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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Saul Godinez-Cruz v. Honduras
Doc. Type:	Judgment (Reparations and Costs)
Decided by:	President: Hector Fix-Zamudio; Judges: Rodolfo E. Piza E.; Pedro Nikken; Rafael Nieto-Navia; Rigoberto Espinal-Irias
Dated:	17 August 1990
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In the Godínez Cruz case,

the Inter-American Court of Human Rights, pursuant to Articles 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 48 of its Rules of Procedure delivers the following judgment on the request of the Inter-American Commission on Human Rights (hereinafter "the Commission") for an interpretation of this Court's judgment of July 21, 1989, assessing compensatory damages against the State of Honduras (hereinafter "Honduras" or "the Government").

I.

1. By note of September 29, 1989, received at the Inter-American Court of Human Rights (hereinafter "the Court") on October 2, the Commission asked for a clarification of the compensatory damages judgment delivered on July 21, 1989, in the Godínez Cruz case.
2. The Commission invoked Articles 67 of the Convention and 48 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").
3. In its request, the Commission asks the Court, in order to protect the purchasing power of the amounts of principal and interest that will accrue in the trust to be established in favor of EMMA PATRICIA GODINEZ (CRUZ), to direct that said portion of the damages be indexed in such a way as to ensure the stability of its purchasing power.
4. On October 18, 1989, the Secretariat, acting pursuant to Article 48(2) of the Rules of Procedure, communicated the Commission's request to the Government and invited it to submit its written observations within a period of thirty days.

5. In a communication dated November 16, 1989, the Government deemed the Commission's request inadmissible, expressing the opinion that the judgment is clear and requires no interpretation and that to accept such a request would involve an amendment to that judgment.

6. On 6 July, 1990, the Commission submitted a request for amplification of the petition for clarification of the judgment which refers to the material consequences resulting from the Honduran Government's failure to pay the damages stipulated in the judgment by the due date - that is, before October 20, 1989- which has given rise to a new situation which requires, authorizes and justifies the instant request for amplification of the petition for clarification at this point in time.

7. The Commission's communication was transmitted to the Government on July 11, 1990. The Government was also informed that the President had set August 10, 1990, as the deadline for receiving the Government's observations regarding that communication.

8. The Government submitted its observations within the time set by the President and asked the Court to reject the Commission's request.

9. On August 14, 1990, the Government presented a photocopy of Decree Number 59-90, published in the Republic of Honduras' "La Gaceta" of July 21, 1990, which authorized the payment of the damages decreed by the Court in its Judgment of July 21, 1989. The cover letter stated that the amount in question has not been delivered to the interested parties because they are awaiting the results of the public hearing to be held on this date.

10. On that same date, the Court held a public hearing in order to hear the views of the parties regarding the Commission's request.

The following persons appeared before the Court:

- a) for the Government of Honduras
Ambassador Edgardo Sevilla-Idiáquez, Agent
- b) for the Inter-American Commission on Human Rights
Dr. Gilda M.C.M. de Russomano, Delegate
Dr. Jorge Seall-Sasiain, Delegate.

II.

11. On this occasion, the Court was composed of those judges who had decided the merits of the case as well as the corresponding claim for compensatory damages of July 21, 1989. It is the latter judgment whose interpretation the Commission now seeks.

12. The composition of the Court was as prescribed by Article 54(3) of the Convention, which states that the judges of the Court shall continue to participate in those cases that they have begun to hear and that are still at the judgment stage. That provision must also be applied to the decision regarding the interpretation of judgments to which Articles 67 of the Convention and 48 of the Rules of Procedure refer because, under general rules of procedural law, a

contentious case cannot be deemed to have been concluded until the judgment has been fully complied with. By analogy, it follows that the judges shall continue to participate when the case is at the enforcement stage. This is so, in particular, because the Court decided in its Judgment of July 21, 1989, that it would supervise compliance with the award of damages and that the case would not be deemed closed until compensation was paid in full.

13. Article 54(3) of the Convention is based on similar rules contained in the Statute of the International Court of Justice and in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms. Article 13(3) of that Statute provides, essentially, that after the judges of the International Court of Justice have been replaced, they shall nevertheless continue to hear the cases they had begun and see them through to their conclusion. Article 40(6) of the European Convention declares that, in the same circumstances, the judges of the European Court shall continue to hear the cases that have been entrusted to them. According to Article 56 of that Court's Rules of Procedure, [t]he request for interpretation shall be considered by the Chamber which gave the judgment and which shall, as far as possible, be composed of the same judges

14. The Court has jurisdiction to comply with the instant request for interpretation because Article 67 of the Convention provides that:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 48 of the Rules of Procedure, for its part, states the following:

Article 48. Request for an Interpretation of a Judgment

1. Request for an interpretation allowed under the terms of Article 67 of the Convention shall be presented in twenty copies and shall indicate precisely the points in the operative provision of the judgment on which interpretation is requested. It shall be filed with the Secretary.
2. The Secretary shall communicate the request to any other party and, where appropriate, to the Commission, and shall invite them to submit, in twenty copies, any written comments within a period fixed by the President.
3. The nature of the proceedings shall be determined by the Court.
4. A request for interpretation shall not suspend the effect of the judgment.

The Commission is a party to this case and presented its request on October 2, 1989. Since the judgment was notified on July 21, 1989, the request was presented within the period stipulated by that Article.

15. In its brief of July 6, 1990, the Commission asked the Court to admit a request for amplification of the petition for clarification of the judgment, based on a new fact that was not known at the time of the first request, that is to say, the Government's delay in paying the damages. Since the Court will base its decision in the instant request on other grounds, it does

not deem it necessary to address the possibility of extending a request beyond the specific period fixed by the Convention. The same reason makes it unnecessary for the Court to deal with the doctrine of new facts which is applied in other tribunals.

III.

16. In its Judgment of July 21, 1989, the Court

unanimously

1. Awards six hundred and fifty thousand lempiras in compensatory damages to be paid to the family of Saúl Godínez Cruz by the State of Honduras.

unanimously

2. Decides that the amount of the award corresponding to the wife of Saúl Godínez Cruz shall be one hundred and sixty-two thousand and five hundred lempiras.

unanimously

3. Decides that the amount of the award corresponding to the daughter of Saúl Godínez Cruz shall be four hundred and eighty-seven thousand five hundred lempiras.

unanimously

4. Orders that the form and means of payment of the indemnity shall be those specified in paragraphs 52 and 53 of this judgment.

unanimously

5. Decides that the Court shall supervise the indemnification ordered and shall close the file only when the compensation has been paid.

17. Paragraphs 52 and 53 of the judgment read as follows:

52. Payment of the six hundred and fifty thousand lempiras awarded by the Court must be carried out within ninety days from the date of notification of the judgment, free from any tax that might eventually be considered applicable. Nevertheless, the Government may pay in six equal monthly installments, the first being payable within ninety days and the remainder in successive months. In this case, the balance shall be incremented by the appropriate interest, which shall be at the interest rates current at the moment in Honduras.

53. One-fourth of the indemnity is awarded to the wife who shall receive that sum directly. The remaining three-fourths shall be for the daughter. With the funds from the award to the daughter, a trust fund shall be set up in the Central Bank of Honduras under the most favorable conditions permitted by Honduran banking practice. The daughter shall receive monthly

payments from this trust fund, and at the age of twenty-five shall receive the totality of the capital.

18. In its brief, dated September 29, 1989, the Commission justified its request in the following terms:

This petition for clarification refers to the sum of money that is to be deposited in trust at the Central Bank of Honduras for the benefit of Emma Patricia Godínez (Cruz), daughter of the victim, until she reaches the age of twenty-five, that is, until May 3, 2007.

The judgment does not contemplate any protective mechanism to preserve the current purchasing power of the award in the face of inflation or possible devaluations of the lempira. As the Court is aware, and as we indicate below, that loss of purchasing power by units of currency has historically been high throughout Latin American, in some countries sometimes reaching catastrophic proportions.

Two fundamental reasons have persuaded the Commission to submit this petition:

First, if the meaning and scope of the judgment are not clarified with respect to the future value of the compensation placed in trust, irreparable damage could be caused to the injured parties. As we state below, that damage is neither hypothetical nor trivial, but predictable and could practically annul the very value of the Court's decision, as well as its compensatory intent.

Moreover, the Commission believes that such judgments in themselves hold a special, precedential legal value which goes well beyond the jurisdiction of the Inter-American Court and its case law, since by their very nature, content and effect they have deservedly earned universal attention and represent a milestone in the development of the international humanitarian legal order.

The Court's specific assumption of the supervision of compliance with its judgment is an eloquent indication of the responsibility the Court assigns to full and exact compliance, and serves to justify the importance of the interpretation we request.

In addressing the merits of the case, the Court will surely take into account the fact that the consumer price index (the indicator most relevant to this case) for the countries of Latin America taken as a whole increased by 721% in the five years from 1983 to 1988, that is, an average of 144% per annum. Without citing extreme cases of countries experiencing hyperinflation, Costa Rica, a country geographically close to Honduras, suffered an increase of 263% in its consumer price index over the last ten years. (Source: Report to the Inter-American Economic and Social Council CIES. OAS, September 1989).

In Honduras, such increases have been much milder. Nevertheless, even at the relatively low growth of the consumer price index in Honduras, if the trust in question had been set up 18 years ago (in 1971) in the amount of L.487,500, that sum would today be the equivalent of L.127,510, or approximately a quarter of its original value, given the changes experienced in the consumer price index of Honduras.

19. The Commission asked the Court to admit its request in order that

measures be taken to protect the purchasing power of the amounts (both principal and interest) involved in the trust to be set up on behalf of EMMA PATRICIA GODINEZ (CRUZ) by tying that portion of the damages to an index that will maintain its purchasing power. This should be done not only for each of the payments of interest thereon but also for the payment of the principal when it becomes due and payable to the beneficiary on her twenty-fifth birthday, May 3, 2007.

20. The Commission stated that

There are different ways of setting up a simple and clear protective mechanism that could be established by the Court in the clarification of judgment requested. None of them would offer complete protection to the beneficiaries, nor could they preserve absolutely the compensatory intent of the judgment, but at least they would to some degree counteract the current lack of protection and the expected loss of value.

The Commission is of the opinion that a suitable adjustment mechanism would be to estimate the real value of the capital placed in trust in United States dollars of October 20, 1989, and maintain it at that same value throughout the life of the trust. To achieve this, it should be adjusted to the amount of lempiras necessary to purchase that fixed amount of dollars initially arrived at on the free international exchange market. Thus, each interest payment would be calculated in lempiras on a principal, also in lempiras, readjusted on the basis of the mechanism described.

21. In a brief dated November 16, 1989, the Government based its opposition to the Commission's request on the following arguments:

1. The compensatory damages judgment handed down by the Honorable Court on July 21, 1989, in the case of SAUL GODINEZ CRUZ is perfectly clear and precise both in its findings and in its operative parts and thus needs no clarification or interpretation, inasmuch as that judgment fixes unequivocally the amount of lempiras to be set up in trust at the Central Bank and the interest rate that the trust fund shall accrue annually in that same currency.

2. In fixing the total amount of compensatory damages and the form of payment thereof, as regards both the amount corresponding to the trust and any earnings thereon, the Court selected the currency of the country in which the judgment was to be executed, that is, Honduras, without taking into consideration, or conditioning the judgment to, any possible decrease in the purchasing power of the Honduran currency; in addition, the judgment did not contemplate any other monetary guideline to serve as an adjustment index for the maintenance of such purchasing power.

3. Since such circumstances were not foreseen in the compensatory damages judgment, what the Inter-American Commission on Human Rights is seeking in its request for clarification is that the Honorable Court amend its Judgment of July 21, 1989, by introducing new factors of a monetary nature to its operative parts, when it asks the Court to provide for some index against which the damages settlement should be adjusted in order to maintain its purchasing power unaltered. As already stated, this is something that the judgment does not address.

For the above reasons, the Government of Honduras respectfully requests that the Honorable Court reject the request presented by the Inter-American Commission on Human Rights.

22. The Commission stated the following in its brief of July 6, 1990:

...eight months after the deadline set by the Court, the judgment has still not been complied with, resulting in various damages to the injured parties.

The damages stem from two sources: first, the time elapsed since October 20, 1989, without the injured parties having access to the use and enjoyment of the compensation due; and second, the devaluation of the lempira during that time, a devaluation legally introduced by the Government to reflect the real loss of purchasing power that had occurred during that period.

...

Despite the above, the Commission nevertheless understands that both the gravity of the international proceedings and the respect that should be accorded a fair compensation as fixed by that Court, as well as the real loss of over 30 (thirty) per cent of the purchasing power resulting from the delay in payment, require that the Honorable Court declare in the interpretation being sought, that the amount of damages fixed should be understood to be linked to the period of time specified.

23. For these reasons, the Commission

... respectfully requests that the Honorable Court admit this request for amplification of the petition for clarification of the judgment and, furthermore, that payment of interest be ordered for the period from October 20, 1989, to the date of effective payment, plus a retroactive adjustment of the purchasing power of the compensation to that date, to make up for the lempira's devaluation over that same period.

24. The Government's objection to this last request was expressed in the following terms:

1. The compensatory damages judgments issued by the Honorable Court on July 21, 1989, in the cases of ANGEL MANFREDO VELASQUEZ and SAUL GODINEZ CRUZ are perfectly clear, both in their findings and in their operative parts, and thus require no clarification, for they fix in precise terms the total amounts to be paid in lempiras, including the amounts to be set up as trusts in the Central Bank and the interest rate that the trust funds shall accrue annually in that same currency.

2. In fixing the total amount of the compensatory damages and the form of payment thereof in lempiras (both for the sums held in trust and for earnings thereon) the Court acted without taking into consideration, or conditioning the judgments to, any possible decrease in the purchasing power of the Honduran currency. In addition, the judgment set no other monetary guidelines to serve as an adjustment index in order to preserve that purchasing power, nor did it order interest to be paid in the event of delays in meeting the compensation payment schedule.

3. Since such circumstances were not foreseen in the compensatory damages judgment, what the Inter-American Commission on Human Rights is seeking in its request for clarification is that the Honorable Court amend its judgments of July 21, 1989, by introducing new factors of a monetary nature to its operative parts, when it asks the Court to declare that, because of its delay in paying the compensation due, the Government of Honduras should pay interest and adjust the purchasing power of the amounts of compensation to the value they had when payment became due. As already stated, these are factors that were not addressed in the above-mentioned judgments.

4. Since the judgments of the Inter-American Court of Human Rights are final and not subject to appeal, they have the effect of *res judicata*. This prevents the parties from reopening a matter in order to obtain a second judgment from the Court, as would happen if the request of the Inter-American Commission on Human Rights were to be admitted and if, in addition, the judgments of July 21, 1989, were to be amended.

5. As has been established before that Honorable Court in the presentations made by the Government of Honduras on January 27 and March 5, 1990, during the period beginning July 21, 1989, my Government undertook all necessary steps to comply with the judgments. If there was a delay in the payment of compensatory damages, it was in no way due to negligence or lack of interest on its part, but, rather, to economic and budgetary constraints that, once overcome, gave rise to Decree No. 59-90, approved by the National Congress on July 2, 1990. In faithful compliance with the judgments of that Honorable Court, the Decree set aside a sum in the General Budget of Income and Expenditures of the Republic to cover the payment of compensation to the families of ANGEL MANFREDO VELASQUEZ RODRIGUEZ and SAUL GODINEZ CRUZ in the manner and under the conditions established in the respective judgments.

25. The public hearing established that, despite the stability of the lempira over a period of many years, by the time the Court issued its judgment on damages, its rate of exchange was exhibiting a tendency to fluctuate against strong currencies. This fluctuation has continued and increased to date, although the official rate of exchange has remained unchanged. It also appeared that the current provisions governing international exchange in Honduras permit private persons to freely acquire other currencies.

IV.

26. The interpretation of a judgment involves not only precisely defining the text of the operative parts of the judgment, but also specifying its scope, meaning and purpose, based on the considerations of the judgments. This has been the rule enunciated in the case law of international courts (see Eur. Court H.R., *Ringeisen* case (Interpretation of the judgment of 22 June 1972), judgment of 23 June 1973, Series A, Vol. 16).

27. The compensation due victims or their families under Article 63(1) of the Convention must attempt to provide *restitutio in integrum* for the damages caused by the measure or situation that constituted a violation of human rights. The desired aim is full restitution for the injury suffered. This is something that is unfortunately often impossible to achieve, given the irreversible nature of the damages suffered, which is demonstrated in the instance case. Under

such circumstances, it is appropriate to fix the payment of "fair compensation" in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered.

28. Therefore, in fixing the measure of damages, the Court took into account loss of earnings, [b]ased upon a prudent estimate of the possible income of the victim for the rest of his probable life, as well as moral damages (Godínez Cruz Case, Compensatory Damages, Judgment of July 21, 1989, (Art. 63(1) American Convention on Human Rights). Series C No. 8, paras. 47 and 50).

29. The fact that the damages fixed comprise loss of earnings, calculated on the basis of probable life-span, indicates that the *restitutio in integrum* concept is linked to the possibility of maintaining the real value of the damages stable over a relatively long period of time. One way of meeting this goal is so-called "indexing", which makes it possible to make periodic adjustments to the sums payable in order to keep the real value constant. In general, however, that method is only applicable to cases where damages are to be paid in installments over relatively long periods of time. That is not true of the instant case. Here the Court ordered payment of the full amount of compensation in one single payment, or, at most, in six consecutive monthly installments.

30. Despite the foregoing there is no reason why a case like the instant one should ignore the notion of preserving the real value of the amount fixed. After all, as has already been stated, the compensation that was fixed for loss of earnings implies that notion to a certain degree. That is why the Court decided, in the operative paragraph of the judgment that refers to paragraph 53, to employ a method for preserving the sums of money owed to the minor daughter of Saúl Godínez Cruz, namely the establishment of a trust fund with the Central Bank of Honduras under the most favorable conditions permitted by Honduran banking practice.

31. The Court interprets the expression under the most favorable conditions as referring to the fact that any act or measure by the trustee must ensure that the amount assigned maintains its purchasing power and generates sufficient earnings or dividends to increase it; the phrase permitted by Honduran banking practice indicates that the trustee must faithfully perform his task as would a good head of family and that he has the power and the obligation to select diverse types of investment, whether through deposits in strong currencies, such as the United States dollar or others, the purchase of mortgage bonds, real estate, guaranteed securities or any other investment recommended by Honduran banking practice, precisely as ordered by the Court.

32. The Court at a given moment shared the concern expressed by the Commission in its briefs and at the hearing, insofar as it wished to ensure that the amount payable to Saúl Godínez Cruz' minor daughter would maintain its purchasing power until she reached the age of twenty-five and even beyond that. It was for this reason that the Court decided to place that sum in a trust fund, an institution that, unlike regular bank accounts, is designed to maintain and increase the real value of its assets.

33. The judgment orders that the compensation be paid either in one single payment or in six consecutive monthly installments. The Commission requests that the Government be obliged to periodically disburse additional sums in order to maintain constant the value of the original

assets, for as long as the trust remains in effect. It is evident that this request, as presented, would impose on the Government an obligation that is not provided for in the judgment. Consequently, since the Commission's request thus exceeds the scope of a mere interpretation, the Court must reject it.

V.

34. In its brief, received by the Court on July 6, 1990, the Commission expanded its request for interpretation of the judgment. The Commission emphasized that, despite the fact that eight months had elapsed since the damages became due and payable, the Government had still not complied with the judgment. It went on to request that, in order to compensate for the consequences of this delay, the Court order the payment of: a) interest for such delay and b) the adjustment of the purchasing power of the unit of currency in order to bring its current value on a par with what it was worth at the time that the payment should have been made.

35. With regard to this brief, the Court must determine, in the first place, whether it is empowered to admit the request as presented.

36. The Court notes that, according to Article 67 of the Convention, it is empowered to interpret its judgments whenever there is disagreement as to the meaning or scope thereof. In the Commission's brief now under consideration no mention is made of any aspects of the judgment of the Court whose meaning or scope are in doubt or controversial. On the contrary, the claim is that there has been non-performance of clearly stated terms of the judgment in question, such as the terms within which the compensation ordered by the Court should have been paid. Consequently, the Court cannot admit the Commission's petition in the guise of an "amplification" of the request for interpretation previously presented by them.

37. Nevertheless, since in the judgment the Court assumed the supervision of the payment of the damages fixed and indicated that the case would be deemed closed only after full payment was made (Godínez Cruz Case, Compensatory Damages, supra 28, para. 55(5)), it retains jurisdiction over the instant case and is empowered to decide on the consequences of the Government's delay in paying the assessed damages.

38. In this connection, the Court must point out initially that the delay is due to a situation attributable to the State of Honduras that continues to hold today. Despite efforts by the Executive Power -to which the Government has attested, as well as to its good will, which the Court in no way questions -the truth is that to date payment has not been effected. This is the responsibility of the State and the consequences of this inaction must be indemnified by it to ensure that the rights of the beneficiaries of the compensation are in no way diminished.

39. The Court must also note that the Government did not indicate at any time that it would avail itself of the option to pay the damages in six consecutive monthly installments (Godínez Cruz Case, Compensatory Damages, supra 28, para. 52). It also did not pay any of those installments which, in any event, are all past due. The basis for calculating the damages caused by the delay must, therefore, be the entire amount of the capital owed on the date it became due and payable, namely six hundred fifty thousand lempiras as of October 21, 1989. The statement

by the Government that the amounts owed have not been delivered to the interested parties because they are awaiting the results of the public hearing, in no way affects the above conclusion, because, among other reasons, the publication of the decree authorizing payment appeared one year after the judgment ordering it and only a few days before the hearing in question.

40. It is appropriate, therefore, to demand the payment of interest on the entire amount of the capital due, at the regular banking rate in effect in Honduras on the date of payment. If such interest were to be set by the Court in the event that the Government opts to pay by means of six monthly installments, it shall apply, a fortiori, to the delay in compliance with the terms of the judgment.

41. There are, furthermore, other damages that must be compensated. These relate to the rights of the beneficiaries of the compensation and, where applicable, to the obligation of the trustee to take appropriate measures to preserve the real value of the sum received when it became due and payable, thus ensuring the fulfillment of the goal of restitutio in integrum for the injuries suffered.

42. In this connection, the Court remarks that one of the easiest and most readily accessible ways to achieve this goal, namely the conversion of the amount received into one of the so-called hard currencies, has been severely impaired as a result of the lempira's loss of value against the United States dollar in the open exchange market since the date on which payment should have been effected. This real loss must be compensated by the Government, in addition to the current bank interest payable, by adding to the latter the value of the loss between the date on which the Government should have paid the damages by setting up the trust but neglected to do so, and the date on which it actually complies with its obligations.

43. Since the Government already has the required authorization to pay, as it has informed the Court, it must now immediately proceed to deliver to the beneficiaries of the compensation and the trust the amount fixed in Decree Number 59-90, applying it, as is customary practice, first to the above-mentioned compensation and to the interest, and subsequently to the capital. Any shortages of capital remaining after this payment shall be subject to the provisions of paragraph 42, supra, until fully paid.

44. It follows, from all that has been said above, that there are two specific issues that the Court must rule on, namely:

1. The interpretation of the meaning, scope and purpose of the expression under the most favorable conditions permitted by Honduran banking practice, utilized in paragraph 53 of the Judgment of July 21, 1989; and
2. The measures the Court must adopt in exercising the power it assumed under paragraph 5 of the operative part of that same judgment, that is, the supervision of the indemnification ordered until full payment is made.

THEREFORE,

THE COURT,

DECIDES:

unanimously

1. To declare admissible the request for interpretation of the Judgment of July 21, 1989, presented by the Inter-American Commission on Human Rights on October 2, 1989.

unanimously

2. To declare inadmissible the request for amplification of the petition for clarification of the judgment presented by the Inter-American Commission on Human Rights on July 6, 1990.

unanimously

3. To declare that the expression under the most favorable conditions permitted by Honduran banking practice must be interpreted in the manner stated in paragraph 31, supra.

unanimously

4. In the exercise of its power to supervise compliance with its Judgment of July 21, 1989, that the Government of Honduras must compensate the injured parties for the delays in the payment of damages and in setting up the trust as ordered, under the conditions stipulated in paragraphs 40, 42 and 43, supra.

Done in Spanish and English, the Spanish text being authentic. Read at the public hearing at the seat of the Court in San José, Costa Rica, on this seventeenth day of August, 1990*

Héctor Fix-Zamudio
President

Rodolfo E. Piza E.
Pedro Nikken
Rafael Nieto-Navia
Rigoberto Espinal-Irías

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles

Secretary

SEPARATE VOTE OF JUDGE PIZA-ESCALANTE

I have concurred with the unanimous vote of the Court and with the general lines of reasoning employed, but I must distance myself from the argument put forward in paragraphs 12, 14 and 15, inasmuch as they invoke the immediate -and not merely analogical- applicability of Article 67 of the Convention, which governs requests for interpretation of judgments. In this connection, I must point out that such requests relate to that norm of the Convention only with respect to the judgment; that is to say, this obviously refers to the final judgment deciding the merits of the case, to which Articles 63(1) and 66 (among others) of that same Convention refer. It is only with respect to that final judgment that an express conventional provision becomes necessary, as well as the setting of a deadline within which to legitimately request it, because, according to universal principles of procedural law (whether domestic or international) only final judgments are irrevocable and they alone can acquire the authority of *res judicata*.

The remaining decisions, both those that pertain to the principal proceedings and those belonging to the enforcement stage, despite the fact that they are also called "judgments" whether out of habit or as a matter of fact, are interlocutory and always subject to others that, whether by means of remedies or simply through adversary jurisdiction, interpret, complement, clarify or add to or even modify or revoke them. This last, of course, in keeping with the respect due to the principle of estoppel and good faith.

The so-called "compensatory damages judgment" of July 21, 1989, is not the definitive judgment ruling alluded to in Articles 63(1) and 66. Nor, consequently, is it subject to the kind of interpretation to which Article 67 of the Convention refers, although it is, of course, subject to any interpretation, complement, clarification or addition, or even modification or revocation, under the terms mentioned above.

In the instant case, the final judgment or ruling could only be that of January 20, 1989, which conclusively decided on the merits of the case. This sole definitive judgment required no interpretation under the terms of Article 67, nor was any requested. Insofar as compensatory damages were concerned, it did not go beyond condemning the Government of Honduras, in the abstract, to paying such damages to the successors of Saúl Godínez Cruz, reserving the fixing of the amount and form of payment to what would obviously be a subsequent state of the enforcement of judgment. Thus the Court availed itself of the customary procedural opinion of leaving for a later stage the settlement of certain general statements contained in the judgment itself, by means of decisions endowed with the same binding and enforceable force of the judgment itself (in this case, that of Articles 65 and 68 of the Convention) although lacking its nature and, as has been stated, lacking its definitiveness, that is, its irrevocability or intangibility. That is what the Court did in its decision of July 21, 1989: enforce the judgment. That is what it is doing today and what it can and possibly should continue to do in the future, for as long as the case remains open because of non-compliance with the judgment.

By the foregoing I do not mean to imply either that the Court can continue indefinitely to modify its decision at the enforcement stage for as long as the familiar procedural justifications (such as,

for example, nullities or a fundamental change in circumstances (*rebus sic stantibus*) are not given to remove the principle of estoppel; or that it is impossible to request a clarification or interpretation of the same, both by analogy, as indicated in the principal vote, and by the general principles mentioned, as confirmed by the very Judgment of July 21, 1989, inasmuch as it decided to keep the case open until it is fully complied with. However, that possibility is not the one contemplated in Article 67 of the Convention and, consequently, is not subject either to a petition by the parties, nor to time limits, but is maintained open for as long as necessary during the course of enforcing the definite judgment.

Rodolfo E. Piza E.

Manuel E. Ventura-Robles
Secretary