

CONCURRENT OPINION OF JUDGE CECILIA MEDINA-QUIROGA
IN THE CASE OF ACEVEDO-JARAMILLO ET AL. V. PERU

1. I have concurred with the adoption of operative paragraph 7 of this Judgment, for I am not against granting a compensation for pecuniary damage to the dismissed workers with respect to whom the orders of amparo directing their reinstatement to their jobs were not complied with. However, I have a difference of opinion in relation to the method whereby said compensation is to be figured out, according to the Court, by the domestic courts.

2. Regarding said workers, the judgments of the Peruvian courts vary in scope. Some of them ordered reinstatement of the workers and back payment of the wages they had lost from the moment they had been dismissed. Others, on the contrary, ordered reinstatement and denied the prayer for back payment.

3. For the first group of workers, the Court stated that Peru should comply with the orders and therefore that the compensations should be figured out as from the date of their unlawful dismissals (paragraph 302).

4. For the second group of workers, the Court established that the basis for the compensation would also be the wages lost, but only as from the date the orders directing reinstatement became final (paragraphs 303 and 304). I do not concur with this.

5. Pecuniary damage "implies the loss of, or detriment to, the income of the victim." It looks evident that this loss had effect as from the moment these workers were unfairly dismissed, for which reason the pecuniary damage also started to appear as from that moment. I do not concur with the consideration made by the Court in paragraph 303 of the Judgment. As the Court sets a compensation, it is not restricted to say only that the order that has not been complied with must be enforced and it has the power, that I think it should have exercised, to assess the damage on an independent basis. This would have also remedied the injustice of ascribing different consequences to similar events and, thus, adversely affect some of the dismissed workers.

Cecilia Medina-Quiroga
Judge

Pablo Saavedra-Alessandri
Secretary