Chapter IX

The Pending Task of Construing the Meaning of the Rights of the Family in the Jurisprudence of the Court

Article 17 (Rights of the Family) of the American Convention on Human Rights reads:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of non-discrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

In contrast to the jurisprudence of the European system of protection of human rights where family life is protected under Article 8 and has been heavily relied on in several cases concerning minors, giving rise to a profuse jurisprudence on the subject in that system, in the Inter-American system so far, the rights of the family have not been part of a central claim in a contentious case before the Court. Article 17.1 has been raised though in the Molina Theissen case, in the Gómez Paquiyauri Brothers case, in the Serrano Cruz Sisters case, and in the Yean and Bosico children case.
In the *Serrano Cruz Sisters* case, the Court did not find jurisdiction to assess the merits of the claim made on the violation of Article 17.1 on behalf of the Serrano Cruz family as we have seen before. In respect of the *Yean and Bosico children* case and that of the *Gómez Paquiyauri Brothers*, the violation of Article 17.1 was not alleged by the Inter-American Commission on Human Rights but by the representatives of the victims. In the *Yean and Bosico children* case counsel for the victims argued:

a) The State is obliged to adopt basic measures to protect family unity. In this case, the State has not instituted the necessary measures to guarantee the rights of the child (especially in relation to the right not to be forcibly separated from its family) and to ensure the right of the child to reside in the country. The State has violated the rights of the family of the children Dilcia and Violeta by refusing to grant birth certificates to children of Haitian origin; and

b) Although the Dominican Republic has not attempted to separate the children Dilcia and Violeta from their families as yet, there is a real threat of separation, given that the State systematically carries out collective expulsions of Haitians and Dominicans of Haitian origin.

The Court however found that the facts concerning the alleged violations of Article 17.1 had already been examined “in relation to the vulnerability of the children Dilcia Yean and Violeta Bosico (paras. 172 and 173 [of the judgment])”. It did not find reason to make a separate finding on violations under Article 17 as a consequence.

With regard to the *Gómez Paquiyauri Brothers* case counsel for the victims had argued in respect of the alleged violation of Article 17 that:

[...] By depriving Emilio and Rafael of their right to life [...] (disseminating a fabricated version which stigmatised them as “terrorists” in order to obscure their summary execution at the hands of the Peruvian State) and in view of the fact they were brothers and that the surviving members of the Gómez Paquiyauri family were subjected to harassment and persecution by the police as a result of the complaints they made in order for those guilty of this crime to be identified, the State of Peru also violated article 17.1 of the American Convention which imposes the duty on States Parties to protect the family as the natural and fundamental group of society, as well as Article 11.2 which states that no one may be the object of arbitrary...