Its benefits and uses are notable, in the individual and collective dimension. For instance, measures as financial compensation, scholarships, medical and psychological attention, are part of the individual practice, while legislative amendments, human rights educations, re-open of schools, are some clear examples of the collective advances.[76]

Also, the IACtHR's evolution has always been guided by the principles of international human rights law. The scope, nature, actions, measures, and the determination of beneficiaries have always been within the limits of international law has installed.[77] The tribunal has adopted as an essential part of its progress

[76] Jorge F Calderón Gamboa, La Evolución de La 'Reparación Integral' En La Jurisprudencia de La Corte Interamericana de Derechos Humanos (Comisión Nacional de los Derechos Humanos ed, 1st edn, 2013) 12.
[77] Neira Alegría and others v. Perú (Reparations and Costs), IACtHR, 19 september 1996, para. 37; American Convention on Human Rights, Article 63.1.

the international standard, with contemplates reparations as part of a customary norm. This norm constitutes one of the fundamental principles of contemporary international law on State responsibility. Therefore, under the *Pacta sunt servanda* principle, States are to carry out their international law obligations in good faith.[78]

Consequently, the States cannot modify the judgment invoking their domestic law; on the contrary, they have to fulfil all the requirements that the Court's orders in the way of reparation. This obligation is also covered by the articles 26 and 27 of the Vienna Treaty Convention which demand that every treaty in force is binding upon the parties to it and must be performed by them in good faith without any excuse of their domestic law.[79] Hence, the State must abide by what has accepted as abound in the treaties and conventions it has signed.

On the other hand, the draft of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law written by Theo van Boven and Cherif Bassiouni is one of the most remarkable Statement that shows the influences of the jurisprudence of the IACtHR in the international field. The authors have based on the experience of the IACtHR to provide a real solution to the harm suffered from the human rights victims. As well, they took advantage of the Court's case law to design a catalogue with the diverse ways of how a State could repair a violation efficiently.[80] Before the creation of this guide, they were not any parameter in reparation subject.

The first time that the IACtHR acknowledged the reparation as a right was in the Velásquez Rodríguez v. Honduras case.[81] Even though the Court has been a

[78] Pérez-León-Acevedo Juan Pablo, '"The Situation of Reparations in the Inter-American Human Rights System : Analysis and Comparative Considerations"' (2016) 20 ASIL Insights 1, 1.
[79] United Nations, 'Vienna Convention on the Law of Treaties, United Nations, Treaty Series.' (1969) 1155 United Nations, Treaty Series 331, Art. 26. Art 27 <http://www.refworld.org/docid/3ae6b3a10.html>.
[80] Van Boven (n 13).
[81] Velásquez Rodríguez v. Honduras (Merits, Reparations and Costs), IACtHR, 21 July 1989, para 25.

pioneer in the implementation of integral remedies, in this case, it was only ordered economic compensation as a remedy. Nevertheless, this was the first time recognized not only the obligation to the State to prevent, respect and punishment in the case of violation but also the obligation to repair. Therefore, this judgement marked a paradigm in the development of the Inter-American system. As well, this invention helped to the involvement and influenced the domestic law of the State's parties in the human rights field.

Even if the traditional remedy has been the economic compensation, through the years, the international community has raised the need for more effective measures which help to heal human dignity.[82] In the Latin-American system, the different factors and the socio-political context of the countries, made the Court consider a broader analysis. For instance, the cases regarding enforced disappearance caused a massive impact on the interpretation of the Court. The disposed of that the enforced disappearance phenomenon represented a direct violation for the *jus cogens* principle, because it occurred in the context of a systematic practice of "State-sponsored terrorism," at a regional level'.[83]

Hence, the IACtHR found itself in dire need to create a more detailed and analytical jurisprudence practice concerning the healing of human dignity, adopting the criterion of granting integral reparation. As Judge García Ramírez argues "It is interesting to note how progress has being made in the area of reparations in each new judgement on the matter issued by the Court, and even in decisions on the merits."[84]

Besides, the Court also has recognized the different categories of victims, direct and indirect[85], adopting the same criterion that the universal protection system does. Nevertheless, the Court has developed its law in cases where the benefit of

[82] Shelton (n 58).
[83] Gelman v. Uruguay, (Merits, Reparations and Costs), IACtHR, 24 February 2011, para 99, 131.
[84] Sergio García Ramírez, 'Las Reparaciones en la Jurisprudencia de la Corte Interamericana de Derechos Humanos' (1999) 131.
[85]Cesti Hurtado v. Perú (Merits, Reparations and Costs), IACtHR, 31 May 2001, para 54; Garrido and Baigorria v. Argentina (Merits, Reparations and Costs), IACtHR, 27 August 1998, para 50.

reparation passes to the victim's heirs.[86] The cases where the victims had died, the right to receive reparation passes automatically to the successors.[87]

The victim may participate autonomously and independently in all stages, as well as in the hearings and closing arguments. Also, this party has access to intervene in the hearing presenting its claims for reparations.[88] Nevertheless, during the process in faced of the Court, the victims will be represented all the time by the Inter-American Commission on Human Rights.

Moreover, another contribution that this system has made could be noted in the significant number of cases related with the injuries against civil and political rights or criminal cases as torture, extrajudicial killings or executions, enforced disappeared, that in the past were occupied the attention of the Court. Nonetheless, currently, the decisions regarding the gross violation of social and economic rights have increased meaningfully in the judgments of the Court.[89] For instance, the Kaliña and Lokono Peoples v. Suriname case, the Court found serious violations of the rights to collective property, to home, and the guarantee of effective participation.

Furthermore, the recognition of the injury party, is also essential to identify the type of damage within the framework of the reparation theory. Because depending on the damage, it will be the form to redress it, also the way will fit the quantum of the reparation.

The IACtHR's practice as well has shared the criterion establishes by the UN Principles and Guidelines. Thus, it has classified the type of damages in two main

[86] Robouts (n 26) 107.
[87] Velásquez Rodríguez v. Honduras (Merits, Reparations and Costs), IACtHR, 21 July 1989.
[88] Calderón Gamboa (n 76) 17.
[89] Kaliña and Lokono People v. Suriname (Merits, Reparations and Costs), IACtHR, 25 November 2015.

categories: pecuniary damages and non-pecuniary damages.[90] Regarding the first category, the Court has repaired damages including emergent damage, loss of profit, damage to the family patrimony and reimbursement of costs and expenses while the other variety of damage has understood the moral, psychological, physical, life plan and collective or social spheres.

Material damage

This term was implemented for the first time by the Permanent Court of International Justice (PCIJ) in the Chorzów Factory case, "Material damage denotes to injury to property or other interests of the State and its nationals which is assessable in financial terms."[91] For material damage, the IACHR takes typically into account *damnum emergence* (actual loss), loss of earnings, *lucrum cessans* (future, expected loss) and damage to family patrimony.[92] In all cases, reparation may consist of the award of an amount of money in economic compensation.

However, sometimes, the Court also has ordered other kind of measures, such as restitution, rehabilitation or satisfaction.[93] The standard condition that the Court requires is to prove the causal link between the damage claimed, and the violation suffered.[94]

Damnum Emergens (actual loss)

They are all the direct and immediate expenses incurred by the victims or their representatives in order to redress the wrongful act or to cancel its effects. Examples of this type of damage may be: fees for the steps taken by the victim's relatives in different locations, quantifiable medical and psychological payments,

[90] Schneider (n 49) 101.
[91] "Chorzów Factory" Germany v. Poland (Jurisdiction), PCIJ, 26 July 1927.
[92] Ivan Dimitrijević, 'Remedies for Human Rights Violations in Jurisprudence of the European Court of Human Rights and Their Execution by Members States. LLM International and European Law Master Thesis' (Tilburg University 2017) 9.
[93] Ituango Massacres v. Colombia (Merits, Reparations and Costs), IACtHR, 1 July 2006, para. 375.
[94] Ricardo Canese v. Paraguay (Merits, Reparations and Costs), IACtHR, 31 August 2004, para. 203.

expenses incurred for the death of a person (funeral expenses), costs related to the procedures carried out to clarify the causes of the events,[95] travel costs incurred by families to visit the victim during the deprivation of liberty.[96] The Tribunal has insisted in the need to prove the existence of the causal link between the injuries and the facts reported.

Loss of earnings or Lucrum Cessans (future, expected loss)

The Court has conceived this type of damage as the income that the victim has lost cause as a result of the violation. As well in the cases of extrajudicial execution or forced disappear where the victim had died it defines as the income that the person could receive during his or her probable life.[97] The calculation for the surviving victims is based on the time that the victim remained without work as a consequence of the violation. On the other hand, the Court has recognized how difficult it can be to prove this affectation, thus it has established that wage for the corresponding activity in the country must be taken as the basis, in the absence of precise information on the real income. The IACtHR also considers the work and the conditions that the victim was doing at the time the violation was committed, for instance, if the victim was studying or was an employment.[98]

Damage to family patrimony

This type of damage occurs when as a result of the illicit facts, the victim and her/his family members incurred in expenses.[99] It implies a substantial change in living conditions and quality of life resulting from the direct consequence of the

[95] "Street Children" v. Guatemala (Reparations and Costs), IACtHR, 26 May 2001, para. 80.
[96] Cantoral-Benavides v. Peru (Reparations and Costs), IACtHR, 3 December 2001, para. 51.
[97] Anzualdo Castro v. Peru. (Reparations and Costs), IACtHR, 22 September 2009, para. 213.
[98] Velásquez Rodríguez v. Honduras (Reparations and Costs), IACtHR, 21 July 1989, para. 47.
[99] Claudio Nash Rojas, Las Reparaciones Ante La Corte Interamericana de Derechos Humanos (1988 - 2007) (Second Edi, University of Chile 2007) 46 <http://www.libros.uchile.cl/files/presses/1/monographs/389/submission/proof/files/assets/common/downloads_a11f2144/page0001.pdf>.

violation not only for the victim but also for her/his family.[100] The abandonment of the parents and family's work, relocation expenses due to the exile of the family, loss of possessions, social reincorporation, as well as detriment to the physical, psychological and emotional health of the affected family, are clear examples of this kind of damage.

Immaterial damage

For immaterial damage, the Tribunal assesses psychological or physical damage. Likewise, in a strict way the Court has developed this concept as *"the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms."*[101] It is essential to highlight the recognition made in this concept to heal not only the suffering experienced by the victims, but also the transgression of the values significant for them. Thus, this precedent marks a great contribution made by the Court, because it takes the victim as a whole, where subjectivity and self-esteem should be considered when determining the scope of reparations.[102]

In the same way, the denial of justice is a conception of this type of damage that the Court provides as an innovative. The Court argues that the persistent lack of justice and impunity affects the psychological and moral integrity of the victims, causing immaterial damage evidenced by frustration and other psychological and emotional injury.[103] Besides, the Tribunal has established that situations such as torture, aggression, enforced disappearance and others, the anguish, terror, impotence and insecurity of the victim become evident. Therefore, the standard of

[100] Baldeón-García v. Peru (Merits, Reparations and Costs), IACtHR, 6 April 2006, para. 186.
[101] "Street Children" v. Guatemala (Reparations and Costs), IACtHR, 26 May 2001, para. 84.
[102] Rojas (n 99) 53.
[103] Almonacid-Arellano et al. v. Chile (Merits, Reparations and Costs), IACtHR, 26 September 2006, para. 124.

burden of proof on the victim is more flexible, and it is not mandatory to prove such circumstances.[104]

Moral and Psychological (Pain and suffering)

The IACtHR conceives the moral damage as a subcategory of the immaterial damages. The Court considers that moral damage is compounded by damage to honour, suffering and pain resulting from injury, arising as a result of the humiliation to which the victim is subjected, when his/her human dignity is unknown. On the other hand, the psychological damage is formed by pathological alterations of the psychic apparatus as a consequence of a trauma derived from the violation of human rights suffered by the victim.[105]

The Moral harm is usually repaired employing economic compensation, although mainly in the case of serious and massive violations of human rights, the investigation, prosecution and eventual punishment of those responsible also play an essential role as reparation for moral damages, depending on the characteristics of the case.[106] While in the cases of the phycological damage the rehabilitation plays the central role in this kind of damage.

Damage caused to the victim's life plan

Within the Court's broad interpretation of the possible damages suffered by a victim, the concept of damage to the life project has been included. It was developed for the first time in the case of Loayza Tamayo v. Peru.[107] The disturbance or affectation to the victim's goals as a consequence of the violation of a human right configured this damage. In other words, the life plan is the future

[104] Case of the 19 Merchants v. Colombia. (Reparations and Costs), IACtHR, 5 Jul 2004, para. 248.
[105] Velásquez Rodríguez v. Honduras (Reparations and Costs), IACtHR, 21 July 1989, para. 51.
[106] Contreras and others v. El Salvador. (Merits, Reparations and Costs), IACtHR, 31 August 2011, para. 185.
[107] Ibid.

possibilities of a person, to achieve his/her objectives or life plans set by him according to his aptitudes, capacities and circumstances. The damage is configured by disruption a person from achieving his or her life project.[108] The Inter-American Court is a forerunner in interpreting and contemplating this criterion.

Collective

This damage is defined as the violations that affect a group of people in their capacity as a community. Collective damage affects the social fabric formed by these groups, which the State must repair jointly. These damages have been conceived mainly in cases of massacres or the rights of indigenous and tribal peoples or other collectives. In most of these cases, the Court has determined redressed through restitution measures.[109]

A. Integral reparations measures

Firstly, the Court has settled that the judgment declaring a violation of human rights constitutes *per se* a form of repair[110]. However, in practice, this is the beginning of the list of reparations measures that it imposes. Likewise, as international jurisprudence has established the reparation par excellence is *restitutio in integrum.* Nevertheless, when the *restitutio in integrum* will not possible (as in most cases it is not), the Inter-American Court will order the State to adopt other measures to redress *"the consequences of the situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."*[111]

Consequently, as previously mentioned, Article 63 of the Convention gives the Court a broad mandate to act in the area of reparations, sanctioning not only acts

[108] Loayza Tamayo v. Peru. (Merits, Reparations and Costs), IACtHR, paras. 148 y 149.
[109] Mayagna (Sumo) Awas Tingni Community v. Nicaragua (Merits, Reparations and Costs), IACtHR, 31 August 2001.
[110] "Las Dos Erres" Massacre v. Guatemala (Merits, Reparations and Costs), IACtHR, 24 November 2009, para 290.
[111] American Convention on Human Rights 'Pact of San José, Costa Rica' Art. 63 (1).

that damage dignity but also imposing actions to repair it. Therefore, unlike other systems, the Court does not cover a subsidiary role before the States instead of that it interprets and directly imposes the forms and measures to be adopted by the perpetrator to grant effective reparation. In order to achieve this objective, the Court has insisted on the need to adopt integral reparation. Which means that in addition to the economic compensation provides in Article 63(1), other types of measures that adjust to the reality and the specific case of the violation, must be taken into consideration.

Thus, the Tribunal has held that integral reparation is only possible to achieve when the measures provide to the victim a satisfaction beyond financial compensation. For instance, the recognition of the responsibility of the State, avoiding the State from enforcing a fine imposed to the victim, providing psychological and medical care and treatment to victims and relatives of victims, the award of scholarships, are practical and clear examples of effective measures. Likewise, these measures have to be aimed to avoid repetition in the future of facts of that nature: legislative changes, human rights education of State officials, investigate and sanctioning of those responsible for facts, implementation of a register of detainees, among others.[112] The first time that the Court considered to use integral reparation was in the case of Aloeboetoe and others v. Suriname, wherein the form of reparation that the Court ordered was reopen a school, and in this way, the children of the victim could receive education.[113]

Hence, the different ways of repairing vary according to the injury produced. Based on the United Nations "Basic Principles and Guidelines" for Reparation, the Court has classified integral reparation measures as follows: restitution, rehabilitation,

[112] Centro por la Justicia y el Derecho Internacional (CEJIL), 'Las Reparaciones En El Sistema Interamericano de Protección de Los Derechos Humanos' [2004] Revista CEJIL 1.
[113] Aloeboetoe and others v. Suriname (Reparations and Costs), IACtHR, 10 September 1993, para. 96.

economic compensation, satisfaction, guarantees of non-repetition, obligation to investigate, prosecute and, punishment and litigation expenses.[114]

a. Restitution

The reparation theory has established that "reparation" is a secondary right, which is born as a consequence of the primary right violations. Thus, the ideal is that the violation had not happened, because in this way, the primary right still being intangible. Nevertheless, when this is not possible, and the violations occurs the most suitable remedy is to restore the things to the State they were in before it occurred. In other words, the IACtHR conceives the restitution as the action to restore the situation that existed before the violation. This concept covers both material restitution and restitution of rights.[115]

The IACtHR has ordered an endless number of measures of restitution. Due to the needs and violation of the victim will be the measure to adopt by the Court. The following are some examples of this: return the victim to work and pay wages and other benefits, from the day of detention until the date of the Court's judgement; the restoration of a person's freedom; order the State not to execute a fine imposed on the victim; ensuring the full enjoyment of the victim's right to retirement; the reinstatement of the position held by the victim before to the violation of human rights suffered; ensure that internal decisions advising the victim, do not produce legal effects; allowing the exhibition of a film[116]; the elimination of criminal or disciplinary records[117].

Besides, this kind of measures have been more visible in the cases involves Indigenous peoples and tribal violation's rights. The Court has disposed that

[114] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
[115] Calderón Gamboa (n 76) 46.
[116] Centro por la Justicia y el Derecho Internacional (CEJIL) (n 112) 2.
[117] Acosta Calderón v. Ecuador (Merits, Reparations and Costs), IACtHR, 24 June 2005.

restitution of the land has constituted the fundamental way to address the claims and damages to these groups of victims.[118] Even, the most recent contribution of the Court within this measure has undoubtedly been the reunification of illegally abducted children with their parents[119]. Consequently, these examples can prove how involved is the Court in the process to find a fair and effective redress.

Nonetheless, in some cases, the Tribunal has imposed some measures as a reinstitution way, but it could be also fit in another measure's category, although the effects will be the thing to analyse. For instance, the persisting and permanent implementation of education and training programmes and courses on issues such as human rights and gender.[120]

b. Rehabilitation

Before describing this measure, it is indispensable to point out that public health remains a non-existent concept in most Latin American countries. Even though countries such as Mexico, Colombia, Peru[121] or some other American States have implemented universal health coverage plans, yet the existing gap with Europe remains abysmal. Therefore, the recovery of the physical or physiological damages to the human rights violation's victims have become another difficulty.

Hence, rehabilitation measures offer the victim the opportunity to have medical, physiological and physical access, which the State in a normal situation would not provide. Also, this category has to include legal and social assistance. This measure can be collective or individual.

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[118] Sawhoyamaxa Indigenous Community v. Paraguay (Merits, Reparations and Costs), IACtHR, 29 March 2006, para 210.
[119] Contreras and others v. El Salvador (Merits, Reparations and Costs), IACtHR, 31 August 2011, para 195.
[120] "Cotton Field" v. Mexico (Merits, Reparations and Costs), IACtHR, 16 November 2009, para. 22.
[121] Giorgi Jerónimo, "La Recaudación Impositiva En América Latina Es Baja." [2017] El Observador Available at: https://www.elobservador.com.uy/nota/-como-es-la-salud-en-america-latina—2017127500 accessed May 10, 2019.

The Tribunal has imposed the State providing rehabilitation either through public or private institutions, but always free of charge to the victim. In the same way, in the case where the victim does not live in the perpetrator State, the IACtHR has determined that the State must pay a monetary sum to the victim. So, in this way, the victim can take the pertinent rehabilitation, it could be psychological or medical, in the State where she resides.

Furthermore, there are some cases where the Tribunal has interpreted this measure beyond medical and psychological rehabilitation. For instance, in Xákmok Kásek v. Paraguay, the Court determined the supply of drinking water, adequate food supplies, medicine supply and sanitary facilities.[122]

c. Economic compensation

This type of measure is settled in article 63.1 of the Convention, and it could understand both material and immaterial damages.[123] Regarding the material damages, the Court has analysed the patrimony consequences causing by human rights violations. The Court has made this analysis based on two main captions: the emerging Damage and Loss of Profit. Examples of this could be the lost patrimony causing by the human rights violation, as well the loss of the detriment earnings of the victims.[124]

On the other hand, regarding moral damages, the Inter-American Court understands that this comes from the psychic effects suffered as a consequence of the violation of rights and liberties. Since it is evident and proper to human nature that any person subjected to aggression and injuries experiences moral suffering, this category is not necessary to prove it when the victims are close relatives or the

[122] Xákmok Kásek v. Paraguay (Merits, Reparations and Costs), IACtHR, 24 August 2010, para 301.
[123] Calderón Gamboa (n 76) 81.
[124] Ramírez (n 84) 144.

effective family treatment were evident.[125] Consequently, material damages are quantifiable in monetary terms and recoverable in the same way. Nonetheless, this is not the case for morals, which are unquantifiable by their nature. However, monetary compensation is admitted in the absence of a better one or combination with any other measure.

Moreover, following the established line by the international doctrine of human rights, the Court has found that compensation has a compensatory character aiming to heal the injured victim, but not punitive.[126] Therefore, the *punitive damages*, which would correspond more to a fine than to reparation, are excluded.[127] Likewise, it has also clearly established that a correct compensation "cannot imply enrichment or impoverishment for the victim or his successors, and must be linked to the violations declared in the Judgment".[128]

The Court has estimated that the particular circumstances of the case will determinate the nature and amount of compensation. Thus, it insists on the needed to analyse each one individually. However, in practice, the IACtHR has established the precise manner in which compensation will be calculated. Therefore, the victim's claims and the evidence provided will be guiding this criterion.

Notwithstanding, sometimes, due to the passage of time or other various factors, it is not possible for the victim to reliably prove the losses suffered. In these situations, the Court can calculate based on equity the amount that the State will have to pay for this concept.[129]

d. Satisfaction

[125] Aloeboetoe et al. v. Suriname (Reparations and Costs), IACtHR, 10 September 1993, para. 52.
[126] Godínez Cruz v. Honduras (Reparations and Costs), IACtHR, 21 July 1989, para. 36.
[127] Ramírez (n 84) 144.
[128] "Cotton Field" v. Mexico (Merits, Reparations and Costs), IACtHR, 16 November 2009, para. 450.
[129] González Medina and family v. Dominican Republic, (Merits, Reparations and Costs), IACtHR, 27 February 2012, para. 313.

According to the judgement “Cotton Field” v. Mexico, these measures do not have a pecuniary scope but a public repercussion. They aim to repair the dignity of the victim, healing the suffering and distress caused by the violation and any alteration, of a non-pecuniary nature. As well, it seeks the recognition of the dignity and reincorporation of values very significant to persons, helping redirect its life or memory in the conditions of existence of the victims.[130]

Furthermore, the Court insists once again that the example of a measure of satisfaction for excellence is the judgement itself.[131] Because there are condemned the human rights violations, is judged the perpetrator, it also recognizes the violation of human dignity and establishes the way for the healing the injury. As mentioned by Judge Sergio García Ramírez, satisfaction seeks in a broad sense to compensate for the detriment of non-patrimonial goods. While an abstract sense provides specific measures to rescue and preserve the honour of the victim on the community.[132]

Due to this measure is focusing on restoring the victim’s dignity and memory through the truth and justice, it could be achieved in diverse ways. The most prominent ways in which the State can perform these acts are through public recognition of the violation, publication of the sentence in the official gazette and the newspaper with the largest circulation. In addition, occasionally the Court has ordered the public translation of the judgement into the victim’s language, and a summary of it aiming to becomes more comprehensible to all readers.[133]

On the other hand, the Court has implemented as measures of satisfaction the tributes or commemorative acts, through actions that rescue the memory of the victims, especially in cases of violations to the right to life, freedom and torture. For

[130] De la Cruz Flores v. Peru, (Merits, Reparations and Costs), IACtHR, 18 November 2004, para 164.
[131] “Cotton Field” v. Mexico (Merits, Reparations and Costs), IACtHR, 16 November 2009, para. 582.
[132] Ramírez (n 84) 156 para 2.
[133] Tiu Tojín v. Guatemala, (Merits, Reparations and Costs), IACtHR, 26 November 2008, para. 108.

instance, building a monument in commemoration of the victims[134]; naming a street, plaza or school by the victim's name in memory of them[135]; the production of a documentary video on the life of the victim or victims, or some subject related to the specific case[136]. The Court has argued that relevance of this specific measure lies in the recovery and re-establishment of the historical memory for a democratic society.[137]

Moreover, the Tribunal has established within its judgement the obligation to grant scholarships, including living expenses or other costs corresponding to eventual tuition and educational material, in favour of the victims and their families. As well, the creation of social programs or development funds, implemented from the national budget, are part of this measure.

Similarly, as happens with public health, public education is a right that is restricted in many Latin-American States. Even if this right is recognized, the conditions and circumstances for granting it universality are not provided. Therefore, this measure of satisfaction has marked a significant advance in Latin America, carrying benefits not only to the victims, but also the population in general.

e. Guarantees of non-Repetition

The main propose of this measure is to avoid the recurrence of the actions that gave rise the violation. It has been created as an assurance that the victim would not have injured their rights again. The establishment of this measure has been focused in those States that have a high level of recurrence in the human rights violation, because of their politics, the absence in the human right's education in

[134] "Cotton Field" v. Mexico (Merits, Reparations and Costs), IACtHR, 16 November 2009, para. 471.
[135] "Street Children" v. Guatemala (Reparations and Costs), IACtHR, 26 May 2001, para 103.
[136] Contreras and others v. El Salvador. (Merits, Reparations and Costs), IACtHR, 31 August 2011, para. 210.
[137] The "Gómez-Paquiyauri Brothers" v. Peru. (Merits, Reparations and Costs), IACtHR, 8 July 2004, para. 236.

the executive level, corruption or weak legislative and judicial measures against human rights violations.

Consequently, the Court, as part of this measure, has mainly ordered the amendment of the legislation in the countries. As well, it has insisted the need to an independent and impartial judicial power, which means effective control of the police and army forces. A clear example of how this measure has been implemented could be seen in the case of "Radilla Pacheco v. Mexico" where the Court determined the typification to the enforced disappearance figure in the criminal code.

Thus, it marked a notable improvement not only in this country but also in the rest of Latin-American. Likewise, the IACtHR held that if this crime is already criminalized, it should be modified if the essential requirements for proper investigation and prosecution are not met.[138]

Moreover, the Court has placed particular emphasis on cases involving persons deprived of liberty. Thus, the adoption of appropriate measures has been ordered to "strengthen existing control mechanisms in State arrest centers, to guarantee adequate arrest conditions and respect for the due process of the law".[139] As well, the Court has estimated the obligation to the State to take action in the improvement of prison conditions compatible with human rights and international law.[140]

On the other and, other measures adopted by the Court as a guarantee of non-repetition are the training programs for State officials. The proposing of this measure is to provide new knowledge and skills in innovative situations aiming to offer specialization and better performance in the task assigned, in adherence to

[138] Palamara Iribarne v. Chile. (Merits, Reparations and Costs), IACtHR, 22 November 2005, para. 254.
[139] Gutierrez Soler v Colombia (Merits, Reparations and Costs), IACtHR, 12 September 2005, para. 112.
[140] Yvon Neptune v Haití. (Merits, Reparations and Costs), IACtHR, 6 May 2008, para. 183.

human rights.[141] These programs are mainly aimed at judges, magistrates, judicial auxiliaries, public ministries, police, the armed forces, doctors, psychologists, prison officials and others. Likewise, the Court has ordered the education and creation of programmes focusing on the general society to create awareness and sensitize on women's rights, gender and stereotypes.[142]

Finally, regarding this measure, the Tribunal has decreed the duty to protect human rights defenders as well as vulnerable groups for their work, such as professionals in law and health. Likewise, according to the International Human Rights Law, the guarantees of non-repetition not only seeks to avoid the facts of the violation happening again to the victim but also, they have a general scope. In other words, they tend to prevent harm to any other person.[143]

f. Obligation to investigate, prosecute and, punishment.

This measure finds its legal basis in the articles 8 and 25 of the ACHR, which provides the right to access to justice, and consequently imposed the obligation to investigate and if it is the case prosecute and punish a human right violation.[144] Under this duty, States must effectively investigate the facts in order to identify, judge and punish the material and intellectual perpetrators of the injuries. As well, it has to grant full access and capacity to act at all stages and instances of investigations to victims and their families.[145]

However, this reparation measure is considered one of the most complex, because, in principle, it seeks to combat impunity. Due to this complexity, the obligation to investigate is one of the most developed and necessary measures

[141] Radilla Pacheco v. Mexico. (Merits, Reparations and Costs), IACtHR, 23 November 2009, para 346.
[142] "Cotton Field" v. Mexico (Merits, Reparations and Costs), IACtHR, 16 November 2009, para. 543.
[143] Juan Carlos Abreu y Abreu, La Victimología a La Luz de Los Derechos Humanos, vol 12 (2016) 36.
[144] American Convention on Human Rights 'Pact of San José, Costa Rica' Articles 8 & 25.
[145] Caracazo v. Venezuela (Merits, Reparations and Costs), IACtHR, 29 August 2002, para. 118.

ordered by the IACtHR. The Court has pointed out that the denial of justice in the face of serious violations of human rights generates various effects, both individually and collectively. Because this "propitiates the repetition of human rights violations and the total helplessness of the victims and their families"[146], as well it provokes an impact of insecurity and legal uncertainty for society in general.

This investigation should include all actors and perpetrators who had been involved in the violation of human rights. Likewise, it must remove all obstacles that hinder, divert or unduly delay investigations aimed at clarifying the truth of the facts. That is to say, the investigation must be an integral investigation: a) a criminal investigation that establishes the main actors[147]; b) an administrative investigation that clarifies those responsible for hindering or delaying the procedure[148]; and finally, c) an investigation that leads to the whereabouts of the victim.[149]

Although the right to know the truth is a form of reparation; it is not satisfied if those responsible for the obstruction of the procedure are not punished. Thus, the duty to investigate is complemented by the duty to punish when so warranted by the case. Similarly, as happens with the right to investigate, the right to punish must include criminal and administrative sanctions. Therefore, States must adopt the necessary provisions of domestic law to ensure compliance with this obligation.[150]

In addition, the Court has insisted that part of this remedy includes a prohibition to adopt measures tended to obstruct criminal prosecution or to abolish the judgement's effects. For instance, amnesties laws, internal figures and institutions that exclude responsibility, legislation that contemplates the prescription of crimes

[146] Las Dos Erres" Massacre v. Guatemala (Merits, Reparations and Costs), IACtHR, 24 November 2009, para. 201.
[147] Ibid., para 183.
[148] Ibid., para 133.
[149] Goiburú et al. v. Paraguay (Merits, Reparations and Costs), IACtHR, 22 September 2006, para. 171.
[150] Barrios Altos v. Peru. (Merits, Reparations and Costs), IACtHR, 30 November 2001, para. 42.

and others.[151] Regard to the latter case, the Court has established that the statute of limitations does not apply to serious human rights violations.

In order to clarify the truth of the facts, the Court has settled that the State must strengthen its investigative capacity. Hence, it requires to be endowed with all the logistical, human, economic, professional, technical and technological resources for the effective fulfilment of its obligation.[152] Likewise, the State must not only remove the obstacles and mechanisms of law and fact that maintain impunity, but also it must grant security guarantees to society in general, mainly witnesses, judicial authorities, prosecutors, other operators of justice and the families of the victims. The State must use all the measures at its disposal to guide the process in a fair, prompt and expeditious manner.[153]

g. Costs and Expenses

The Court has contemplated this remedy as an acknowledgement of the expenditures made by victims in accessing international justice. In other words, it is a way to compensate the national and international processing expenses causing by the human rights violation. These expenses include the costs of lawyers, national and international transfers of victims to the Commission and the Court and others. Even though this is an independent measure and is not part of the pecuniary's measures catalogue, it is mandatory to prove the costs incurred, the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights.[154]

Correspondingly, the way to fix the quantum may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided

[151] Castillo Páez v. Perú. (Merits, Reparations and Costs), IACtHR, 27 November 1998, para. 105.
[152] Carpio Nicolle and others v. Guatemala. (Merits, Reparations and Costs), IACtHR, 22 November 2004, para. 134.
[153] Myrna Mack Chang v. Guatemala. (Merits, Reparations and Costs), IACtHR, 25 November 2003.
[154] Garrido and Baigorria v. Argentina (Reparations and Costs), IACtHR, 27 August 1998, para. 254.

that their quantum is reasonable.[155] Nonetheless, similarly as happens with the economic compensation, in the cases that it is not possible for the victims to prove it. The Court will exclusively calculate the quantum base on the equity's criterion. They are always taking into account the proportionality principle.

On the other hand, it is essential to highlight that due to the absence of a tabulator table of international fees, the inconvenience of this measure became remarkable. Although there are national tabulator's tables, these only indicate a minimum that generally does not correspond to the fees charged by lawyers and much less regarding with the cases handled before an international tribunal. Consequently, this measure is effective for the victim. As well, this remedy contemplates the future expenses that may be incurred internally or during the Judgment's supervision compliance.[156]

Additionally, in order to facilitate access to the inter-American human rights system for those who currently do not have the resources necessary to bring their case to the Commission or the Court, the Legal Assistance Fund of the Inter-American Human Rights System was created in 2008 by the OAS.[157] Likewise, this fund function as financially subsidiary victims who lack sufficient monetary resources to present their Statements before international bodies provided that the victims comply with the requirements established in their regulations.[158] In this case, the Court will evaluate and, if it is necessary, order the responsible State to reintegrate the expenditures incurred into the Legal Assistance Fund corresponding to the Court.

Finally, it is essential to include this measure within the catalogue of the IACtHR´s remedies, because a very elaborate system of remedies and guarantees before

[155] Fleury and others v. Haití. (Reparations and Costs), IACtHR, 23 November 2011, para. 150.
[156] Xákmok Kásek Indigenous Community v. Paraguay (Reparations and Costs), IACtHR, 24 August 2010, para. 329.
[157] Oas, "Organization of American States: Democracy for Peace, Security, and Development" (OAS August 1, 2009) <http://www.oas.org/en/iachr/mandate/basics/fund.asp> Accessed: June 15, 2019.
[158] Barrios Family v. Venezuela (Merits, Reparations and Costs), IACtHR, 24 November 2011.

the Courts would be useless if individuals did not have enough resources to access to it.[159] As well, this is a common practice within the domestic law, thus the Court has considered applying too in the international field. However, part of the requirements is that the victim has to be the one who requests it, as is the case in domestic law.

Previously this benefit was paid directly to the victim's representatives. Currently, this view has been modified, and the Tribunal reimburses these expenses directly to the victim so the victim can make the corresponding payments. As argued by Judge Sergio García Ramírez in his concurrent opinion in Herrera Ulloa v. Costa Rica:

> "it is not the function of the Court to assess the performance of the legal advisors and to order that payment be made to them directly. This has to be decided by the person who retained their services and who was at all times abreast of their work and their progress. The Court did not order direct payment of fees to physicians who attended the victim, or payment of any other considerations to certain parties. It is the victim, using the sum that he receives, who can best determine what is owed or what is equitable."[160]

On the other hand, as a part of the procedure, it is essential to point out that in the first instance it is the Commission and the victim herself/himself who request the reparation measures from the Court. As well, sometimes the State itself offers ways in which it considers that human rights violations can be remedied. Although, the Court emphasises the transcendence of the victim's interest, it cannot only grant all applications. The Tribunal must conduct an in-depth study the causal nexus, the claim violations and the type of suffered damage.[161]

Additionally, as in any controversy, the resolution of the conflict will always privilege through non-contentious means. Since the parties are who better know

[159] Ramírez (n 84) 149 para 3.
[160] Herrera-Ulloa v. Costa Rica (Merits, Reparations and Costs), IACtHR, 2 July 2004, Series C no. 107, para 40 concurring opinion of Judge Sergio García Ramírez.
[161] Kichwa de Sarayaku Indigenous Community v. Ecuador. (Merits, Reparations and Costs), IACtHR, 27 june 2012, Serie C, no. 245, para. 281.

their needs, it is in principle available to the parties through a friendly settlement to reach an agreement that best meets their interests. Consequently, the Inter-American system encourages the parties to carry out this procedure before establishing a contentious procedure.[162] The Commission will supervise and, if necessary, warn whether the proposed agreement represents a reasonable solution regarding protection and redress for the violated rights, always guided by the *pro homine principle*.[163]

However, the jurisprudence has settled that even if the parties reach an agreement, it must be homologated before the Court, aiming sanctioned it, and consequently, the actions derived from it taken effect. As well, the Tribunal has contemplated the cases when the victim forgives the perpetrator, and it has ruled that the State still must investigate and to sanction whether a human rights violation has been committed.[164] Although the Court shows certain flexibility in prioritising friendly settlement, it established that gross violation of human rights is indeed an affair of public order.[165] Therefore, the State must guarantee the restoration of the affected legal good.

B. Factors Influencing the Development of Certain Reparations in the jurisprudence.

The varied catalogue of reparation measures provided today by the jurisprudence of the Inter-American Court has not always been composed in this way. Initially, regarding the imposition of reparation measures, the Court's jurisprudence was limited in its action. After that, the Court considered addressing gross violations by providing remedies.[166] However, in the first moment, the economic compensation

[162] Rules of Procedure of the Inter-American Commission on Human Rights 2002 1, Article 37.4.
[163] ibid Article 40.5.
[164] Calderón Gamboa (n 76).
[165] Ramírez (n 84) 135.
[166] Velásquez Rodríguez v. Honduras (Merits, Reparations and Costs), IACtHR, 21 July 1989.

was the only reparation imposed, following the criterion settled by the International law and the ECtHR's jurisprudence.

Nevertheless, the Court had to change this idea, taking into account the critical situation in most countries of Latin-America. The Tribunal realized that economic compensation was not enough to settle issues regarding social, moral, family, ethical, cultural and scientific components. As well, the absence of the rule of law and democracy in these countries have been another robust element to influent the Court's acting. These components provoked in the Inter-American jurisprudence a progressively develop, adopting innovative ways to redress human rights violations.

Likewise, there are some authors who assert that the development of jurisprudence in this system has been influenced by three crucial periods: in the 1960's and 1970's the Court developed jurisprudence on enforced disappearance; in the 1980's and 1990's the Tribunal established several legal standards to combat the impunity; and the last one corresponds to the present time, where gross violation caused by social exclusion and inequality has been analyzed.[167] However, in a more summarized and broad interpretation, it can be noted that the common denominators of the problems diversity in this region, have been the violence translated into crimes, impunity, and the absence of an effective judicial system, which are described and exemplify below.

a. Criminal Factors

Initially, due to the context in which Latin America was, the Court's decisions were based on purely criminal factors. For instance, some countries, as Chile were subjected to cruel and long-lasting dictatorships. These authoritarian regimes caused thousands of human rights violations, such as the right to life, the right to

[167] Parra Vera, Oscar 'La Jurisprudencia de La Corte Interamericana Respecto a La Lucha Contra La Impunidad : Algunos Avances y Debates.' (2012) Year 13, Nº Revista Jurídica de la universidad de Palermo 5, 7,8.

liberty and personal integrity.[168] Consequently, the Tribunal had to take action concerning these violations imposing the obligation to investigate, to provide adequate judicial guarantees and reparations.

On the other hand, in many other countries such as El Salvador and Colombia, there was a transition process after the civil war, provoking social instability, which even prevails to this day. Thus, serious human rights violations were common, such as enforced disappearances and extrajudicial executions. Likewise, massacre cases have marked a paradigm in the development of the Court. These cases represented a series of atrocious acts against not only an individual but also a collective, involving an endless number of violated rights. Such as the right to life, the deprivation of liberty, children's rights, women's right.

Finally, at this point, the crime of selling children was also a remarkable atrocity where the Tribunal paid special attention. Consequently, in these situations, the IACtHR saw the need to adopt measures such as restitution, satisfaction and the duty to investigate and sanction. Thus, this traduced as the "81% of all contentious cases are directly related to criminal matters or criminal procedure", as the judge of the IACtHR Eduardo Ferrer Mac-Gregor argues.[169]

b. Inefficient national judicial system

Besides, another relevant factor that has influenced the development of the Jurisprudence of the IACtHR is the absence of effective an independent judicial system. The article 8.1 provides the right to justice access and also contemplates as part of this guarantee a reasonable period that judicial proceedings have to

[168] Brenes Vargas, Rodolfo "Crónica de Jurisprudencia de La Corte Interamericana de Derechos Humanos" Year 2012, vol 84 (2013) 219.
[169] Ferrer Mac-Gregor, Eduardo 'Las Siete Principals Líneas Jurisprudenciales de La Corte Interamericana de Derechos Humanos Aplicable a La Justicia Penal' (2014) 59 Revista IIDH 29, 1.

settle the disputes. Therefore, a prolonged delay constitutes automatically a violation of the judicial guarantees granted by this article.[170]

The Inter-American jurisprudence has considered these factors to establish that administrative and judicial procedures must be handled with exceptional diligence and speed on the part of the authorities, and even more in cases involving the interests of children[171], persons with disabilities[172] or vulnerable groups[173]. The Court has stipulated that judicial delay, not only violate the right to adequate justice access but also could impact in a negative way on the victim's quality of life if the victim is in a particular situation (children, disabled or vulnerable group).

Likewise, the Court has noticed that part of the judicial inefficiency is due to the lack of judges and administrative staff's experience. Therefore, the Tribunal has included the obligation to the State to implement appropriate training and specialisation to the authorities responsible for administering justice. In this sense, the jurisprudence established the methodology and manner on how to carry out the actions of the authorities concerning the investigation and sanction of those responsible.[174]

c. Impunity

This factor is directly related to those described above. Because, on the one hand, it involves the behaviour and obligations of the State concerning human rights. While, on the other, it shares the causes that generate these phenomena, such as corruption.

The Inter-American Court has defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the

[170] Gudiel Álvarez and others ("Diario Militar") v. Guatemala. (Merits, Reparations and Costs), IACtHR, 20 November 2012, para. 261.
[171] Fornerón and daughter v. Argentina. (Merits, Reparations and Costs), IACtHR, 27 April 2012.
[172] Furlan and Family v. Argentina. (Merits, Reparations and Costs), IACtHR, 31 August 2012.
[173] Nadege Dorzema and others v. Dominican Republic. (Merits, Reparations and Costs), IACtHR, 24 October 2012.
[174] Uzcátegui v. Venezuela. (Merits, Reparations and Costs), IACtHR, 3 September 2012.

rights protected by the American Convention".[175] This passive attitude by the State is a violation of human rights because it causes the violation of more rights, or if they have already been committed, it does not offer the victim a proper redress to repair the damage suffered. Hence, the Tribunal's insistence on the implication of the proper investigation, prosecution and punishment of the perpetrators.

Moreover, the ambiguous and national norms opposed to the legality principle have caused transcendence in the jurisprudence of the Court.[176] Due to these acts have left the victim in a helplessness State, because he/she is not guaranteed that his/her rights are duly established and therefore protected. Consequently, the Inter-American Court of Human Rights has ordered amendments to the law that would allow individuals to exercise precise and valid democratic control over all State institutions and their officials.[177]

C. The concept of dignity in the Jurisprudence of the Inter-American Court of Human Rights

Even when the concept of the victim still being unclear and ambiguous in the international doctrine, the Inter-American system has tried to adopt a more comprehensive conception within their legal instrument and jurisprudence. Hence, article 11.1 of the ACHR, provides this concept explicitly, "everyone has the right to have his honour respected and his dignity recognized." [178] However, this is not the exclusive article where dignity is contained, also the Convention mentioned it in three more occasions.

Furthermore, the Court, in its jurisprudence, adds that dignity is the governing principle of all human rights. Likewise, the cases in which the IACtHR has referred

[175] Castillo-Páez v. Peru. (Reparations and Costs), IACtHR, 28 November 1998, para. 107.
[176] Palamara Iribarne v. Chile. (Merits, Reparations and Costs), IACtHR, 22 November 2005.
[177] Idem. Para 254.
[178] American Convention on Human Rights 'Pact of San José, Costa Rica' Art. 11.1.

to the concept of human dignity are mostly related to the right to life, forced disappearances, illegal deprivation of liberty, torture, free movement and nationality. However, they are not exclusive because the concept of dignity is also present in cases regarding the right to private property.

Moreover, concerning the reparations, the Tribunal refers to human's dignity concept basically when it regarding immaterial damage. Nevertheless, every time is most common that the Court also mentioned this precept in material damage. Also, the IACtHR has added that the person possesses dignity as an attribute inherent to his human condition. Consequently, this attribute makes her the holder of fundamental rights that cannot be ignored; they are superior to the power of the State.[179] Thus, whatever the material or immaterial damage, dignity is diminished by constituting a fundamental right, so it has to redress in the same way.

Besides, the Court, in its advisory role, has referred to the concept of human dignity, explicitly in Opinions 4, 17, 18. The Court Stated that the notion of dignity derives directly from the unity of the nature of humankind and is inseparable from the person. As well it implemented an innovative criterion regarding the sovereignty of the States, which clarify that dignity will always prevail. In the same way, it clarified that "regardless of nationality, on the territory where he is, or on his legal status, the human rights must be denied, otherwise it would be akin to denying human dignity. If human rights limit the exercise of authority, State sovereignty cannot be cited to violate them or prevent their international protection".[180]

In conclusion, it provides a general idea of the situation in which Inter-American jurisprudence has expressly contemplated the concept of dignity in its legal bodies, jurisprudence and advisory opinion. However, the reality is that this concept is the guiding principle not only of the inter-American system of human rights but also of

[179] Amezcua, Luis 'Algunos Puntos Relevantes Sobre La Dignidad Humana En La Jurisprudencia de La Corte Interamericana de Derechos Humanos' (2007) 8 Revista Iberoamericana de Derecho Procesal Constitucional 339, 353.
[180] Juridical Condition and Rights of Undocumented Migrants, IACtHR, Advisory Opinion OC-18/03, 17 September 2003, Series A no. 18.

the universal system, must be contemplated in every case where a violation of human rights occurs. Finally, in later chapters, the study of a particular case dictated by the Court will be addressed, in which the vision of human dignity before the Court will be highlighted.

III. The System of Reparation in the Jurisprudence of the European Court of Human Rights

The international human rights law establishes that it is essential that all notions of human rights embrace the concept of reparation for the existence of the very notion of human rights.[181] Therefore, in compliance with this, the European protection system also has instituted this notion within its legal instrument, the European Convention on Human Rights. Likewise, this perception has been supported by the European Court of Human Rights jurisprudence. The ECtHR is the judicial body, with the essential function of judging those States party that had violated what they have committed in the Convention and in consequence, determines the right to remedy if it is the case. As well, the conception of the reparation in the European system has involved another figure, the Committee of Ministers. This body is responsible for supervising the enforcement of sentences handed down by the Court[182].

However, the way that in practice this system conceives the right to reparation is considerable distant than the International law and the other regional systems do[183]. This first difference can be deduced from the article 41 of the ECHR, which provides the right to remedy understanding as to the concept of just satisfaction:

[181] "Report of the Secretary-General: Question of the Realization in All Countries of Economic, Social and Cultural Rights" (2013) Available at: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/_layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-31_en.doc&action=default&DefaultItemOpen=1> accessed May 1st, 2019.
[182] 'European Convention on Human Rights' Art. 46 P2.
[183] International Commission of Jurists (n 29) 35–36.

> **"Just satisfaction:** If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."[184]

In this way, from the interpretation of this article may be noticed in a first moment that not even mentioned the notion "reparation" or "remedy explicitly". Instead of, this article institutes the concept of just satisfaction. Secondly, unlike its homologue, the IACtHR, the ECtHR's interpretation is more limited since it does not consider this notion an automatic right by the only fact of having suffered a violation of human rights. Instead, the national jurisdictions must to redress the alleged violations themselves and only if the State does not offer any remedy will it be possible to appeal to the ECtHR granting the victim the right to fair and equitable reparation. In other words, a first verification of the reparative efficacy of the internal route is required, and only if this is not possible or inefficient will it be possible to access the regional route, with the Court adopting a subsidiary role.

Nevertheless, the European system has taken the basic structure of this right by the International standards[185]. Since this system has admitted that the right to provide an effective reparation born in the first instance with the responsibility of the State, this means that the State must redress all the injuries of fundamental rights that had committed, and the system is the intermediary to determinate this responsibility.

As well, the European Convention has instituted the obligation of the States through the article 46.1, even if it does not have the same forced as the article 63 of the ACHR, this article still imposes a binding responsibility to the Convention's States parties. Likewise, this responsibility has also been imposed by the Committee of Ministers. Who Stated the duty to the States *"to be held accountable for their actions in the cases of gross violation of human rights*."[186] Thus, this recognition of States responsibility enforced them to fulfil all the aspects that the judgment covers, including the reparation stage.

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[184] 'European Convention on Human Rights' (n 182) Art. 41.
[185] "Chorzów Factory" Germany v. Poland (Jurisdiction), PCIJ, 26 July 1927.
[186] Eradicating impunity for serious human rights violations: Guidelines and reference texts. 2011 5.

Furthermore, at the same time that the States must abide by the final judgment of the Court, also is free to indicate how to redress the human right violation, due to the Court's subsidiary role. However, this freedom will be limit by the Convention and supervised by the Committee of Ministers. In other words, the Court will impose the obligation to repair in the cases of it will find a violation of the Convention, nevertheless and unlike than IACtHR the Court will not specify the measures.[187]

In addition to, one of the most remarkable justifications concerning the Court's subsidiarity character in the face of reparation has been made in the Scozzari and Giunta judgement, where the Court stipulated that the judgments have essentially declaratory character. Hence, is the State who must designate the measures to take for fulfil the legal obligation established in article 46 of the ECHR. Likewise, this determination will supervise by the Committee of Ministers.[188]

Nevertheless, it has been precisely this subsidiary character that over the years, the Court has been strongly questioned for its limited interpretation and consequently the absence of real restorative justice. In the past, the ECHR only imposed the pecuniary reparations and the expenses and costs, in a very restricted way. For instance, the Court considered that persons who were convicted of a crime should not receive compensation for the violation of a procedural right, even if a violation of the Convention were established unless they could prove their innocence.[189] As well, the Court kept this criterion regarding the cases where a violation of human rights was declared. However, the victim represented a danger to society; thus, the right to reparation was limited.[190]

[187] Kudla v. Poland. (Merits and Just Satisfaction), ECtHR, 26 October 2000, para 152.
[188] Scozzari and Giunta. (Merits and Just Satisfaction), ECtHR, 13 July 2000, para 249.
[189] Silver and others v. United Kingdom. (Just Satisfaction), ECtHR, 24 October 1983.
[190] McCann v. United Kingdom. (Merits and Just Satisfaction), ECtHR, 27 September 1995, para 219.

However, with the aim of not leaving the victims in a State of helplessness, of collaborating with a more precise and more effective execution with the Committee of Ministers[191], the Court adopted a novel approach. For the first time, the ECtHR imposed a specific reparation measure in addition to just satisfaction in the case of Papamichalopoulos v. Greece (1995) restitution in a case of illegal expropriation.[192] This novel approach has been crucial in the development of remedies in the ECtHR's jurisprudence because it has imposed on the State not only the burden of compensating but also to restitution. This judgment has also opened the door for the Court to take a more active role in ordering specific measures.

On the other hand, it has been critical the identification of the person who is alleging a violation of human rights and, consequently, their due reparation. According to article 34 of the ECHR, any individual or group of people who have suffered a human rights violation may be contemplating as a victim. Therefore, with the right to present the application to the Court. The Convention gives full legal standing to the petitioners (*ius standi*), and thus it is not necessary the intervene of another Organ unlike the IACtHR, where the claims only can have access to the Court through the Commission.

Although, in the past, only the States and the Commission were authorized to file applications before the ECtHR. However, in order to give full legal standing to petitioners, this Protection System adopted new reforms, such as the entry into force of Protocol 11, where the European Commission has been abolished.[193] In this way, the Court has analyzed the condition of the victim in human rights violations, so that it can determine whether or not it is the aggrieved party and thus accredits a just satisfaction. Therefore, the Court has distinguished the different types of victim within its jurisprudence as direct victims, potential victims and indirect.

[191] Papamichalopoulos v. Greece. (Just Satisfaction), ECtHR, 31 October 1995.
[192] Idem, paras 202-203.
[193] Laura Alicia Camarillo Govea, 'Convergencias y Divergencias entre los Sistemas Europeo e Interamericano de Derechos Humanos' (2016) 67, 71–72.

The ECtHR has also adopted the same notion as the universal human rights protection system regarding the direct victims. The Court recognizes as a direct victim, the person who directly receives the consequences of the violated right. In other words, direct victims are all person who has been affected by the State's acts or omissions, causing an injury to his rights.[194] Likewise in this concept, the Court has encompassed not only to individuals as direct recipients of human rights violations but also to communities, corporations and organizations that have suffered harm, including physical or mental injury, emotional suffering or economic loss.[195]

Moreover, the jurisprudence has embraced the concept of the potential victim. It has been used in cases where even if it has not yet generated any direct consequence,[196] there is a regulation, measure or action by a State party that may affect a person or a group of persons. This means that in order for an individual or groups being considered a victim, the effects of the violation do not necessarily have to arise at the instant, yet they are sure that they will occur shortly. A clear example of this are those cases where a person's life is in danger, due to the extradition ordered, because in the destination's country he or she may be sentenced to death penalty[197], or some groups represent a risk of death for the victim such as gangs[198] or the government of the country of the destination itself[199].

In addition to the Court has recognized entitled to just satisfaction those people who have suffered as a consequence of the direct victim damage or those who would have a compelling personal interest in ceased the violation.[200] Consequently, this notion lets the family and relative's victim to awarded a remedy as an indirect victim[201]. As well, this acknowledgement has extended to the

[194] Brumarescu v. Romania. (Merits), ECtHR, 28 October 1999.
[195] Robouts (n 26) 104.
[196] Klass and others v. Germany. (Merits), ECtHR, 6 September 1978.
[197] Soering v. UK. (Merits and Just Satisfaction), ECtHR, 7 July 1989.
[198] HLR v. France. (Merits and Just Satisfaction), ECtHR, 29 April 1997.
[199] Cruz-Varas v Sweden. (Merits and Just Satisfaction), ECtHR, 20 March 1991.
[200] Andronicou and Constantinou v. Chipre. (Merits and Just Satisfaction), ECtHR, 9 October 1997.
[201] Idem; Koolen v. Belgium. (Merits), ECtHR, 18 December 1963.

successors and victim's heirs, to receive the direct victim's reparation in the cases where he or she had died. Although, this individual right is ruled under the admissibility requirements established by article 35 of the ECHR.

On the other hand, regarding the conception of damage, the CoE has provided a guideline to attend and eradicate human's right violation and its causes. The guidelines have envisaged the gross violation as "those acts in which the States have the obligation under the convention, and in the light of the Court's case law, to enact criminal law provision."[202] For instance, these acts may be traduced as violations to the right to life, torture, forced labour, security guarantees and private life. Therefore, these violations may be manifested as extra-judicial killings, negligence leading to serious risk to life or health; torture or inhuman, degrading treatment by the security forces, prison officers or other public officials; enforced disappearances, kidnapping, slavery, forced labour, or human trafficking, rape or sexual abuses, serious physical assault, including in the context of domestic violence and the international destruction of homes or property.[203]

Nevertheless, the jurisprudence has clarified that a simple act against the Convention it may be enough to constitute a violation and consequently obliged the State to repair.[204] Likewise, the Court's practice has distinguished between the different ways as the damage may existing pecuniary and non-pecuniary damages.

Pecuniary damages has adopted in the ECtHR as the international law has comprehended, based on *damnum emergens* and *lucrum cessans*.[205] Hence, regarding with this category, it may include loss of earnings (past and future), loss of job opportunities[206], loss of social security, fines [207], medical expenses[208], the

[202] Eradicating impunity for serious human rights violations: Guidelines and reference texts. Article II, point 3.
[203] Geneva Academy of International Humanitarian Law and Human Rights (n 15) 12–13.
[204] Ireland v, UK. (Merits and Just Satisfaction), ECtHR, 18 January 1978, para. 762
[205] President of the ECtHR, Practice Direction: Just Satisfaction Claims, (2018) point. 6.
[206] Elçi and others v. Turkey. (Merits and Just Satisfaction), ECtHR, 13 November 2003.
[207] Lopes Gomes de Silva v. Portugal. (Merits and Just Satisfaction), ECtHR, 28 September 2000.
[208]Pitkanen v. Finland. (Merits and Just Satisfaction), ECtHR, 9 March 2004.

detriment of property[209] and domestic costs and expenses[210]. The Rules of the ECtHR mentioned that supporting documentation, the presence between the causal link with the violation and the damage claimed, are the three main requirements that the victim has to prove this classification.[211]

Reparation for non-pecuniary damage, has been included moral and physical hurt[212], the trauma[213], anguish and affliction[214], stress, prolonged uncertainty and anxiety[215]. Even if the Court has been more flexible regarding the standard of proof in this classification, it is mandatory to prove the existence of the damage and the causal link with the harm.[216] However, in those cases where it would be impossible to prove it, and the assumption of the suffering is evident, the requirement of proof will be less strict.

A. Specific Measures of reparation

The ECHR does not constitute a fourth degree of jurisdiction; thus, it is the obligation to the States adopting general measures to redress the Convention's damages. This means that according to article 46.1, a State condemned by the ECtHR must adopt individual and general measures to redress the violation to the ECHR. The Court only has to suggest the type of measure that the State could take to stop and end the identified systemic situation.[217]

Consequently, and due to the subsidiarity role of the ECtHR, in the European order, there is not an exhaustive catalogue of specific reparation's measures, unlike the IACtHR. The Court emphasized that its judgments are essentially

[209] Gelsomini Sigeri SRL v. Italy. (Merits and Just Satisfaction), ECtHR, 18 December 2003.
[210] Krone Verlag GmbH & Co KG v. Austria. ECtHR, 20 March 2003.
[211] Rule 60 (2) of the Rules of the ECtHR.
[212] K. A. v. Finland. (Merits and Just Satisfaction), ECtHR, 14 January 2003.
[213] M. C. v. Bulgaria. (Merits and Just Satisfaction), ECtHR, 4 December 2003.
[214] Werner v. Poland. (Merits and Just Satisfaction), ECtHR, 15 November 2001.
[215] Oldham v. U.K. (Merits and Just Satisfaction), ECtHR, 26 September 2000.
[216] Schneider (n 49) 77.
[217] Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania. (Merits and Just Satisfaction), ECtHR, 7 January 2014.

declaratory and it is the State's responsibility to choose the ways to comply with its obligations, under the supervision of the Committee of Ministers.[218] However, in the last years, it has been visible the jurisprudence development regarding the adoption of specific reparation measures for the Convention's violations through the CoM faculties.

The jurisprudence has Stated the obligation to adopt general and individual measures to redress the harm by the State. In the case of Scozzari and Giunta v. Italy, the Court has explained that the purpose of the obligation of States concerning the adoption of general measures is to prevent further violations of the Convention. Also, the adoption of individual measures is to compensate the appellant for the consequences of the violation.

For instance, restitution or proceedings reopening are clear examples of individual measures. On the other hand, the amendments of domestic law are models of general measures. The Court may also order to the State paying a sum of money to the applicant as "just satisfaction", aiming that the money in question serves as compensation and erases the consequences for the victim.[219]

However, just satisfaction represents the victim's last resort in the event the State fails to provide effective and complete reparation. Likewise, since the Court has not the power to intervene in the internal law of the States, in the past, just satisfaction was the only measure that the Court could directly impose to the State.[220] Besides, under the just satisfaction concept, the judgement constitutes itself a form of reparation.[221]

[218] Marckx v. Belgium. ECtHR, 29 September 1975.
[219] Council of Europe, "Individual Measures" (The European Convention on Human Rights) Available at: https://www.coe.int/en/web/human-rights-convention/individual-measures. Accessed June 15, 2019.
[220] Luis M Cruz, 'La Reparación a Las Víctimas En El Convenio Europeo de Derechos Humanos' (2010) LXII Revista Española de Derecho Internacional 92.
[221] Barberá, Messegué and Jabardo v. Spain. (Merits and Just Satisfaction), ECtHR, 6 December 1988, para 92.

The purpose of the sums awarded as just satisfaction is solely to provide reparation for the pecuniary and non- pecuniary damages suffered by the victims, as they constitute a consequence of the infringement which may not be erased.[222] There is not any tabulator that indicates the procedure performed by the ECtHR to determine the quantum of compensation. Hence, the Court applies general principles in assessing just satisfaction. In fact, in many cases, it is challenging, if not impossible, to discern how the Court has arrived at the amount awarded.[223]

Usually, the compensation awarded by the ECtHR is relatively lower than that awarded by European States. Besides, the highest compensation awarded by the Court has been relating to the cases concerning the right to life, torture, deprivation of liberty and property.[224] Likewise, in the European order, a report of the Committee of Ministers refers to just satisfaction would only be one of the forms of *restitutio in integrum*. [225]

Consequently, the Court has implemented the international notion concerning *restitutio in integrum* as a way of primary reparation. The case of Assanidze v. Georgia (2004) provides an excellent example of reparation measures ordered by the ECtHR, case where was restored the right to liberty. As well, in this case, the restitution has defined as the action to restore the situation to the previous time of the violation.[226] Also, another example of this measure has been established in the Oleksandr Volkov v. Ukraine case, where the ECtHR according to with the article 46 ordered as an individual measure the victim's reinstallation as a Judge of the Supreme Court.[227]

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[222] Scozzari and Giunta v. Italy. (Merits and Just Satisfaction), ECtHR, 13 July 2000.
[223] Cruz (n 220) 102.
[224] Selmouni v. France. (Merits and Just Satisfaction), ECtHR, 28 July 1999; Çiçek v. Turkey. (Merits and Just Satisfaction), ECtHR, 27 February 2001; Ilasçu and others v. Russia and Moldova. (Merits and Just Satisfaction), ECtHR, 8 July 2004; Anguelova v. Bulgaria. (Merits and Just Satisfaction), ECtHR, 13 June 2002.
[225] Surveillance de l'exécution des arrêts et décisions de la Cour Européenne des Droits de L'Homme, 6ème Rapport du Comité des Ministres, (2012) 22.
[226] Assanidze v. Georgia. (Merits and Just Satisfaction), ECtHR, 8 July 2004, concurring opinion of Judge Costa, paras 6ff.
[227] Oleksandr Volkov v. Ukraine. (Merits), ECtHR, 9 January 2013.

On the other hand, in particular cases, the Court has also ordered to the States, the conduction of a proper investigation to determinate the perpetrators of the human rights violations.[228] Additionally, the ECtHR holds that in the cases of the investigation located the responsible for the violation the State has to take the appropriate measures to punish them.[229]

Moreover, the Court has done a remarkable input concerning to the persons who are deprived of the liberty, requiring the State the adoption of measures to guarantee the prisoners conditions of detention.[230] The Court has established in some cases the term that the States have to fulfil with the imposed order.[231] Likewise, this measure includes the cases of a potential victim, where the expulsion of an applicant from the territory of the respondent State exposes him to a serious risk of being subjected to torture or ill-treatment.[232]

Besides, some measures have been requested to the States regarding judicial guarantees. Such as separation between judiciary and other branches of government,[233] insurance the expeditious compliance with the procedural requirements,[234] to ensure prisoner voting rights,[235] effective relief for violations of the right to fair trial within reasonable time,[236] reopening procedures that were concluded in an unfair way,[237] limited a sentence of life imprisonment to a maximum of thirty years.[238] As well, cases regarding asylum seekers and migrants the Court has demanded the State guarantee the applicants the no deportation until the final judicial decision.[239]

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[228] Benzer and Others v. Turkey. (Merits and Just Satisfaction), ECtHR, 12 November 2013.
[229] Ataykaya v. Turkey. (Merits and Just Satisfaction), ECtHR, 22 July 2014.
[230] Vasilescu v. Belgium. (Merits and Just Satisfaction), ECtHR, 25 November 2014.
[231] Torreggiani and Others v. Italy. (Merits and Just Satisfaction), ECtHR, 8 January 2013.
[232] Al Nashiri v. Poland. (Merits and Just Satisfaction), ECtHR, 24 July 2014.
[233] Oleksandr Volkov v. Ukraine. (Merits), ECtHR, 9 January 2013.
[234] McCaughey and Others v. United Kingdom. 16 July 2013
[235] Hirst v. United Kingdom. (Merits and Just Satisfaction), ECtHR, 30 March 2004, para. 60.
[236] Vlad and Others v. Romania, (Merits and Just Satisfaction), ECtHR, 26 November 2013.
[237] Maksimov v. Azerbaijan, (Merits and Just Satisfaction), ECtHR, 8 October 2009.
[238] Scoppola v. Italy. (Merits and Just Satisfaction), ECtHR, 17 September 2009, para. 6(a).
[239] A.C. and Others v. Spain. (Merits and Just Satisfaction), ECtHR, 22 April 2014.

Furthermore, there have been cases where the rules and domestic legislation are incompatible with the principles established in the Convention. Consequently, causing several human right violations such as restriction of freedom of expression,[240] the violation of the presumed innocent and pre-trial detains,[241] delays in justice,[242] discrimination towards the woman[243]. Therefore, the legislative reform and amendments have been standard actions required to the States by the Court in these kinds of cases.

In order to regulate the police's force and reduce the use of weapons such as the tear gas canisters, the ECtHR has prescribed the need to reinforce the safeguards measures in the case of peaceful demonstration.[244] The Court has held that a more precise set of rules for the minimization of force and weapons during a demonstration has to be adept as a measure by the State.[245] As well "to take all the necessity steps at the national level to prevent similar breaches."[246]

Additionally, the Court has ordered another kind of measures focusing on disabled people. For instance, in the Centre for Legal Resources v. Romania case, the Court has required ensuring the needs of mentally disabled people, such as afforded an independent representation.[247] Even, there has been a situation where the Court has determinate the obligation to the State to provide with adequate medical services.[248]

Likewise, according to article 46.1, the States not only must to provide a reparation in the cases of the Convention's violation, but also the States must undertake not

[240] Vyerentsov v. Ukraine. (Merits and Just Satisfaction), ECtHR, 11 April 2013.
[241] Gülay Çetin v. Turkey. (Merits and Just Satisfaction), ECtHR, 5 March 2013.
[242] Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania. (Merits and Just Satisfaction), ECtHR, 7 January 2014.
[243] Cusan and Fazzo v. Italy. (Merits and Just Satisfaction), ECtHR, 7 January 2014.
[244] Ataykaya v. Turkey. (Merits and Just Satisfaction), ECtHR, 22 July 2014.
[245] Abdullah Yasa and Others v. Turkey. (Merits and Just Satisfaction), ECtHR, 16 July 2013.
[246] Izci v. Turkey. (Merits and Just Satisfaction), ECtHR, 23 July 2013.
[247] Centre for Legal Resources v. Romania. (Merits and Just Satisfaction), ECtHR, 17 July 2014.
[248] Amirov v. Russia. (Merits and Just Satisfaction), ECtHR, 27 November 2014.

to produce that situation again. This interpretation can be translated as a guarantee of non-repetitio. In addition to the Papamichaloupoulos and other v. Greece (1995) mentioned that the condemns judgment imposed three primary responsibilities to the States: "*the obligation to cease the violation, the obligation to restore the situation to before the violation was committed or the obligation to make reparation and the obligation not to commit the violation again*."[249]

Furthermore, the Court has established clearly in the jurisprudence the costs and expenses are not part of just satisfaction. However, the Court shall award the applicable allowances provided showing that the expenditure has actually been incurred, it has been necessary in order to obtain redress for a breach of the Convention and the reasonable link in relation to the amount of the breach.[250] These expenses could include the expenses for lawyers, travel and relocation costs caused by the commencement of the trial before the ECtHR. Nevertheless, even though the Court has adopted a more open approach to requiring States specific measures, its approach remains restrictive and does not usually impose more than one specific measure in judgments.[251]

Due to the numerous systematic problems repetitive applications that the Court has, it faced the necessity to create a systematic way to deal with all the situations. Hence, the ECtHR has introduced the pilot cases as an innovative solution to settle the cases of systematic violations. The pilot cases appear as a *"procedure that allows it to group cases that reflect a systematic or structural dysfunction at national level."* [252]

Consequently, the case Broniowski v. Poland (2004) where the first case launched as a pilot case,[253] giving the expected results, thus, there have been hundreds of cases that the Court has settled as a pilot case, providing and promptness and

[249] Papamichaloupoulos and others v. Greece. (Just Satisfaction), ECtHR, 31 October 1995.
[250] Iatridis v. Greece. (Just Satisfaction), ECtHR, 19 October 2000, para 98.
[251] Schneider (n 49) 84.
[252] Geneva Academy of International Humanitarian Law and Human Rights (n 15) 23.
[253] Broniowski v. Poland. (Merits and Just Satisfaction), ECtHR, 22 June 2004.

effective resolution. Likewise, the ECtHR has had to identify the systematic problem and the source of them[254] as a primary requirement to may consider the possibility to settle as a pilot case.

Undoubtfully, this innovation has constituted a colossal practice in the jurisprudence of the ECtHR in pursuing to provide a systematic remedy not only for all the present applicants but also to the possible futures ones. The redress offers by this kind of cases have been healed in cases concerning enforced disappearance,[255] right to property,[256] prohibition of torture and inhuman treatment.[257] Finally, the pilot judgement has been due established in Rule 61 of the Rules of the ECtHR.[258]

B. Factors Influencing the Development of Certain Reparations in the jurisprudence.

The European Regional Protection System has also experimented several changes through the years, as has already mentioned not only the Convention but also the ECtHR and the Committee of Ministers, experienced numerous transformations that influences in the jurisprudence that is known nowadays. Hence, there have been some factors that influenced in the way of how jurisprudence has been developing. As well, these elements could understand the necessities and the social context that has been lived in Europe. Therefore, the differences with the rest of the systems could be more apparent.

a. Criminal Factors

The jurisprudence of the ECtHR has shown that criminal factors have been considerable influences in the jurisprudence's way development. Even if there are

[254] Schneider (n 49) 89.
[255] Abuyeba et al v. Russia. (Merits and Just Satisfaction), ECtHR, 2 December 2010.
[256] Broniowski v. Poland. (Merits and Just Satisfaction), ECtHR, 22 June 2004.
[257] Torreggiani and Others v. Italy. (Merits and Just Satisfaction), ECtHR, 8 January 2013.
[258] Schneider (n 49) 95.

not exist or there are not so common the cases of massacres, enforced disappearances, extrajudicial execution as in the Inter-American system does, the Court has found several violations of the right to life, to prohibition or torture and judicial guarantees. Therefore, the necessity to improve the jurisprudence's analysis in this field.

As well, the European continent has not been exempted from these crimes, because there are some at the same scale or worst, like terrorism. For instance, in the last years, the crimes of enforced disappearances and extrajudicial execution have been raised, some of them has been linked in some way with terrorism.[259] Nevertheless, context and social behavior are different from Latin-America. Hence the norms and remedies than the countries and in a subsidiary way, the Court have adopted are fit with the social demands in the continent.

Moreover, the Court held the criterion about the "bad man"[260] where the ECtHR considered that those persons who had been convicted by crimes had not the right to the remedy only if their innocence could be proved. For instance, the case of McCann v. U.K. where even if the Court recognized the responsibility to the State for the violation of the article 2 (right to life). There were not any remedy for the violation, based on the fact that the suspects were terrorism. Therefore, the victims represented a danger for the society, and consequently there were not result appropriate providing a reparation.

However, regarding with the evident justice denegation and the firsthand needs protecting the Convention due the novel violations, the Court had to change this criterion and gone beyond. For instance, according with the jurisprudence, 40% of the detained persons in Italian's prisons were people in preventive's prison, waiting for a judgment. Even when the Court has not the faculty for ordered the States to take the actions regarding with the prison system organization, these problems have been becoming a systematic problem. Hence, the Court required the States

[259] McCann v. U.K. (Merits and Just Satisfaction), ECtHR, 27 September 1995.
[260] Messina (no. 2) v. Italy. (Merits and Just Satisfaction), ECtHR, 28 September 2000.

to take specific measures, such as effective remedies concerning prison overcrowding, the political program reorientation of the preventive detention.[261]

b. Political Factors

On the other hand, the attitudes and dispositions government to redress the breaches of human rights, also have been a crucial factor within the ECtHR's jurisprudence. The Cruz Varas v. Sweden case have been a good example of how the governments sometimes does not fulfil the Court's requirements. The ECtHR has argued that even if mostly the times the States fulfil the requests imposed by the Court, at the end they still keeping a discretional faculty.[262]

Likewise, in some cases due to the incompatibility between the domestic legislations and the Convention, the Court has ordered changes and amendments to the national laws. The ECtHr has had involved in this field, due to the risk of the States were not adopted any changes in their constitution and legislation exercising the discretional faculty that they have. Hence, this danger represented not only a severe factor regarding the State's responsibility but also it was a menace to the future effectivity to the convention.[263]

As well, cases regarding with the asylum seekers by political persecution has been constructive elements in the ECtHR's jurisprudence. For instance, in the Savriddin Dzhurayev v. Russia, the Court considered that the repetitive disappearance and exportation people to other countries has been a massive injury to the rule of law. However, the ECtHR had to act and ordered the effective investigation and punishment to the perpetrators to redress the violations.

c. Judicial Factors

i. Complexity in the processes

[261] Torreggiani and Others v. Italy. (Merits and Just Satisfaction), ECtHR, 8 January 2013.
[262] Cruz (n 220) 10.
[263] Zornić v. Bosnia and Herzegovina. (Merits and Just Satisfaction), ECtHR, 15 July 2014.

The Court has recognized that not all proceedings are the same; there are some proceedings more complicated than others, referring these to the Grand Chamber. From this recognition, the Court has also been estimated that its complexity may have the same origin. Therefore, in order to help member States, fulfil their role in the Convention, the Court launched the pilot cases. This modality has helped to put an end to the excuses regarding the complexity of procedures due to its structurally and systemically. Also, it has contributed to securing the rights and freedoms of the Convention and offering faster redress.

ii. Natural Delays

On the other hand, the delays in the execution of judgments have been a remarkable circumstance in the development of the jurisprudence. The Court has realized about the numerous pending cases, that the States has to fulfil their obligation with the articles 41.[264] However, the ECtHR, adopted the role to provide specific recommendation assistance with the State to provide an effective and promptness remedy.

Likewise, this factor has been part of the systematic and structural violations of human rights. For instance, the inadequate legislation and ineffective administration of justice in Hungary caused an apparent violation of the right to be tried within a reasonable time. "Approximately 100 similar cases were pending before the Court, and the Court found that Hungary had violated Article 6(1) in approximately 60 cases concerning the length of criminal proceedings." [265] Hence, this factor is attributed to the impetus behind the creation of pilot cases.

C. The concept of dignity in the Jurisprudence of the European Court of Human Rights

The human dignity in the European System is a precept that its recognition gained strength after the wars lived, especially of the Second World War. However, it is

[264] Gerasimov and Others v. Russia. (Merits and Just Satisfaction), ECtHR, 1 July 2014.
[265] Barta and Drajkó v. Hungary. (Merits and Just Satisfaction), ECtHR, 10 April 2007.

difficult to be sure from when the European system has adopted this conception because none of the treaties or conventions explicitly include this precept. It was not until Protocol No. 13 that the text Stated that abolition of the death penalty was essential to the full recognition of the inherent dignity of all human beings.

Furthermore, several authors reiterate that it is paradoxical that even if the Convention is considered the example of progressivity in human rights towards other regional systems, the word dignity does not appear even once. The Convention conceives notions of freedom, equality, property, and even the pursuit of happiness.[266] Nonetheless, the precept of dignity is still absent in the legal order at least in an explicit and literary way. The explanation is based on the fact that the term "dignity" is relatively recent in legal literature.[267]

Nevertheless, the European System has argued that this system has been formed on the principles stipulated by the international body, the UDHR, which conceives human dignity as the guiding principle of human rights. Hence, even if human dignity is not comprehending as a right, it understands as a matrix principle of the ECHR. This principle fits the entire Convention, supporting other rights. Therefore, the Convention has offered a broader interpretation through the Court's jurisprudence of how it conceives human dignity.

The jurisprudence of the Court has referred in more than 1000 cases[268], the human dignity concept. As well, the Court pointed out that human dignity is "the very essence of the Convention",[269] it has emphasized the need to respect human dignity and also imposes the consequences of non-compliance by violating it. Also, this precept may understand as a way of being composed by living conditions, translated into a person's physical and mental well-being.

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[266] María Luisa and Marín Castán, 'La Dignidad Humana, Los Derechos Humanos y Los Derechos Constitucionales' (2007) 09 Revista d e Bioética y Derecho 1 <http://www.bioeticayderecho.ub.es>.
[267] ibid.
[268] Buyse A, "The Role of Human Dignity in ECHR Case-Law" (ECHR BLOGJanuary 1, 1970) Available at: http://echrblog.blogspot.com/2016/10/the-role-of-human-dignity-in-echr-case.html. Accessed June 15, 2019.
[269] Case of V.C v. Slovakia. (Merits and Just Satisfaction), ECtHR, 8 November 2011, para.105.

For instance, the jurisprudence has shown this criterion in the case Larioshina v. Russia. The applicant sued the Russian State because the pension provided was not enough for her to live with dignity, therefore constituted inhuman and degrading treatment. The Court determined, no violation to the article 3, however, it recognized that in cases where the person is dependent on the State and his or her physical and mental health is threatened by lack of resources, a problem could arise concerning article 3.[270]

Furthermore, the concept of dignity becomes more visible in cases of torture and inhuman treatment of persons in detention, for example, in the Torreggiani and Others v. Italy case. The applicants alleged violation to article 3 due to the inadequate conditions of detention. Thus, the Court considered that the conditions of detention of the person in question were contrary, human dignity and violated both the Italian law and the norms established by the CPT of the CoE and the jurisprudence of the ECtHR. [271]

As well the Court emphasized, that Article 3 imposes a positive obligation on the authorities to ensure that all prisoners are detained under conditions compatible with respect for human dignity.[272] The conditions of the prisoner must, therefore, be taken into account and his or her adequate health and well-being guaranteed.[273]

On the other hand, even if the ECHR does not establish in an expressly way the human dignity either the right to reparation, there is a closely linked between them, where reparation has no reason to exist without prior recognition of human dignity. Since the reparation is born as a consequence of the transgression of human dignity, hence, depending on how human dignity is conceived, it is how it will be adopted and establish a way of healing it. Likewise, analysing the value given to

[270] Larioshina v. Russia. (Merits and Just Satisfaction), ECtHR, 23 April 2002.
[271] Torreggiani and Others v. Italy. (Merits and Just Satisfaction), ECtHR, 8 January 2013.
[272] Kudla v. Poland. (Merits and Just Satisfaction), ECtHR, 26 October 2000, para 94; Kudla v. Poland was the first judgement where an expressly way the ECtHR mentioned the human dignity.
[273] Idem.

human dignity, it may see how extensive and abstract its system of reparation can be.

Consequently, due to human's dignity injuries and the ambiguous State's reparation system, the Court has had to become more directly involved in the reparation process for victims of human rights violations. However, practice shows that in this sense, dignity offers very little decisive weight in the legal argument. Therefore, the value given to dignity in the European system will depend on the development of the jurisprudence.

IV. Case analysis

On the other hand, once have been analyzed the system of reparation in the jurisprudence of the Inter-American and European Regional Protection System on Human Rights, the similarities and differences are visible. Thus, in terms of similarities, both systems are based on the same freedoms and rights essential to the human being. They also share very similar admissibility criteria and principles of interpretation, as well as the case law in the last years, has shown a crucial development who also have helped in the cooperation between both systems.[274] Although, how remedies are administered is the most noticeable difference between these systems, where the IACtHR have been focusing on providing an integral reparation, while the ECtHR has been basing on the subsidiarity principle.

Therefore, in order to show a more precise way how an effective reparation can be granted to restore victim's dignity, two recently similar cases in terms of violated rights and facts will be analyzed of both the Inter-American system and the European system, respectively.

Case V.R.P., V.P.C.* and others v. Nicaragua

[274] Wolf Legal Publishers, *Diálogo Transatlántico: Selección de Jurisprudencia Del Tribunal Europeo y La Corte Interamericana de Derechos Humanos* (2015) <www.echr.coe.int>.

The case involved the sexual raped of a 9-year-old girl (V.R.P.) by her father. The minor's mother (V.P.C.) denounced the facts, but the perpetrator was found innocent of the crime of rape. During the trial, Mrs V.P.C. took other steps in order to denounce irregularities in the investigation and the trial. Due to the objective factors that generated a situation of unprotected rights of victims by the State and a well-founded fear of judicial harassment and greater vulnerability to possible attacks on their rights, Mrs V.P.C. left Nicaragua with her two daughters and were granted asylum by the United States.[275]

The IACtHR declared that the girl suffered double violence: on the one hand, sexual violence by a non-State actor; and, on the other hand, institutional violence during the judicial procedure, in particular as a result of the forensic medical examination and the reconstruction of the facts. Therefore, the Court found a violation to the articles 5.2 and 1.1 (cruel, inhuman and degrading treatment), 5.1 (right to have his physical, mental, and moral integrity respected), 8.1 (right to a fair trial)11.2 (right to privacy), 19 (rights of the child) and 25.1 (right to judicial protection). Consequently, the IACtHR established that the judgement constituted per se a form of reparation and ordered as specific measures the followings:

> a) To determine responsibility and apply the law against officials who contributed to the commission of revictimization's acts and institutional violence to the detriment of V.R.P.
> b) The payment of the amounts to V.R.P., V.P.C. y N.R.P., concerning medical, psychological and/or psychiatric treatment.
> c) Providing through its specialized health institutions, and immediately, adequately, free and effectively, psychological and/or psychiatric treatment to the applicants.
> d) The payment to V.R.P. of the scholarship, in order to cover the expenses necessary for the completion of her professional training in the place where she resides.
> e) To adopt, implement and to monitor accurately three standardized protocols regarding with the criminal proceedings in cases of child and adolescent victims of sexual violence; comprehensive medical-legal assessment for cases of children and adolescents who are victims of sexual

[275] Case V.R.P., V.P.C.* and others v. Nicaragua. (Merits, Reparations and Costs), IACtHR, 8 March 2018.

violence; comprehensive care for the child and adolescent victims of sexual violence.
f) To create and implement a specialized figure that provides free legal assistance to children and adolescents who are victims of crimes, especially sexual violence.
g) Adopting and implementing permanent training and courses for public officials and medical personnel dealing with cases of child sexual violence.
h) The payment of compensation's amounts for material and non-material damage, as well as reimbursement of costs and expenses.
i) The monetary reintegration of the amounts disbursed during the processing of the case to the Victims Legal Assistance Fund of the IACtHR.

Case of M.G.C. v. Romania

The case concerned an 11-year-old girl (M.G.C.), who claimed to have been sexually abused by different members of the neighbouring family (J.V. a man of 52 years-old, four of the neighbour's sons and their friend G.I). M.G.C.'s parents found out the abuses committed because of her pregnancy. With the approval of her parents, the girl underwent a surgical termination of the pregnancy. The M.G.C.'s parents reported to the Public Prosecutor's Office the rape that the minor had suffered by J.V. and four of the children of that family.[276]

The applicant argued that *"she had been forced by J.V. to have sex with him on several occasions, alleging that he had threatened that he would beat her if she told anyone. The other boys had also forced her to have sex with them, telling her that it was J.V. who had told them what to do."* [277]As well, medical and psychological examinations were carried out to demonstrate the rape. However, the medical examination did not show any signs of violence. While the psychological showed that she was suffering from post-traumatic stress, and she had insufficient discernment due to her age.

However, the National Court did not take into account the applicant's psychological examination. Thus, the friend was exonerated because he was under 14 years of

[276] Case of M.G.C. v. Romania. (Merits and Just Satisfaction), ECtHR, 15 March 2016.
[277] Idem, para 14.

age, the children of the family were sanctioned with administrative fines, and J.V was convicted only for the crime of having sexual relations with a minor and not for the rape of the 11-year-old minor (M.G.C.). The perpetrators Stated that she was the one who had asked them directly if they wanted to have sex. J.V. also indicated that it was the minor who had provoked him, and she was always scantily dressed.

Consequently, in 2016 the ECtHR declared the responsibility to Romania regarding the violation to Articles 3 and 8 of the European Convention on Human Rights, concerning the positive obligations deriving for the State based on the right to the prohibition of torture and the right to respect for private and family life since J.V. was not effectively convicted for the rape of the 11-year-old minor (M.G.C.) but was convicted only for the crime of having sexual relations with a minor.

The Court emphasizes the special protection that children and other vulnerable groups must receive from the State. Therefore, the ECtHR determines the obligation, based on Articles 3 and 8 of the ECHR, to enact criminal laws that effectively punish rape, and to implement those provisions through effective investigation and prosecution.[278] Likewise, regarding with the just satisfaction the Court estimated, that due to the evident distress and psychological trauma resulting at least partly from the shortcomings in the authorities' and the fact that she was pregnant as a result of the abuse. The Court awarded her EUR 9,000 in respect of non-pecuniary damage. As well the Court fixed the corresponding costs and expenses.

A. Analysis of the Cases.

First of all, it should be pointed out that these two cases are relatively recent jurisprudence in both Courts, which constitute a paradigm concerning child sexual abuse. For this reason, both Courts have had to go further in their study and resolution. However, for this analysis, only how these regional Courts granted

[278] Case of M.G.C. v. Romania. (Merits and Just Satisfaction), ECtHR, 15 March 2016, para. 59.

reparation to the victims will be examined, in order to evaluate the most appropriate manner to heal human dignity.

Even though the ECtHR and IACtHR have different values and approaches in case law analysis, however, there are some similarities in the acknowledgement of the rights violated in each case. Both Courts declared that the minors suffered inhuman and degrading treatment (Article 3 ECHR) (Article 5.2 and 1.1 ACHR), as well a violation to the right to respect for private and family life (Article 8 ECHR) (5.1 and 11.2 ACHR) and a violation to the Rights of the Child. As well, in each case, the Courts coincide that these violations were caused not only by the perpetrators of the rape but also for the institutional violence practiced by the authorities.

Consequently, in order to redress the violations suffered, the IACtHR ordered a list of integral remedies ranging from financial compensation for the material and non-material harm suffered, investigation and punishment of those responsible for the institutional violence suffered by the minor, the award of a scholarship, medical and psychological care, and the adoption of protocols to train institutional personnel in charge of child sexual violence.

While in the case of the European Court, the State's obligation to take effective deterrent measures against gross violations of personal integrity and especially in children cases was reiterated. The ECtHR Stated that such measures should be aimed at ensuring respect for human dignity and protecting the best interests of the child, specifying the need for efficient investigation and prosecution and the possibility of redress and compensation. However, regarding grant an effective reparation, the Court was limited to mere awarding of monetary compensation.

Moreover, as may be shown in the jurisprudence under study, human dignity is a value that is difficult or even impossible to repair when it is violated. However, the

granting of a range of possibilities to cover the damages perpetrated offers a higher possibility of effectively heal human dignity, as the IACtHR has done.

On the other hand, concerning to the European Court, although the development of its jurisprudence has caused great improvements for victims who turn to the European Court of Human Rights in search of reparation, there is still being a lack regarding with the heal of the human dignity including the present case. The responsible State's obligation under international law must reach far beyond mere monetary compensation, driven by the establishment of clear and appropriate measures by the Court. This possibility is opened due to the broader analysis have made by the Court in recent years, where it has even come to impose specific reparation measures.

Therefore, the best way in which the ECtHR should remedy more effectively is to go further in the granting of essential measures, since this faculty does not contravene the principle of subsidiarity that it proclaims. Subsequently, the logic indicates that if the State party failed to comply with its primary obligations to respect the provisions of the Convention, in the same way, there is a risk that it will not comply with the obligation to repair or does not know how to comply with it.

Consequently, The European Court can provide a broader catalogue of reparation measures, which would be a benefit to all parties in the conflict, mainly the victim to heal the damage and his human dignity. As well the States to face their obligation to repair and the Committee of Ministers to give a more precise and more practical follow-up to the case for its proper execution. Besides, this catalogue will remain within the functions of the Court and also will serve as a standard of application for other States committing similar violations.

Therefore, the IACtHR, may be an example of the catalogue in mention as it is shown in the specific case, where it is also transcendental to pay special attention to the dignity and rights of children. Finally, the adoption of a catalogue of such

impetuosity will be especially beneficial for weak democracies, such as Romania, even serving as a guarantee of non-repetition, since cases of child abuse had previously already arisen.[279]

Conclusion

The human dignity is the ruler principle of human rights, yet, it is challenging to find an exact definition since the principles, rules and way to live of the society are in constantly changing. However, the value of dignity is an intrinsic value of the human being. Thus, it has been recognized in a legal norm by the highest international standard the UDHR, which conceives dignity as an inherent right of all human beings.

On the other hand, in International Law, the serious violation of human rights and consequently the human dignity calls gross violation or massive human rights violations. The people who suffer these violations to human dignity and human rights, are known as victims. The international jurisprudence has been established a clear definition of this concept in principle 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, envisaging two types of victims: direct victim, person who is the direct target of the violation; and indirect victims, who may comprehend the family or dependents of the direct victim and person who have suffered harm in intervening to assist direct victims or their relatives.

There was not any legal instrument who contained the right to remedy until 2005 when the Basic Principles and Guidelines on the Right to a Remedy and Reparation for the Victims of gross violation of International Human Rights Law and Serious Violations of International Humanitarian law was proclaimed by the General Assembly. This instrument provides the specific and different types of

[279] C.A.S. and C.S. v. Romania. (Merits and Just Satisfaction), ECtHR, 20 March 2012.

measures remedying a serious and gross violation of human rights. These measures must be adequate, prompt and effective, for the successful redress. Over the years, these measures have been classified in two important categories measures pecuniary and nor pecuniary. The pecuniary measures are those measures that focus on repairing the material and moral damage. While the not pecuniary measures are bases in other subcategories: restitution and rehabilitation, satisfaction and guarantees of non-repetition.

Furthermore, the Human Rights Regional Protection System has contemplated the concept of human dignity. In the Inter-American system, has stipulated in the article 11.1 of the ACHR, as well it has Stated that dignity is the governing principle of all human rights. The Court affirmed that the notion of dignity derives directly from the unity of the nature of humankind and is inseparable from the person, thus dignity will always prevail regardless of the territory and the circumstances.

Moreover, regarding the evolution of the concept of integral reparation, the IACtHR has been developed by its jurisprudence. As well, the Tribunal has adopted as an essential part of its progress the international standard, with contemplates reparations as part of a customary norm. The first time that the IACtHR acknowledged the reparation as a right was in the Velásquez Rodríguez v. Honduras case, where also was the first time establishing the obligation to the State. The different factors and the socio-political context of the countries have been a critical factor for the development of the Court's jurisprudence.

The IACtHR's practice as well has shared the criterion establishes by the UN Principles and Guidelines regarding the conception of victim and damages, however, in this point, the Court has added an innovative conception a criterion of damage, the damage to the project life, which is common in the cases of enforced disappearance. Regarding with the specific measures of reparation, the Inter-American Court also has adopted the criterion establishes by the IHRL and Stated

that the reparation par excellence is the restitution and only if this is not possible the Court will order the State to adopt other measures to redress.

The different ways of repairing vary according to the injury produced, but the Court has classified the different remedies as restitution, rehabilitation, economic compensation, satisfaction, guarantees of non-repetition, obligation to investigate, prosecute and punishment and costs and expenses.

On the other hand, regarding to the European Regional Human Rights Protection System, the concept of dignity is still absent in the legal order. However, it has been envisaged within its jurisprudence, and recognized that dignity is “the very essence of the Convention”. This concept has been more common in cases of torture and inhuman treatment of persons in detention. Likewise, regarding the right to reparation in the European system, the conception is considerable distant than the International law and the other regional systems, the article 41 of the ECHR institutes the concept by the just satisfaction. This article let the victims appeal to the ECtHR granting the right to fair and equitable reparation only if the State does not offer any remedy will it be possible, exercising the Court its subsidiary function.

As well, the European Convention has instituted the obligation of the States through article 46.1, a binding responsibility to the Convention’s States parties. The ECtHR has also adopted the same notion as the universal human rights protection system regarding the conception of victims and damages. Due to the subsidiarity role of the ECtHR, in the European order, there is not an exhaustive catalogue of specific reparation’s measures, unlike the IACtHR. Therefore, just satisfaction used to be the only measure that the Court could directly impose to the State, and its aim is the reparation for the pecuniary and non-pecuniary damages suffered by the victims.

The ECtHR also conceives the *restitutio in integrum* as a way of primary reparation. As well, in the last years, the Court has ordered specific measures in some specific cases, what has meant a significant evolution in its jurisprudence. However, it has been limited to the imposition of no more than one specific measure. Also, the ECtHR has recognized award cost and expenses even if they are not part of just satisfaction. Some elements have been influenced in the development of the jurisprudence, such as criminal factors, political factors and judicial factors.

Finally, beyond the convergences and divergences that each system may have at first sight, in the analysis of similar cases may notice how each system applies its criterion regarding redress human dignity. The Inter-American Court has offered the possibility of healing human dignity through integral reparation. While the European Court continues to limit itself to financial compensation, even though it has already imposed specific reparation measures in some instances. Therefore, an excellent way to provide more effective reparation to restore human dignity is to adopt a catalogue of reparation measures that will be focused not only on providing a sufficient and adequate reparation to the victim, but also to indicate the precise manner in which the State must comply with this obligation and, finally, this catalogue will also help the execution of judgment by the CoM, giving a more explicit way of how to do it.

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