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DAMAGE AWARDS FOR HUMAN RIGHTS VIOLATIONS IN THE EUROPEAN AND INTER-AMERICAN COURTS OF HUMAN RIGHTS*

I. INTRODUCTION

Judicial systems, created to resolve disputes and uphold rights, must afford remedies for violations of law. A remedy may be an award of damages to compensate an injured party or a change of situation ordered to correct a legal problem. In 1950, the European Convention of Human Rights enumerated internationally-protected rights and established the European Court of Human Rights to afford a remedy for human rights violations in Europe. The Inter-American Court of Human Rights, established for the Americas in 1978, similarly provides damage awards to protect human rights. The legal basis for awarding damages in the two systems is found in the fundamental treaties which set forth the rights and protections of peoples within their respective regions: the European Convention on Human Rights and its protocols set forth the principles and machinery for Europe, while the American Convention on Human Rights protects those in the Americas.

* The author wishes to thank Dinah Shelton for her guidance and inspiration and hopes that this comment will foster a better understanding of human rights.

1. BLACK'S LAW DICTIONARY 849 (6th ed. 1990) [hereinafter BLACK'S]. See also Eagleton, Measure of Damages in International Law, 39 YALE L.J. 52 (1929).
2. BLACK'S, supra note 1, at 1294.
The European Court of Human Rights has functioned for nearly forty years, while the Inter-American Court has existed for twelve years. Although the Inter-American Court has handed down only three decisions, the European Court has decided hundreds of cases. Many of these cases assess damages for human rights abuses based on broad treaty language conferring wide discretion on the courts to assess what constitutes "fair or just compensation." Although the two systems of human rights protection have functioned continuously since their initiation, there has been no analysis or compilation of the circumstances under which petitioners are entitled to compensation under the relevant treaties.

By examining the cases, an evaluation may be made of how each court works, under what circumstances each court grants compensation, and whether the compensation is consistent. A pattern of compensation emerges from the cases. For analytical purposes, cases may be categorized according to type of award. The categories found in the European system include: (1) awards for pecuniary damages; compensation for non-pecuniary damages; and (3) lawyers fees, costs and expenses. Fundamentally, the court should award damages

6. See supra notes 3-4 and accompanying text.
9. European Convention, supra note 5, art. 50; American Convention, supra note 5, Part II, art. 63.
10. Pecuniary damages are awards which "can be estimated in and compensated by money; not merely the loss of money or salable property or rights, but all such loss, deprivation, or injury as can be made the subject of calculation and of recompense in money." BLACK'S, supra note 1, at 392.
12. Lawyers fees, costs and expenses include such expenses as travel costs, expert fees and other fees in connection with representation; however, these fees must have actually been incurred and be reasonable as to the amount. See Pudas Case, 125-1 Eur. Ct. H.R. (ser. A) at 18 (1987); Baraona Case, 122-1 Eur. Ct. H.R. (ser. A) at 23 (1987); Case of Sporrong & Lönroth, 88-1 Eur. Ct. H.R. (ser. A) at
in each of these categories as an enforcement mechanism against abuses and to enable people to feel that the system is providing relief. The three decisions handed down by the Inter-American Court involve disappearances. In the two where the court found the government responsible, it awarded reparations and moral material damages.\(^3\)

This comment will analyze decisions of both the European Court of Human Rights and the Inter-American Court of Human Rights in order to demonstrate the factual elements needed for an award of damages for human rights abuses. First, the background of damage awards and the two human rights systems will be addressed. Next, the European Court decisions will be categorized according to damage awards provided and compiled according to which articles have thus far been used to award damages. The two Inter-American Court cases in which damages were awarded will be analyzed according to their language and the damages received by the petitioners. Finally, a proposal will be presented which advocates broader treaty interpretation and application of existing case law to new article violations.

II. BACKGROUND

A. Damages

Generally, two basic legal systems govern Europe and the Americas: common law and civil law.\(^4\) A major difference between the two systems is that civil law relies on substantive rules to derive judgements,\(^5\) whereas common law consists of unwritten, judge-made law.\(^6\)

The role of damages differs according to the legal system involved. Common law in the United States has developed a

13. These damage award terms will be explained in the following text. Reparation refers to pecuniary damages. See supra note 10. Moral damages refer to non-pecuniary damages. See supra note 11.
14. See generally, Monge, The Structure of the American Legal System—Its Sources, Forms and Theory of Law, 51 REV. JUR. U.P.R. 11 (1982). The United States, England and other former English colonial countries such as Bermuda, Jamaica and Canada are the common law countries involved in these two systems. Id.
16. Id. at 638.
system of punitive damages, which has greatly increased the amounts of awards possible. The purpose of punitive damages as a civil remedy is punishment and deterrence. In contrast, punitive damages do not exist in the civil law system. Instead, this system relies on the criminal law system and fines for punishment. Additionally, in the civil law system, the loser pays all the litigation expenses, thus alleviating the need for monetary compensation for attorney and court fees within the judgment.

Punitive damages in international cases have not been rejected in theory, but thus far have been excluded in practice because of the limited power granted the courts by the governing treaties. At this point, the treaties have been interpreted to exclude punitive damage awards.

B. Human Rights Systems of Protection

1. The European System

The European Convention on Human Rights ("Convention") began in 1953 as a multilateral, regional treaty to pro-
tect civil and political rights. Since its initiation, the Convention has been ratified by all of the twenty-one member states of the Council of Europe.

Protected rights are located in section I of the Convention and in the First, Fourth, Sixth, and Seventh protocols. The rights which have been compensated include: the right to liberty and security of person; the right to a fair trial and a public hearing in civil and criminal matters; the right to respect for one's private and family life, one's home, and one's correspondence; freedom of assembly and association (including the right to initiate and participate in trade unions); the right to marry and have a family; the right to peaceful enjoyment of property; and the right to education.

27. Civil and political rights constitute personal and natural rights along with the right to participate directly or indirectly in the government guaranteed and protected by a "constitution." BLACK'S, supra note 1, at 1324-25.

28. O'Boyle, supra note 3, at 698. Member states that have ratified the Convention are: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. O'Boyle, supra note 3, at 698. For detailed statistical information, see Council of Europe, European Commission of Human Rights Annual Review (1978).

29. European Convention, supra note 5.
30. European Convention, supra note 5.
31. European Convention, supra note 5.
32. European Convention, supra note 5.
33. A protocol is a section of a treaty added to the preliminary body which becomes part of the treaty. WEBSTER'S NEW COLLEGIATE DICTIONARY 947 (9th Edition 1988). A protocol can be analogized to an amendment to the U.S. Constitution. Id.
34. European Convention, supra note 5, art. 5.
35. European Convention, supra note 5, art. 6.
36. European Convention, supra note 5, art. 8.
37. European Convention, supra note 5, art. 11.
38. European Convention, supra note 5, art. 12.
39. European Convention, supra note 5, protocol 1, art. 1.
40. European Convention, supra note 5, protocol 1, art. 2. In summary, they provide: the right to life, freedom from torture and inhuman and degrading treatment, freedom from slavery and forced labor, the right to liberty and security of person, the right to a fair trial and a public hearing in civil and criminal matters, protection against retroactivity of criminal law, respect for one's private and family life and one's home and correspondence, freedom of thought, conscience, and religion, freedom of expression, freedom of assembly and association (including the right to initiate and participate in trade unions), the right to marry and have a family, the right to an effective remedy before a national authority if the rights and freedoms of the Convention are violated, prohibition of discrimination in the enjoyment of the rights and freedoms of the Convention, id. arts.
States ratifying the Convention assume the obligation to secure the rights and freedoms afforded through this instrument to every person within their jurisdiction. The Convention also establishes a system of international supervision "to ensure the observance of the engagements undertaken by the High Contracting Parties." The system operates with three controlling organs: the European Commission on Human Rights ("Commission"), the European Court of Human Rights ("Court"), and the Committee of Ministers of the Council of Europe ("Committee of Ministers"). The Committee of Ministers is the political organ of the Council of Europe and has specific tasks assigned to it by the Convention. The Commission and the Court operate as specialized bodies empowered with judicial independence.

Victims, or parties on behalf of the victims, initially file individual complaints with the Commission, which then executes a preliminary examination to determine admissibility of the complaint. If the Commission deems the complaint admissible, it ascertains the facts of the situation and examines the possibility for a friendly settlement. If the two parties cannot achieve a friendly settlement, the Commission prepares a confidential report containing the established facts and an opinion as to whether a violation has occurred.

2-14; the right to peaceful enjoyment of property, the right to education, the right to free elections, id. protocol 1, arts. 1-3; freedom from imprisonment on the ground of inability to fulfill a contractual obligation, the right to free movement within any country and freedom to leave any country, the right of a national to enter and remain in his country, and prohibition of the collective expulsion of aliens, id. protocol 4, arts. 1-4.

41. O'Boyle, supra note 3, at 699. Explicit limits on these rights exist when there is a protection of a superior state interest. Derogation is also possible. European Convention, supra note 5, art. 15.

42. European Convention, supra note 5.

43. O'Boyle, supra note 3, at 699.

44. O'Boyle, supra note 3, at 699.

45. The Convention provides for two types of complaints: an inter-state complaint and a complaint filed by individuals. European Convention, supra note 5, arts. 24-25. The right to individual petition, however, may only be exercised within states which have specifically accepted the competence of the Commission to hear such complaints. O'Boyle, supra note 3, at 700.

46. The established criteria may be found in the European Convention, supra note 5, arts. 26, 27.

47. European Convention, supra note 5, art. 28.

48. European Convention, supra note 5, art. 31.
The Commission transmits this report to the Committee of Ministers and the concerned state. Within three months of the transmittal, the case may be referred to the Court for adjudication by the Commission, the state, or the Committee of Ministers. The Court has the power only to hear cases involving states that have accepted its jurisdiction either on a compulsory or ad hoc basis.

Court membership consists of a number of judges equal to the number of the member states comprising the Council of Europe. The Court holds public hearings of cases as they are brought before it and exercises jurisdiction over all cases concerned with the interpretation and application of the Convention. During the proceeding, the Court obtains written briefs and hears oral arguments. If the Court finds that a violation has occurred, article 50 of the European Convention authorizes an award of damages as follows:

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the

49. The Committee of Ministers supervises the execution of the judgment of the court which is a binding, final decision affording “just satisfaction” to the injured party. European Convention, supra note 5, arts. 48, 50, 52 & 53.

50. European Convention, supra note 5, arts. 28, 31 & 48.

51. European Convention, supra note 5, art. 48. A country’s agreement to compulsory jurisdiction grants the court the right to hear all cases brought to the court that deal with that particular country. BLACK’S, supra note 1, at 287. Ad hoc jurisdiction grants the court the right to hear only the particular case brought to the court. BLACK’S, supra note 1, at 41. An elaborate system of enforcement sanctions against non-compliant states does not exist in the Convention. However, a possibility of expulsion or suspension when dealing with extreme cases from the Council of Europe exists. O’Boyle, supra note 3, at 701.

52. Judges are elected for a nine year term. European Convention, supra note 5, art. 39.

53. European Convention, supra note 5, art. 38. The court elects a president and vice-president for a three year term. European Convention, supra note 5, art. 41. For consideration of a case, the Convention sets forth that the court will consist of a Chamber of seven judges. If the case raises a serious question involving the interpretation of the Convention, the Chamber must relinquish jurisdiction to the Plenary Court. A quorum of the Plenary Court exists if there are eleven judges. O’Boyle, supra note 3, at 722.

54. Jurisdiction is a legal term meaning the “[p]ower and authority of a court to hear and determine a judicial proceeding; and power to render the particular judgment in question.” BLACK’S, supra note 1, at 853.

55. European Convention, supra note 5, art. 45.
internal law of the said Party allows only partial reparation
to be made for the consequences of this decision or mea-
sure, the decision of the Court shall, if necessary, afford just
satisfaction to the injured party.\(^{56}\)

The European Court of Human Rights develops and protects
fundamental principles of law which extend beyond the indi-
vidual case principles and must be taken into account by
member states in their domestic law and practice.\(^{57}\) Similar
provisions can be found in the Inter-American system.

2. The Inter-American System

The Inter-American Convention,\(^{58}\) adopted in 1978, sets
out the human rights protection system for the Americas. Al-
though the system has a long tradition,\(^{59}\) the Inter-American
Convention was modeled in large part after the European
system. For purposes of this comment, the court functions in
the same manner as explained above for the European sys-

tem.\(^{60}\)

However, the language authorizing the court to compen-
sate violations is broader than the corresponding provision in
the European Convention. Article 63(1) of the American Con-
vention enables damages to be paid:

> 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. \textit{It shall also rule, if ap-}

\(^{56}\) European Convention, \textit{supra} note 5, art. 50 (emphasis added).
\(^{57}\) O'Boyle, \textit{supra} note 3, at 732.
\(^{58}\) American Convention, \textit{supra} note 5.
\(^{59}\) T. Buergenthal, R. Norris & D. Shelton, \textit{Protecting Human Rights
in the Americas: Selected Problems} 1-26 (1986).
\(^{60}\) The American Convention is not identical to the European Convention,
but basically protects the same principles. One of the major differences between
the systems is that an individual within an OAS member-state may file a petition
by right, whereas in the European system the right of an individual to petition is
subject to separate acceptance by the accused country. \textit{Compare} European Con-
vention, \textit{supra} note 5, art. 25 \textit{with} American Convention, \textit{supra} note 5, arts. 44-45.
For a good discussion of the Inter-American system, see generally Norris, \textit{supra}
ote 4.
propriate, 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.\textsuperscript{61}

While the European Court of Human Rights provides that the court should award compensation only “if necessary,” the American Convention provides that the court will “rule, if appropriate, . . . that fair compensation be paid to the injured party.”\textsuperscript{62} Therefore, the standard for obtaining relief through the Inter-American Convention is more inclusive than that of the European Convention.

C. Jurisprudence

1. European Court Jurisprudence

As of 1988, one hundred and sixty cases had been filed with the European Court.\textsuperscript{63} Ninety-two (fifty-eight percent) of the cases filed resulted in violations.\textsuperscript{64} Of these, damages oth-

\textsuperscript{61} American Convention, supra note 5, art. 63(1) (emphasis added).

\textsuperscript{62} European Convention, supra note 5, art. 50; American Convention, supra note 5, art. 63(1).


er than declaratory relief for human rights violations were awarded in approximately sixty-five cases. Thus, forty-seven


percent of all cases filed with the Court have resulted in some
form of monetary compensation, while in eighty-two percent of those in which a violation was found, the Court awarded compensation.\(^6\)

As mentioned above, these decisions can be categorized according to the awards given: (1) awards for pecuniary damage;\(^7\) (2) awards for non-pecuniary damage;\(^8\) and (3) awards for lawyer’s fees, costs and expenses.\(^9\)

a. **Pecuniary Damages**

Pecuniary damages constitute compensation for lost wages and other monetary losses.\(^70\) In *Case of Young, James and Webster*,\(^71\) the Court held the United Kingdom liable for pecuniary damages for a violation of article 11 of the European Convention.\(^72\) Article 11 provides the right to freedom of peaceful assembly and the freedom of association.\(^73\) All three petitioners were dismissed from their employment for failure to join a specified trade union.\(^74\) The Court “afforded just satisfaction” under article 50 by awarding the petitioners past earnings with interest, pension rights, and travel privileges in monetary amounts.\(^75\) The amounts awarded by the Court were:

\(^{66}\) All cases are not cited within this comment; rather a select group represents the categories.

\(^{67}\) Pecuniary damages provide for damages which “can be estimated in and compensated by money; not merely the loss of money or salable property or rights, but all such loss, deprivation, or injury as can be made the subject of calculation and of recompense in money.” BLACK’S, *supra* note 1, at 392.


\(^{70}\) See *supra* note 67.


\(^{72}\) European Convention, *supra* note 5, art. 11.

\(^{73}\) European Convention, *supra* note 5, art. 11.


\(^{75}\) *Id.* at 7.
Mr. Young: U.S. $29,483.10, Mr. James: U.S. $73,153.72, and Mr. Webster: U.S. $15,949.30.6

Case of Campbell and Cosans77 illustrates another award for pecuniary damages. Here, the Court found a violation of article 2, protocol 1,78 which protects the right to education and the state's respect for the parents' right to ensure education in conformity with their own religious and philosophical convictions. The claim was based on the use of corporal punishment as a disciplinary measure in Scottish schools.79 The Court held that corporal punishment breached the parents' rights to educate their children80 and that the student's suspension from school due to his refusal to accept such punishment violated his right to education.81 As a result, the Court awarded pecuniary loss damages to the student Jeffrey Cosans.82 No specific guidelines were set forth by the Court for its award.83 The subjective factors used by the Court included whether Cosans' educational level and opportunities would have been different aside from this event.84 The factors did not lend themselves to precise calculations, but from them, the Court was able to set an award of U.S. $4,748.70 for pecuniary and non-pecuniary damage to Jeffrey Cosans.85

Pecuniary damages resulting from a violation of article 6, section 1,86 the right to a fair and public trial within a reasonable time, were assessed against Italy for failing to provide a civil proceeding within a reasonable time. In Capuano Case,87 the defendants waited more than ten years for the domestic court to rule on Capuano's suit88 to defend her beach access

76. Id. Amounts awarded in English pounds: Mr. Young: 18,626; Mr. James: 46,215; and Mr. Webster: 10,076. Id. at 9. Dollar amounts appearing in the text are approximations according to exchange rates on May 9, 1990 provided by Bank of America, Santa Clara, Cal. (U.S. $1.5829 = 1 English pound).
78. European Convention, supra note 5, protocol 1, art. 2.
80. Id.
81. Id. at 5-6.
82. Id. at 14.
83. Id. at 13.
84. Id.
85. Id. Three thousand English pounds for both pecuniary and non-pecuniary damage were awarded. Unfortunately, the court did not separate the award. Id. See supra note 76.
86. European Convention, supra note 5, art. 6.
88. Id. at 4. The claim was filed in November of 1976. The original hearing
easement which had been encroached by the government. The Court did not find the case to be factually or legally complex, and awarded damages of U.S. $6,078.40 to Mrs. Capuano because of the domestic court's unnecessary delay. The Court attributed Mrs. Capuano's pecuniary loss to costs and expenses in Italy and other financial losses.

b. Non-pecuniary Damages

The Court awards non-pecuniary damages for emotional damage, pain and suffering, and injury to human dignity. The European Court has awarded non-pecuniary damages in was scheduled for January 10, 1977; however, the hearings were continually cancelled and postponed until April 29, 1987. The Court of Appeal had not given the judgment at the time of this case. Id. at 7-10.

89. Id. at 8.
90. Id. at 12.
91. Id. at 15-16 (1987). The 8,000,000 Italian lire awarded includes both pecuniary and non-pecuniary damage. Id. U.S. $0.0007598 = 1 Italian lira. See supra note 76.
92. Capuano Case, 119-I Eur. Ct. H.R. (ser. A) at 15. All pecuniary awards issued by the European court were as follows:
numerous cases. These cases generally involve violations of four specific articles of the Convention.

1. Article 6 Cases

Article 6 guarantees the right to a fair and public trial. In Case of Colozza and Rubinat, Italy had ordered the imprisonment of Mr. Colozza for fraud. However, Mr. Colozza was never notified of the charge or case and no attorney represented his claim as required by Italian law. When the authorities located Colozza, they arrested and sentenced him without giving him a trial. The Court awarded non-pecuniary damages of U.S. $4,558.80 for Colozza’s time in prison and the deprivation of his right to trial.

94. Non-pecuniary damages have been awarded for twenty-five article violations. Fourteen cases occurred under article 6 violations, four occurred under article 8 violations, five occurred under article 5 violations, one under article 11, and one under protocol 1, article 1.


95. See supra note 94 for list.

96. European Convention, supra note 5, art. 6.


98. Id. at 8.

99. Id. at 8-10.

100. Id. at 10-11.

101. Id. at 14-17. Six million Italian lire awarded. Id. See supra note 76.
Article 6 violations also occur when a trial is not held within a reasonable time. In the Baraona Case, Portugal violated article 6 by waiting six years to proceed against Mr. Baraona in his civil case. Mr. Baraona filed a civil action on July 30, 1981 against Portugal seeking damages for the use of an illegal warrant for his arrest. Six years later, the court found the action still pending. In analyzing Portugal's conduct, the Court found that although the case against Baraona was complex, a six-year waiting period constituted an unreasonable delay. The Court looked to the fact that after six years, Mr. Baraona still lived in uncertainty as to the outcome of the litigation and the possibility of resettling in Portugal. The Court ordered the State to pay Mr. Baraona U.S. $3,122.50 for non-pecuniary damage.

Non-pecuniary damages have also been awarded for the lack of a fair and public trial. In O, H, W, B, and R v. United Kingdom, the Court awarded damages because insufficient remedies were available for the parents in regard to decisions pertaining to their children who were in the care of a local authority. In the first case, the applicant was refused access to his children for four and one-half years. The Court declared a violation of article 6, section 1, based solely on the ground that no available remedy would allow the applicant to gain access rights to his children. The Court awarded U.S. $7,914.50 to O; U.S. $18,994.80 to H;

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105. Id. at 9.
106. Id. at 19.
107. Id.
108. Id. at 22.
109. Id. at 23. The court ordered 500,000 Portuguese escudos for non-pecuniary damage. Id. U.S. $.006245 = 1 Portuguese escudo. See supra note 76.
112. Id. at 4.
113. Id. at 8-9.
114. Id. at 8.
115. Id. at 9.
116. Id. at 18.
$18,994.80 to W;\textsuperscript{117} U.S. $18,994.80 to B;\textsuperscript{118} and U.S. $12,663.20 to R.\textsuperscript{119}

In Unterpertinger Case,\textsuperscript{120} the Court held that Austria violated article 6, section 3(d), which provides for the right to examine, or have examined, witnesses who will be used against an accused.\textsuperscript{121} The applicant had been convicted of a criminal offense on the basis of statements made to the police by his former wife and step-daughter which were read aloud at the hearing.\textsuperscript{122} These statements were not treated as mere information, but rather as proof of the truth.\textsuperscript{123} The applicant had no opportunity to examine them himself or have them examined by others during any stage of his proceedings.\textsuperscript{124} Thus, the Court found a violation of article 6, section 3(d), and awarded U.S. $11,724.87.\textsuperscript{125}

Goddi Case\textsuperscript{126} awarded non-pecuniary damages for Italy's failure to notify the current counsel of the date of the hearing. Goddi was serving time in prison for a conviction when another hearing was scheduled to take place. The state did not notify his current counsel or make arrangements for Goddi to be present at the hearing. The state convicted Goddi, and upon review, the Court found a violation of Goddi's right to a practical and effective defense.\textsuperscript{127} The Court awarded U.S. $3,799.00 to the applicant.\textsuperscript{128}

\begin{itemize}
\item \textsuperscript{117} Id. at 26.
\item \textsuperscript{118} Id. at 35.
\item \textsuperscript{119} Id. at 43. The court awarded 5,000 English pounds to O; 12,000 to H; 12,000 to W; 12,000 to B; and 8,000 to R. Id. See supra note 76. For other cases alleging damages for material and non-material damages and illustrating the court's awards for article 6 violations, see Pudas Case, 125-I Eur. Ct. H.R. (ser. A) (1987); Capuano Case 119-I Eur. Ct. H.R. (ser. A) (1987); Case of Campbell & Cosans, 60-I Eur. Ct. H.R (ser. A) (1983).
\item \textsuperscript{120} Unterpertinger Case, 110-I Eur. Ct. H.R. (ser. A) (1986).
\item \textsuperscript{121} Id. at 16.
\item \textsuperscript{122} Id. at 13.
\item \textsuperscript{123} Id. at 15.
\item \textsuperscript{124} Id. at 13.
\item \textsuperscript{125} Id. at 16. The court awarded 161,578.15 Austrian shillings minus 5,470.50 French francs. Id. U.S. $.07830 = 1 Austrian shilling; U.S. $.1694 = 1 French franc. See supra note 76.
\item \textsuperscript{127} Id. at 3, 6-8.
\item \textsuperscript{128} Id. at 14. Five million Italian lire were granted. Id. See supra note 76.
\end{itemize}
2. Article 5 Cases

Violations of article 5, section 1, which guarantees liberty and security of person, have resulted in non-pecuniary damage awards. The Bozano Case demonstrates one such award. The French illegally detained Mr. Bozano in prison for one night and then forcibly escorted him to the Swiss border. This action was found to be a "disguised form of extradition designed to circumvent a negative ruling by the appropriate French court, and an abuse of deportation procedure for objects and purposes other than its normal [use]." Mr. Bozano was subsequently taken to prison to serve a life term. The Court found that the forcible removal caused real damage to Mr. Bozano due to "the 'process' whereby it was carried out" and the arbitrary and unlawful deprivation of liberty that Mr. Bozano suffered during the night of his capture. The Court awarded U.S. $16,940.00 for this violation of liberty.

Article 5, section 3, guarantees that arrestees or detainees will be promptly brought before a judge or other officer authorized by law to exercise judicial power, and be entitled to a trial within a reasonable time, or to release pending trial. Violations of article 5, section 3, have resulted in damage awards in two cases. Case of Duinhof and Duijf held the Netherlands liable for damages from the detention of service-men accused of military criminal offences. Duinhof and Duijf were brought before their national courts as conscientious objectors to military call. The Court found that the

129. European Convention, supra note 5, art. 5.
131. Id. at 48.
132. Id. at 44-45.
133. Id. at 46.
134. Id. at 45.
135. Id. at 48.
136. Id. One hundred thousand French francs were awarded. Id. See supra note 76.
137. European Convention, supra note 5, art. 5.
140. Id. at 3.
141. Id. at 7.
proceedings violated the Convention. First, the people of authority, the auditeur-militair and the officer-commissaris before whom the petitioners appeared, did not have the power to order the release of the petitioners and, therefore, did not possess judicial power within the meaning of the Convention.\textsuperscript{142} In addition, the military court hearings did not occur until eight and twelve days after arrest, which was held to constitute an abuse of the "prompt" hearing requirement.\textsuperscript{143} The Court ordered payment of U.S. $150.24 to each applicant.\textsuperscript{144}

In \textit{Van Droogenbroeck Case},\textsuperscript{145} the Court found violations of article 5, section 4, which guarantees that everyone deprived of liberty by arrest or detention is entitled to proceedings by which the lawfulness of the detention shall be decided speedily by a court and a release ordered if the detention is not lawful.\textsuperscript{146} Mr. Van Droogenbroeck spent 1,899 days in custody without being able to initiate a proceeding to decide the lawfulness of his detention.\textsuperscript{147} Because no facts suggested that Mr. Van Droogenbroeck would have been released earlier, no pecuniary loss was found.\textsuperscript{148} However, the court did award non-pecuniary damages for the deprivation of Mr. Van Droogenbroeck's article 5, section 4, rights.\textsuperscript{149} The Court awarded U.S. $534.00 to the applicant.\textsuperscript{150}

3. \textit{Article 8 Cases}

Article 8 provides the right to respect for privacy, family life, and correspondence.\textsuperscript{151} \textit{Olsson Case}\textsuperscript{152} illustrates a typi-
cal article 8\textsuperscript{153} damage award. The State took the Olsson's children away and placed them under state supervision.\textsuperscript{154} At a young age, the parents had been placed in a home for the mentally retarded.\textsuperscript{155} They had received psychiatric counseling and did not always cooperate with the social authorities.\textsuperscript{156} Hence, the state determined the Olssons unfit to raise their children.\textsuperscript{157} The Court found insufficient reasons justifying the removal of the children\textsuperscript{158} and held that the public care of the applicants' children violated article 8.\textsuperscript{159} Thus, the Court awarded U.S. $30,380.00 to the Olssons.\textsuperscript{160}

4. Protocol 1, Article 1 Cases

The last example of a violation resulting in an award of non-pecuniary damages involves a violation of article 1 of protocol 1.\textsuperscript{161} This article entitles persons to the peaceful enjoyment of their possessions.\textsuperscript{162} In \textit{Case of Sporrong and Lönroth},\textsuperscript{163} the Court ordered Sweden to compensate the plaintiffs for a violation of their right to property due to the state's system of long-term expropriation permits.\textsuperscript{164} The system prohibited construction on certain lands and did not compensate for the loss in value. Thus, the petitioners were unable to redevelop their land for business purposes.\textsuperscript{165} The Court found that the restrictions put on the property by the government created a loss in market value, an inability to obtain loans based on the value of the property, and additional risks to development of that property.\textsuperscript{166} Since Swedish courts did not compensate for this damage, and a violation was found,

\begin{itemize}
\item \textsuperscript{94} for other cases.
\item \textsuperscript{153} European Convention, \textit{supra} note 5, art. 8.
\item \textsuperscript{155} \textit{Id.} at 9.
\item \textsuperscript{156} \textit{Id.} at 9-10.
\item \textsuperscript{157} \textit{Id.} at 10.
\item \textsuperscript{159} \textit{Id.} at 4-5.
\item \textsuperscript{160} \textit{Id.} at 44. 200,000 Swedish crowns were awarded to the Olssons for non-pecuniary damages. \textit{Id.} U.S. $\$1519 = 1 Swedish crown. \textit{See supra} note 76.
\item \textsuperscript{161} European Convention, \textit{supra} note 5, protocol 1.
\item \textsuperscript{162} \textit{Id.}
\item \textsuperscript{164} \textit{Id.} at 4.
\item \textsuperscript{165} \textit{Id.} at 8-9.
\item \textsuperscript{166} \textit{Id.} at 11.
\end{itemize}
the Court assessed a damage award of U.S. $121,520.00 to the Sporrong estate, and U.S. $30,380 to Mrs. Lönnroth.\textsuperscript{167}

c. **Lawyers Fees, Costs, and Expenses**

Assessments for lawyers fees, costs, and expenses, present the largest category of damage awards by the Court.\textsuperscript{168} Due to the nature of human rights violations, a remedy is often accomplished by declaratory relief rather than an award of monetary damages.\textsuperscript{169} However, in order to enable cases to be brought, the Court must award the expenses incurred by the petitioners. To date, the Court has awarded expenses for violations of ten different articles: article 5,\textsuperscript{170} article 6,\textsuperscript{171} article

\textsuperscript{167} Id. at 17. Eight hundred thousand Swedish crowns went to the Sporrong estate and 200,000 Swedish crowns to Mrs. Lönnroth. Id. See supra note 76.


169. Deweer Case 35-I, Eur. Ct. H.R. (ser. A) at 32 (1980). The court found that a violation of article 6 was remedied by a judgment that Mr. Deweer's rights were violated, instead of awarding a monetary non-pecuniary damage award. Id.


8, 172 article 10, 173 article 11, 174 article 12, 175 article 13, 176 article 14, 177 and protocol 1, articles 1 178 and 2. 179

Sanchez-Reisse Case 180 presents an example of an article 5 181 violation. Here, the Court held Switzerland liable for not providing an adequate mechanism for the petitioner to challenge the lawfulness of his detention. He was imprisoned in Switzerland, from where he was to be extradited to Argentina. 182 However, Switzerland did not provide adequate safeguards to allow him to challenge his detention and, therefore, was in violation of article 5, section 4. 183 Lawyers costs and expenses were the sole damages claimed, 184 for which the Court awarded U.S. $4,464.89. 185

An article 8 violation occurred in Schönenberger and Durmaz, 186 where Switzerland violated Mr. Durmaz’s article 8 right to correspondence by stopping his attorney’s letter from reaching him when he was being held on remand. 187 The Court awarded the petitioners the costs of the proceedings. Mr. Schönenberger received U.S. $4,108.63 and Mr. Durmaz received U.S. $1,787.78. 188

In Case of Abdulaziz, Cabales and Balkandali, 189 the United

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181. European Convention, supra note 5, art. 5.
183. Id. at 23.
184. Id. at 22-23 (1986).
185. Id. at 23. The court awarded 6,868 Swiss francs. Id. U.S. $6,501 = 1 Swiss franc. See supra note 76.
188. Id. at 16. Mr. Schönenberger was awarded 6,320 Swiss francs and Mr. Durmaz 2,750 Swiss francs. Id. See supra note 76.
Kingdom violated articles 8, 13, and 14\textsuperscript{190} when applicants, who were permanently and lawfully settled in the United Kingdom, were not permitted to remain with or be joined by their spouses.\textsuperscript{191} The Court found a deprivation of the right to a family, and discrimination on the grounds of sex.\textsuperscript{192} The Court determined that the finding of a violation itself constituted just satisfaction, but awarded costs and expenses of the proceedings, which included attorney’s fees, and totaled U.S. $120.75.\textsuperscript{193}

The sole case compensating for a violation of article 12, which provides men and women of marriageable age the right to marry and have a family,\textsuperscript{194} is Case of F v. Switzerland.\textsuperscript{195} Switzerland imposed a temporary prohibition on remarriage after a divorce on the spouse held responsible for the dissolution of the marriage.\textsuperscript{196} In this case, the Court again found that its judgment served to remedy the violation, and thus an award of U.S. $9,313.98 for costs and expenses—of both national court costs and Convention proceedings—sufficed as just compensation.\textsuperscript{197}

A large number of awards for costs and expenses involve article 6, section 1.\textsuperscript{198} An example of a violation of the right to a fair and public hearing within a reasonable time is the Bodén Case,\textsuperscript{199} where Sweden did not provide a procedure for challenging an expropriation permit issued by the government.\textsuperscript{200} The Court awarded costs and expenses associated with the court proceedings of U.S. $774.26.\textsuperscript{201}

\begin{flushleft}
\textsuperscript{190} Case of Abdulaziz, Cabales & Balkandali, 94-I Eur. Ct. H.R. (ser. A) at 5-7 (1985).
\textsuperscript{191} Id. at 5.
\textsuperscript{192} Id. at 5, 6, 45.
\textsuperscript{193} Id. at 45. The court awarded 76 English pounds. Id. See supra note 76.
\textsuperscript{194} European Convention, supra note 5, art. 12.
\textsuperscript{196} Id. at 5.
\textsuperscript{197} Id. at 20. The court awarded 14,327 Swiss francs. Id. See supra note 76.
\textsuperscript{198} Twenty-six cases were article 6 violations. See supra note 168.
\textsuperscript{200} Id. at 31.
\textsuperscript{201} Id. at 44. The court awarded 8,900 Swedish crowns less 3,410 French francs. Id. See supra note 76.
\end{flushleft}
D. Inter-American Court Decisions

The Inter-American Court has only decided three cases; in two of these, violations were found and damages awarded. Velasquez Rodriguez Case and Godinez Cruz Case both deal with disappearances in Honduras. In these first cases, the court has set forth in detail the damage awards and their reasoning, making it possible to better assess the details of the damage awards.

1. Velasquez Rodriguez Case

a. Background

Velasquez Rodriguez Case was brought against Honduras for violating the rights of personal liberty, humane treatment, and life, guaranteed by the American Convention. Velasquez Rodriguez, a student at the National Autonomous University of Honduras, was allegedly kidnapped and illegally detained by members of the National Office of Investigations and the G-2 of the Armed Forces of Honduras. He was interrogated and tortured during this detention, after which he disappeared. The Commission received the petition on October 7, 1981 and began an investigation of the disappearance. The Court received the case on April 24, 1986. The Court ultimately awarded “fair compensation” in the form of payments to the wife and daughters and title to an adequate house along with moral reparation.

The judgment on the merits, issued on July 29, 1988, required Honduras to pay fair compensation to the next-of-kin
of Manfredo Velasquez Rodriguez in order for the case to be settled.\textsuperscript{210} When this was not done, the Court considered the issue once again. According to a document submitted to the Court on January 24, 1989, the Honduran government sought to limit the damage to "the most favorable benefits that Honduran legislation provides for Hondurans in the case of accidental death."\textsuperscript{211} The Commission submitted its views on just compensation claiming:

1. The adoption of measures by the State of Honduras which express its emphatic condemnation of the facts that gave rise to the Court's judgment. In particular, the Government's obligation to carry out an exhaustive investigation of the circumstances of the disappearance of Manfredo Velasquez and bring charges against anyone responsible for the disappearance should be established.
2. The granting to the wife and children of Manfredo Velasquez of the following benefits:
   a) Payment to the wife . . . the highest pension recognized by Honduran law.

\textsuperscript{210} \textit{Id.} at 35.
\textsuperscript{211} \textit{Id.} at 36. The wife of Velasquez pled the following points:
- An end to forced disappearances in Honduras.
- An investigation of each of the 150 cases.
- A complete and truthful public report on what happened to the disappeared persons.
- The trial and punishment of those responsible for this practice.
- A public undertaking to respect human rights, especially the rights to life, liberty and integrity of the person.
- A public act to honor and dignify the memory of the disappeared. A street, park, elementary school, high school, or hospital could be named for the victims of disappearances.
- The demobilization and disbanding of the repressive bodies especially created to kidnap, torture, make disappear and assassinate.
- Guarantees to respect the work of humanitarian . . . organizations and public recognition of their social function.
- An end to all forms of overt or indirect aggression or pressure against the family of the disappeared and public recognition of their honor.
- The establishment of a fund for the primary, secondary, and university education of the children of the disappeared.
- Guaranteed employment for the children of the disappeared who are of working age.
- The establishment of a retirement fund for the parents of the disappeared.

\textit{Id.} at 37-38.
b) Payment to the children . . . a pension or subsidy until they complete their university education.

c) Title to an adequate house, equivalent to the house of a middle class professional family.

3. Payment . . . [in an amount] corresponding to the resultant damages, loss of earnings, and emotional harm suffered by the family . . . , to be determined by that Illustrious Court based upon the expert opinion offered by the victim’s family.212

The attorneys also asked for moral as well as monetary damages.213 On March 15, 1989, a public hearing was held regarding the indemnity to be awarded.214

The Government believed that the court’s judgment of July 29, 1988 was “very clear and precise regarding the obligation of Honduras to pay damages, which [was] to pay just compensation to the family of the victim and nothing more.”215 As for the benefits set forth by the Commission, the Government believed that compensation should be limited to that authorized under Honduran law.216

The government also asserted the rationale that expenses for the media campaign against Honduras, fees for lawyers, and costs for the Commission process should not be granted in the form of damages, loss of earnings and emotional harm, because they did not reflect compensation to the Velasquez family.217

212. Id. at 4-5.
213. Id. at 5. In their opinion the cash indemnity should be a total of U.S. $2,012,208.60/9,844,465 lempiras consisting of:
   U.S. $40,880/200,000 lempiras for damages;
   U.S. $495,142.64/2,422,420 lempiras for loss of earnings;
   U.S. $981,129.19/4,800,045 lempiras for emotional damage;
   U.S. $495,056.80/2,422,000 lempiras for punitive damages
   U.S. $2,044 = 1 Honduran lempira. See supra note 76.

215. Id. at 45 (emphasis in original).
216. Id.
217. Id. Subsequent document exchanges took place between the government and the court pursuant to requests previously made. Id. at 45-47.
b. The Court's Evaluation and Award

The Velasquez Rodriguez court held that full reparation for a violation of an international obligation consists of "restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm."\(^{218}\) In fact, the Court pointed out that emotional harm may be awarded especially in instances of human rights violations: "As to emotional harm, the court holds that indemnity may be awarded under international law and, in particular, in the case of human rights violations."\(^{219}\)

The Court established that indemnification for human rights violations was supported both by universal and regional international instruments\(^ {220}\). Under article 63(1), which authorizes the award of damages, the Court found no provision limiting damages to the amount authorized by state law, and instead held that international reparations function independently of local law.\(^ {221}\) From this, the Court found that it must rely on the American Convention and applicable principles of international law.\(^ {222}\)

In addition, the Court saw a Honduran duty to prevent involuntary disappearances and to punish those directly responsible.\(^ {223}\) The Court declared the above obligations on Honduras until they were fully carried out.\(^ {224}\)

The Court did not award punitive damages requested by Velasquez, finding that punitive damages were not available in the Inter-American system.\(^ {225}\) Implicit in terms of the treaty, the Court found compensatory damages to include reparation to the family of material and moral damages suffered because of the involuntary disappearance of Velasquez Rodriguez.\(^ {226}\)
In sum, the Court held that fair compensation consisted of reparation to the family of the victim for material and moral damages suffered.\textsuperscript{227}

The Court established that the disappearance could not be compensated in terms of accidental death under Honduran law due to the seriousness of acts imputable to Honduras.\textsuperscript{228} Instead, the salary Velasquez was receiving at the time of his disappearance (U.S. $210.53 per month) was calculated by the number of years until retirement, along with a pension until his death.\textsuperscript{229}

However, because compensation will be awarded to the family, the Court determined that potential earning power of the children should be calculated in the award formula.\textsuperscript{230} The Court concluded that since Velasquez's children would have earning power at the age of twenty-five\textsuperscript{231} the total

\textsuperscript{227} Id. Compensation for patrimonial damages and litigation expenses, although legally available under the compensatory scheme, were not awarded due to the fact that they were not sufficiently pled or proven.

The Government argued that the most favorable treatment for the family possible under Honduran law was provided by the Law of the National Institute of Social Security for Teachers in the case of accidental death. The compensation would be U.S. $8,421.28/41,200 lempiras under the compensation system along with a government contribution to bring the total to U.S. $30,660.00/150,000 lempiras. See supra note 76.

The Commission did not propose an amount, but rather, left the following guidelines: (1) the greatest benefits Honduran legislation allows nationals which would be those granted by the Institute of Military Pensions; (2) a cash amount set by provisions of Honduran and international law.

The attorneys for Velasquez asserted that loss of earnings should be the income at the time of the kidnapping calculated with the education, professional opportunities, promotions, bonuses and benefits for retirement. For a thirty-year period this total was calculated at U.S. $337,597.26/1,651,650 lempiras. A ten year retirement was calculated at U.S. $157,543.34/770,760 lempiras to bring the total to U.S. $495,142.64/2,422,420 lempiras. Velasquez Rodriguez Case, Compensatory Damages, Judgment of July 21, 1989, (Art. 63(1) American Convention on Human Rights). Inter-Am. Ct. H.R., Series C, No. 7, at 54-55 (1989). See supra note 76.


231. Id.
amount of the award should be reduced.\textsuperscript{232} The Court, therefore, awarded U.S. $102,200.00 for loss of earnings.\textsuperscript{238}

The Court then analyzed the moral damages.\textsuperscript{234} Due to the effects of the disappearance of the head of the family, symptoms of fright, anguish, depression and withdrawal were discovered by expert documentary evidence.\textsuperscript{235} The Court found these moral damages should be compensated in the amount of U.S. $51,000.00.\textsuperscript{236} In total, the Court set forth an award of 750,000 lempiras, which translates into approximately U.S. $153,300.00.\textsuperscript{237}

\textbf{2. Godinez Cruz Case}

\textbf{a. Background}

The second case in which damages were awarded by the Inter-American Court, \textit{Godinez Cruz Case},\textsuperscript{238} was based on the disappearance of Saul Godinez Cruz from Honduras. Due to its similarity to \textit{Velasquez Rodriguez Case}, the circumstances, arguments, and Commission's and court's decisions will not be repeated.\textsuperscript{239}

\begin{itemize}
  \item \textsuperscript{232} \textit{Id.}
  \item \textsuperscript{233} \textit{Id.} 500,000 lempiras awarded for loss of earnings. \textit{Id.} at 14. \textit{See supra} note 76.
  \item \textsuperscript{235} \textit{Id.} at 15.
  \item \textsuperscript{236} \textit{Id.} The court awarded 250,000 lempiras for moral damages. \textit{Id.} \textit{See supra} note 76.
  \item \textsuperscript{238} \textit{Godinez Cruz Case}, Inter-Am. Ct. H.R. 35, OAS/ser. L./V./III.19, doc. 14 (1988). If no mention is made to a particular area covered in \textit{Godinez Cruz Case} it may be assumed that the language of the decision is the same.
  \item \textsuperscript{239} For pleadings, \textit{see supra} note 203 at 34. On March 10, 1989, the attorneys for Godinez requested reparation for moral damage to accompany the monetary damage. Moral reparation was set forth as:
    \begin{itemize}
      \item A public condemnation of the practice of involuntary disappearances carried out between 1981 and 1984.
      \item An expression of solidarity with the victims of that practice, including Saul Godinez Cruz' Public Homage to those victims by naming a street, thoroughfare, school or other public place after them.
      \item An exhaustive investigation of the phenomenon of involuntary disappearances in Honduras, with special attention to the fate of each of the disappeared. The resulting information being made known to the family and the public.
    \end{itemize}
\end{itemize}
The Godinez judgment, delivered on January 20, 1989, required Honduras "to pay fair compensation to the next-of-kin of the victim."240 The Court subsequently handed down a judgment on July 21, 1989, under article 63(1), setting forth monetary damages for the disappearance of Saul Godinez Cruz.241

As in the Velasquez case, there was wide divergence on the scope, bases and amount of compensation claimed for the Godinez Cruz family.242 Thus, the Court had to set forth the grounds and definition of just compensation in this case.243

- Prosecution and appropriate punishment of those responsible of inciting, planning, implementing or covering up disappearances, in accord with the laws and procedures of Honduras.


In monetary figures, the attorneys requested a total of U.S. $2,019,534.90/9,880,308 lempiras in damages award:

- U.S. $40,880.00/200,000 lempiras for damages;
- U.S. $578,514.95.00/2,830,308 lempiras for a loss of earnings;
- U.S. $933,494.80/4,567,000 lempiras for emotional damage;
- U.S. $466,645.20/2,283,000 lempiras for punitive damages.

Id at 5. See supra note 76.

Along with the monetary terms, the attorneys requested two terms for the execution of the award. The first was a request for legislation setting forth the wife and daughter as beneficiaries so that their award could be received without judicial proceedings. The second created deadlines for moral reparation which the government was to comply with; expressly stated was a 90 day execution period for the monetary reparation. Godinez Cruz Case, Inter-Am. Ct. H.R. 35, OAS/ser. L./V./III.19, doc. 14 at 5 (1988).

The Government offered payment of indemnity under the Honduran law of National Social Security Institute for Teachers in addition to a gesture of U.S. $1,226.40/60,000 lempiras because Godinez Cruz was a member of the system. Godinez Cruz Case, supra note 203, at 5-6. See supra note 76.


In a subsequent pleading, the government argued that payment is only admissible as to that which might be provided for by the system with which Mr. Godinez Cruz may have been affiliated. The government asserted that damages, loss of earnings, and emotional harm were inadmissible because the purpose was "not merely to compensate the Godinez Cruz family, but . . . to pay the expenses of the intense media campaign waged against Honduras within and without the country by national and foreign associations and to pay the fees of lawyers and other professionals who cooperated with the Commission." Id. at 7.

240. Id. at 2.
241. Id. at 15-16. Identical principles are explained by the court in note 227 supra.
242. Id. at 9.
243. Id. at 9-15.
b. The Court's Evaluation and Award

The Court compared what the government submitted, what the Commission set forth, and what the attorneys believed to be just compensation before making its award. Considering this evidence, the court set forth the loss in terms of a prudent estimate of the possible income of the victim for the rest of his probable life—a loss of earnings set at U.S. $81,760.00.

244. The court did not grant expenses to the family related to the investigation because they were not pled or proven during the trial. Id. at 12. The government decided that there should be the most favorable treatment possible under Honduran law, which is provided by the Law of the National Institute of Social Security for Teachers in the case of accidental death. This would be an award of U.S. $3,038.10/14,863.50 lempiras to which the government would contribute the difference of making the total compensation for the family to equal U.S. $1,226.40/60,000 lempiras. Id. See supra note 76.

The Commission did not give a monetary amount yet stressed two essential components:

(1) the greatest benefits under Honduran legislation providing for this type of case which in the Commission's opinion was granted by the Institute of Military Pensions; and

(2) a cash amount to be set in accordance with Honduran and International law.

Id. at 12.

The attorneys for Codinez Cruz calculated the loss of earnings according to the income of Mr. Godinez Cruz at the time of his kidnapping along with his education, possible promotions, bonuses and other benefits that would have been received at retirement. Id. In thirty years this amount would be U.S. $283,888.50/1,388,887 lempiras. To this a ten-year retirement allowance of U.S. $141,939.65/694,421 lempiras was added for a total compensation request of U.S. $425,828.15/2,083,308 lempiras. Id. at 12-13. See supra note 76.

Due to the nature of Mr. Godinez Cruz's death, along with the accountability of the State, the court noted that compensation should not be afforded through accidental death channels. Thus, the amounts should be based on what would have been earned in his natural life, not life insurance provisions. Id. at 13. The award, therefore, should be calculated according to what he would have received in his job until retirement, along with the pension which his work arrangement provided. Id.

The court noted that damage awards were based on two distinct situations:

(1) when the beneficiary is a victim who is totally and permanently disabled, compensation is what he would have earned calculated with life expectancy; and (2) if the beneficiaries are family members, the family members have the actual or future possibility of working or receiving income of their own. Id. at 13. In this situation, a prudent estimate of damages given the circumstances of each case should be awarded. Id.

245. Id. at 9-13.

246. Id. at 13 (loss of earnings of 400,000 lempiras). Id. See supra note 76.
The Court next considered moral damages suffered as a result of the psychological impact of the involuntary disappearance.\(^\text{247}\) As in the Rodriguez case the Court found symptoms of "fright, anguish, depression and withdrawal."\(^\text{248}\) Therefore, the Court awarded moral damages of U.S. $51,100.00, and set up a scheduled disbursement.\(^\text{249}\) The Court was to supervise the compensatory indemnity of 650,000 lempiras, which translates to approximately U.S. $132,860.00.\(^\text{250}\)

E. \textbf{Punitive Damages in Human Rights Awards}

The language in human rights treaties which provides for remedies has been held not to permit punitive damages.\(^\text{251}\)

The expression "fair compensation," used in Article 63(1) of the Convention to refer to a part of the reparation and to the "injured party," is compensatory and not punitive. Although some domestic courts, particularly the Anglo-American, award damages in amounts meant to deter or to serve as an example, this principle is not applicable in international law at this time.\(^\text{252}\)

Thus, damages for human rights in all Courts are assessed without considering punitive damages. The Courts strictly adhere to the language granting their powers, and to the principle that the awards are not correctional in that they do not serve as punishments.\(^\text{253}\)

\textbf{References}

248. \textit{Id.} at 14.
249. \textit{Id.} The moral damage award was set at 250,000 lempiras. See \textit{supra} note 76. In conclusion, the court set forth 650,000 lempiras to be executed to the family of Godinez Cruz free from tax either within 90 days or in six equal monthly installments, the first within 90 days. One forth of this award is to be designated to the wife, while three-fourths is to be given to the daughter. Godinez Cruz Case, Inter-Am. Ct. H.R. 35, OAS/ser. L./V./III.19, doc. 14, at 14 (1988).
252. \textit{See id.}
253. \textit{See id.}
III. ANALYSIS

In the analysis of the damage awards, the European system will be addressed first, followed by the Inter-American system. The purpose is to decipher the role damage awards currently play in remedying human rights violations, and to evaluate the need for, and possibility of, expanding this role.

A. European Court Decisions

One-third of the merits terminations in the European system have resulted in a damage award for human rights violations. Hence, the system set up by the European Convention is being utilized to go beyond mere declaratory relief in order, perhaps, to restore the individual to a situation as if the right had not been violated. At least this should be the policy. However, the small awards afforded in the European system seem to reflect other policies.

It is imperative that principles of human rights be protected, and violations be compensated, regardless of the size of the award. Damages should be awarded according to the severity of the violation and the damage suffered. In order to encourage persons whose rights have been violated to seek redress, claimants costs and expenses should be provided. Additionally, damage awards should always be made, even if they are nominal in nature.

B. Criteria for Damage Awards

An analysis of the European Court decisions leads to the conclusion that damages are awarded when particular criteria are met.

1. Pecuniary Damages

First, an award of pecuniary damages depends upon a demonstration of solid proof of a violation and subsequent damage, as exemplified in Case of Young, James and Webster. The petitioners in this case received pecuniary damage awards, and costs and expenses for their dismissal from employment.

254. See supra note 65.
due to their failure to join a trade union. In this case, the plaintiffs presented actual proof of why they were fired and their subsequent loss of income.\textsuperscript{256} Hence, the European Court faced no difficulty in granting relief as the circumstances set forth a clear breach of the human rights of peaceful assembly and freedom of association, and the resulting damages sustained.\textsuperscript{257}

On the other hand, the European Court will not award pecuniary damages if there is a lack of actual proof clearly establishing pecuniary damage.\textsuperscript{258} Language in Case of Schönenberger and Durmaz,\textsuperscript{259} clearly sets forth this principle.\textsuperscript{260} Durmaz's right to correspondence was violated when the state intercepted a letter from an attorney his wife had obtained while he was being held by the police. Mr. Durmaz was not aware that he had the opportunity to have this outside attorney work for him because he did not receive the letter.\textsuperscript{261} The Court found the withholding of this letter to be in violation of the Convention's right to correspondence. However, the court could not grant a pecuniary damage award because too many assumptions were necessary to substantiate a pecuniary loss. Pecuniary damages were claimed by Mr. Schönenberger for the earnings he would have made had he been appointed counsel for Mr. Durmaz. However, the causal link was lacking between Mr. Durmaz receiving the letter and Mr. Schönenberger receiving monetary compensation for services rendered. Nothing existed in the record to actually prove Mr. Durmaz would have appointed Mr. Schönenberger as counsel. Due to this lack of clear proof, a pecuniary award could not be awarded.

2. Non-pecuniary Damages

To determine if an award of non-pecuniary damage should be granted, the European Court analyzes "the attendant circumstances [which] inevitably caused the applicant substantial non-pecuniary damage."\textsuperscript{262} In the Bozano Case,\textsuperscript{263} the

\begin{itemize}
\item \textsuperscript{256} Id. at 4-5.
\item Id. at 4.
\item Id. at 15.
\item Id.
\item Id. at 8-10.
\item Bozano Case, 124-I Eur. Ct. H.R. (ser. A) at 46 (1987) at 46. See supra
\end{itemize}
petitioner was illegally detained, kept overnight in prison, and then forcibly escorted to the border for extradition. The court found the deprivation of liberty to be a grave violation which "inevitably" produced non-pecuniary damage.

The Court does, however, limit the extent on non-pecuniary damages. The Court denied non-pecuniary damages for a violation of the right to correspondence when the evidence showed nothing more than mere frustration.

3. Costs and Expenses

The European Court's case law, with regard to costs and expenses, is best exemplified by the Sunday Times Case. In this case, the Court stated that to receive costs and expenses, the petitioner must establish that the costs and expenses are actually incurred, are necessarily incurred, and that the amount is reasonable. Hence, the usual point of controversy occurs in assessing whether any costs were incurred unnecessarily or are unreasonable as to amount. The Court may award all costs and expenses of defending the violated right. These may include domestic, Convention and court costs. Often, the Court awards costs and expenses when the acknowledgement of a violation suffices as a remedy. If the petitioner can prove costs within the above standard, the Court will award damages for costs and expenses, provided a violation of the Convention is found.

263. Id.
264. See supra notes 129-36 and accompanying text for further explanation of the facts of this case.
268. Id. at 13.
270. Id. at 9.
C. Number of Damage Awards According to Article Violations

A trend can be seen in the European Court damage awards for specific article violations. The Court consistently awards damages for articles 6, 8, and 5. Thereafter, damage awards drop substantially in number. Thus, chances of receiving damage awards are increased when there is a violation of one of these three articles.

Most prominent are awards for article 6 violations, which comprise nearly half the awards. In fact, article 6 violations resulted in awards in all three categories of pecuniary damages, non-pecuniary damages, and costs and expenses. This trend shows the Court's broader approach to damages for a violation of the right to a fair trial. This apparent preference for awarding damages for article 6 violations can be traced to several factors. First, the language and idea of the right to a fair trial is a universally accepted principle in most member state legal systems. Thus, the Court does not encounter controversy in awarding damages for the deprivation of this right. In addition, the simplistic and definable language in article 6 lends itself to clear application to many differing systems and fact scenarios. Also, article 6 violations constitute the largest percentage of cases filed.

The second most prevalent article under which damages are awarded is article 8. Damage awards for article 8 viola-
tions have been allocated for non-pecuniary damages and costs and expenses, but pecuniary damages have not been awarded thus far.\textsuperscript{281} Damage awards for article 8 violations have been granted as follows: non-pecuniary damage—four awards\textsuperscript{282} and costs and expenses—ten awards.\textsuperscript{283} As mentioned above, clear evidence of pecuniary loss needs to be shown for a pecuniary damage award. A violation of the right to respect for privacy, family life, and correspondence,\textsuperscript{284} does not lend itself to proving clear pecuniary damage, because this right does not readily correspond to a monetary value. Thus, the right itself limits the applicability of a non-pecuniary award.

Article 5 violations, constituting the third-most-frequently compensated claims,\textsuperscript{285} have also only resulted in non-pecuniary damage awards, costs, and expenses.\textsuperscript{286} Again, the language of article 5, protecting the right to liberty and security of person,\textsuperscript{287} normally does not lend itself to proving pecuniary damages because it is difficult to put a price on liberty or security of person. However, because this right addresses unlawful detention, pecuniary damage could occur—such as a loss of wages from being detained. If proven, compensation should be awarded.

Damages due to violations of the remaining articles drop substantially in number. Article 14, providing the right to be free from discrimination,\textsuperscript{288} has resulted in only three damage awards.\textsuperscript{289} One of these, \textit{Inze Case},\textsuperscript{290} granted recovery for pecuniary damage, thus illustrating the possibility of a pecuniary award. In this case, the applicant was born out of wedlock. His mother died and the inheritance laws of Austria set

\begin{thebibliography}{99}
\bibitem{281} European Convention, \textit{supra} note 5.
\bibitem{282} See \textit{supra} note 168.
\bibitem{283} See \textit{supra} note 168.
\bibitem{284} European Convention, \textit{supra} note 5, art. 8.
\bibitem{285} Article 5 violation awards: five for non-pecuniary; four for costs and expenses, and two cases that do not classify specific a category. See \textit{supra} note 168.
\bibitem{286} See \textit{supra} note 285.
\bibitem{287} European Convention, \textit{supra} note 5, art. 5.
\bibitem{288} European Convention, \textit{supra} note 5, art. 14.
\end{thebibliography}
forth that the land parcel could not be divided by the heirs. The applicant thus attempted to be named the sole heir in order to take over the land and pay off the other heirs. Austrian courts denied Inze this right and gave the property right to his younger half-brother. Inze appealed to the highest court and subsequently filed with the European Court of Human Rights for a violation of article 14. The Court found a violation of article 14 in that Inze was discriminated against because of his birth out of wedlock. Article 14, taken in conjunction with article 1, protocol 1, provided for compensation. Mr. Inze clearly proved that discrimination had occurred and that he suffered pecuniary damage. The Court found pecuniary damage for Inze's loss of the opportunity to take over the farm. Compensation was calculated by increasing Inze's legal share in reasonable proportion to the surplus value which had been accrued to his half-brother. The other two awards for article 14 were for costs and expenses.

Article 11, which provides the freedom of peaceful assembly, has resulted in only two damage awards: one pecuniary award, and one costs and expenses award. Case of Young, James & Webster, was the sole case involving an article 11 award. The petitioners received pecuniary damages, and costs and expenses for their dismissal from employment due to their failure to join a trade union.

Violations of protocol 1, article 2, protecting the right to education, have resulted in two damage awards. In one case, Campbell & Cosans, the applicants were granted both pecuniary damages and costs and expenses. Again, as with article 6, clearly definable rights are provided within the right to education, making this article conducive to pecuniary award standards set forth by the European Court.

291. Id. at 8-12.
292. Id. at 21.
293. Id. Applicant awarded 150,000 Austrian shillings. Id.
295. European Convention, supra note 5, art. 11.
297. Id.
298. Id.
299. European Convention, supra note 5, protocol 1, article 2.
Article 12, defending the right to marry, and article 13, providing for an effective remedy to violations, are the last two articles which have been used to grant monetary relief. The one case under article 12, and the two cases under article 13, all resulted in costs and expenses awards.

In *Case of F v. Switzerland*, the Court held Switzerland responsible for the costs and expenses of temporarily prohibiting remarriage after a divorce—a violation of article 12. The state imposed this restriction on the spouse held responsible for the dissolution of the marriage, and the Court found that just satisfaction was afforded by the mere judgement of a violation. Thus, the Court only awarded costs and expenses for both the national and Convention proceedings.

In *Case of Campbell and Fell*, the Court ordered an award for part of the costs of the European Court proceedings after finding that an "effective remedy" was not offered to the petitioners and that their article 13 rights had, therefore, been violated. The Court found the restriction of the petitioner’s access to legal advice and personal correspondence while incarcerated and preparing his defense incompatible with the Convention’s right to an effective remedy at law.

In *Case of Silver and Others*, the Court similarly found that control over a prisoner’s correspondence, and refusal of access to legal advise sought, violated article 13.

**D. Summary of European Court Cases**

In summary, only ten articles have resulted in an application of the legal authority to award damages. Although the awards illustrate that damages are being provided, the circumstances and amounts are limited. Due to the narrow scope of

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301. European Convention, *supra* note 5, art. 12.
304. *Id.* at 20.
306. *Id.* at 51-56 (1984)
307. *Id.* at 52.
309. Articles 5, 6, 8, 11, 12, 13, 14, and First Protocol, article 1 and article 2.

See *supra* notes 273-308 and accompanying text.
the awarded damages, the system as it stands today detrimentally limits the wide protections of human rights afforded by the Convention.

The court’s limited view is based on the treaty’s “necessity” standard for awarding damages. Given the length of time needed to process these claims, the court should be more generous—perhaps in keeping with civil law provisions that award costs to all prevailing petitioners. Consistent with the treaty language, the term “necessary” should be examined in reference to the victim’s ability to bring a case and to deter future violations, thus expanding the narrow scope of the court’s current application. This expansion is not inconsistent with the object and purpose of the treaty and thus could be applied.310

E. The Inter-American System

Within the limited amount of time in which the Inter-American Court has existed, only three contentious cases have been brought before the Court.311 The Court has found violations in two of the cases.312 Both of these cases resulted in damages for the disappearance of individuals.313 The Court decisions virtually mirror each other, and demonstrate concern for consistency and precedent.314 The Inter-American Court’s computation for loss of earnings in cases of disappearance sets a standard for compensation by assessing earnings in terms of the income the victim would have received during his natural life, including a pension.315 The computation does not involve the most beneficial income possible in the country. Rath-


311. See supra note 7, and accompanying text.


314. See supra note 238.

er, it bases the award on the amount that the individual would have actually earned.\textsuperscript{316} The potential earning power of children is also factored into the compensation equation.\textsuperscript{317}

Despite requests for punitive damages, none were awarded in either case.\textsuperscript{318} The Inter-American Court clearly established that punitive damages are not available under this system of compensation at this time.\textsuperscript{319} This can be attributed to the Court's attitude that the rights exist to protect individuals, and not necessarily to punish wrongdoers as is done in a criminal system. In addition, most countries around the world base their legal system on civil law which does not provide for punitive damages.\textsuperscript{320}

Although no punitive damages awards have been allowed, the court does provide for moral damage awards.\textsuperscript{321} In the two cases, moral damages, a functional equivalent to non-pecuniary damages in the European Court, compensated for the psychological impact and damage to the plaintiffs.\textsuperscript{322} This shows the Court's willingness to compensate victims for a wide variety of damages despite their inability to award punitive damages.

In sum, damages for human rights violations are handled differently by the European and Inter-American Human Rights Courts. This is to be expected, as the governing language of the two treaties differs. The European Convention will only


\textsuperscript{320} Warshaw, supra note 19.


award a damage award if "necessary," whereas the Inter-American Court will grant a damage award if "appropriate." Thus, the Inter-American system has greater latitude in awarding damages. Additionally, stringent standards used by the European Court, limiting awards to only ten different articles, seem to undercut the full range of protections initially established by the European Convention. The Court's use of ambiguous language creates difficulties for uniformity, judicial standards, and interpretation. Inherent difficulties in the systems will always exist due to the divergence of legal traditions which are combined under the system.

IV. PROPOSAL

An expansion of human rights protection is imperative in order to foster a global concept of respect for human beings and human life. The European Court can open up doors for new protections by applying the basic concepts that it has already utilized to award damages, and by expanding this reasoning to awards of damages for other human rights violations. Attorneys must use a more focused presentation involving the specific standards set forth by the Court for pecuniary and non-pecuniary damages, and costs and expenses. A clear chain of events leading up to a violation, and subsequent damage, will be most persuasive in convincing the court to grant an award. Past case decisions and fact patterns should be cited to the Court, and comparisons between compensated article violations and similar concepts underlying other articles should be drawn. This type of comparison may persuade the Court to grant damage awards for violations of all available articles.

The term "necessary" should also be given a broader reading by the Court. The Court should be more generous when defining this term, and should take into consideration the victim's ability to bring a case, the length of time to process the claim, and the potential to deter future violations. This will lead to a greater number of awards and larger monetary compensation. Such an expansion would not be inconsistent with the object and purpose of the treaty. Alternatively, the Court could adopt the language of the Inter-American Court stan-

323. European Convention, supra note 5, art. 50; American Convention, supra note 5, art. 63(1).
standard which awards damages when “appropriate.” With this, the current standard would be expanded to include more latitude in awarding damages because the Court would have more discretion to award damages.

The Inter-American Court can also afford greater human rights protection in the future by applying the comprehensive award structure utilized in the disappearance cases to violations of other articles.

V. CONCLUSION

Today, human rights violations are remedied through damage awards by both the European Court and the Inter-American Court. These damage awards reveal the necessary criteria for a damage award qualification and help enforce international human rights guarantees. However, as the system stands, only violations of ten articles have resulted in damage awards under the European system, and only two cases, both dealing with disappearances, have ended in awards under the Inter-American system. Further enforcement could result from liberalized awards and the creative use of authority to make awards. An expansion of protected rights and an increased capacity to grant greater damage awards is necessary. A comprehensive compensatory system, awarding damages according to the severity of the violation as well the losses suffered will more capably promote the recognition of human rights.

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