

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Rafael Ivan Suarez-Rosero v. Ecuador
Doc. Type:	Judgment (Interpretation of the Judgment of Reparations and Costs)
Decided by:	President: Antonio A. Cancado Trindade; Judges: Hernan Salgado-Pesantes; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated:	29 May 1999
Citation:	Suarez-Rosero v. Ecuador, Judgment (IACtHR, 29 May 1999)
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In the Suárez Rosero Case,

the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and articles 29.2 and 58 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”), decides the following request filed by the State of Ecuador (hereinafter “Ecuador” or “the State”) on April 16, 1999, seeking an interpretation of the judgment on reparations delivered by the Court on January 20, 1999 in the Suárez Rosero Case (hereinafter “the judgment on reparations”).

I. COMPETENCE AND COMPOSITION

1. Under Article 67 of the Convention, the Court is competent to interpret its own judgments. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which interpretation is being sought (Article 58.3 of the Rules of Procedure).

II. INTRODUCTION OF THE REQUEST FOR INTERPRETATION

2. On April 16, 1999, Mr. Ramón Jiménez Carbo, State’s Attorney General, presented a request for interpretation of the judgment on reparations, pursuant to Article 67 of the American Convention and in keeping with Article 58 of the Rules of Procedure. In that submission, Mr.

Jiménez Carbo stated that he was the “only judicial representative of the Ecuadorian State” to submit that request.

3. By note of April 22, 1999, the Secretariat of the Court (hereinafter “the Secretariat”), acting upon instructions from the President of the Court (hereinafter “the President”), asked Mrs. Laura Donoso de León, the accredited Agent in the instant case, to clarify whether, in light of the statement made by Ecuador’s Attorney General, the latter should be regarded thenceforth as Ecuador’s Agent in the proceedings for an interpretation of judgment.

4. On May 3, 1999, the Agent for the State advised the Court that “notwithstanding the fact that the Attorney General of Ecuador sent [the request] directly,” the authority invested in her was still valid.

5. By note of May 4, 1999, the Secretariat forwarded copies of the request for interpretation to Mr. Rafael Iván Suárez Rosero, victim in the instant case, and to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”). As instructed by the President, the Secretariat invited them to submit whatever written comments they deemed relevant by no later than May 14 and 18 of that year, respectively.

6. On May 18, 1999, the Commission submitted its written comments on the request for interpretation. Mr. Rafael Iván Suárez Rosero submitted his comments on May 21, 1999, stating that he had not received the Secretariat’s invitation until May 13, 1999, and had therefore not had the opportunity to reply within the time limit established by the President. He therefore asked that the original time limit given be reconsidered.

III. PURPOSE OF THE REQUEST FOR INTERPRETATION

7. In its request for interpretation, the State petitioned the Court to “shed light on the real meaning and scope” of operative paragraphs “two, three and four, subparagraph b” of the judgment on reparations.

8. In those operative paragraphs the Court had unanimously resolved:

[...] that the State of Ecuador [must pay], in the manner and under the conditions stipulated in paragraphs 101 to 112 of the judgment, a total of US\$ 86,621.77 (eighty-six thousand six hundred twenty-one United States dollars and seventy-seven cents) or its equivalent in Ecuador’s national currency, distributed as follows:

- a. US\$ 53,104.77 (fifty-three thousand one hundred four United States dollars and seventy-seven cents) or its equivalent in Ecuador’s national currency, to Mr. Rafael Iván Suárez Rosero;
- b. US\$ 23,517.00 (twenty-three thousand five hundred seventeen United States dollars) or its equivalent in Ecuador’s national currency, to Mrs. Margarita Ramón Burbano; and
- c. US\$ 10,000.00 (ten thousand United States dollars) or its equivalent in Ecuador’s national currency, to the minor Micaela Suárez Ramón.

[...;]

that for costs and expenses the State of Ecuador [must pay], in the manner and under the conditions stipulated in paragraphs 101 to 112 of the judgment, the sum of US\$ 6,520.00 (six thousand five hundred twenty United States dollars) or its equivalent in Ecuador's national currency to Mr. Alejandro Ponce Villacís, and the sum of US\$ 6,010.45 (six thousand ten United States dollars and forty-five cents) or its equivalent in Ecuadorian currency to Mr. Richard Wilson.

and that the payments ordered shall be exempt from any existing or future taxes or levies (operative paragraph four, subparagraph b.).

9. After examining Ecuador's submissions, the Court has concluded that despite the rather general terms in which the State's request is formulated, the latter is seeking an interpretation of two specific and different points.

10. The first concerns the compensation ordered for the victim and his next of kin. The State obviously understands that the amounts in question are not subject to taxation at time of payment. Its doubt is whether the "interest earned and the use made" of the proceeds from the compensatory damages subsequent to payment would also be tax exempt.

11. The second question that the request for interpretation poses concerns the payment ordered for the victim's attorneys which, according to the State, "is taxable."

12. Having established the two points raised in the request for interpretation, the Court will now proceed to examine its admissibility.

IV. ADMISSIBILITY

13. Under Article 67 of the Convention, the request for interpretation must be filed "within ninety days from the date of notification of the judgment." The Court has established that the State was given notice of the judgment on reparations in the instant case on January 25, 1999. The request for interpretation was, therefore, presented within the required time limit (*supra* 2).

14. The Commission's comments were also submitted within the established time limit and will therefore be considered.

15. Mr. Suárez Rosero's comments, on the other hand, were submitted after the time limit had passed because, according to him, the notice soliciting his comments was sent to him only one day before the deadline fell due, the Court has reviewed the date-of-receipt printed by his facsimile machine, which shows that the Secretariat's note of May 4, 1999, reference number CDH-11,273/252, was sent via fax to Mr. Richard Wilson, one of Mr. Suárez Rosero's attorneys, on May 5, 1999. Therefore, the Court cannot accept the explanations that Mr. Suárez Rosero offers. However, the comments were submitted within a reasonable period after the prescribed time limit had expired, and the proceedings in the case were in no way delayed pending their receipt. Finally, interpretation proceedings are such that it is useful for the Court to hear the views of all interested parties. For these reasons, the Court has decided to consider Mr. Suárez Rosero's comments.

16. The Court must now turn its attention to the question of whether the substance of the request for interpretation satisfies with the applicable rules. Article 58 of the Rules of Procedure provides that

[t]he request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

In that article of the Convention, the Court is given the authority to interpret its judgments in the event of questions as to their meaning and scope.

17. The first issue the State raises (supra 10) is the obvious product of doubt as to whether tax exemptions applied to any proceeds from the “use and administration” of the amounts that the Court ordered for Mr. Suárez Rosero, his wife and daughter. Although the State did not specify which terms of the judgment on reparations it believed to be obscure or ambiguous, the Court considers that one of its earlier findings applies with equal force in this situation:

[t]he transparency of this Tribunal’s proceedings is enhanced by clarification, when it so deems appropriate, of the content and scope of its Judgments, thereby dissipating any doubts about them, and that they may not be challenged by merely formal considerations (El Amparo Case, Order of the Court of April 16, 1997, Annual Report 1997, p. 123, first Consideranda).

Accordingly, because the Court considers that effective fulfillment of its judgment on reparations will be thus enhanced, the Court will interpret this first issue raised in the request.

18. The second point for which the State seeks interpretation (supra 11) is a different one. Ecuador expressed disagreement with the tax exemption the Court ordered for the expenses and costs, arguing that in its view said costs and expenses were the amounts earned by the victim’s attorneys in the practice of their profession and therefore could not be exempted from the “general taxes that every other attorney [in Ecuador] pays.”

19. The Commission and Mr. Suárez Rosero argued that with this request for interpretation, the State was seeking nullification of part of the judgment on reparations.

20. The Court has held that

[the] request or petition for interpretation of a judgment may not be used as a means of challenging it, but must be made for the sole purpose of working out the meaning of the decision when one of the parties maintains that the text of its operative paragraphs or its consideranda is unclear or imprecise, provided those consideranda affect that operative paragraph. Hence, a request for interpretation may not be used to seek amendment or nullification of the judgment in question. (Loayza Tamayo Case, Order of the Court of March 8, 1998, Annual Report 1998, p. 209, para. 16; in keeping with the Neira Alegría et al. Case, Order of the Court of July 3, 1992, Annual Report 1992, p.79, para. 23)

The case law of this Court is consistent with that of the European Court of Human Rights, which held that interpretation of a judgment shall not alter it in respect of any issue that the Court decided “with binding force” (Eur. Court HR, *Alenet de Ribemont v. France*, Judgment of 7 August 1996 (interpretation) and Eur. Court HR, *Hentrich v. France*, Judgment of 3 July 1997 (interpretation), Reports of Judgments and Decisions 1997-IV). In the instant case, the Court notes that the State’s comments on the subject of the payment of costs and expenses make no mention of issues whose meaning or scope might be ambiguous or obscure. Quite the contrary, what the State indicates in its petition is its disagreement with that part of the judgment that stipulates that said payment shall be tax exempt.

21. However, although the meaning and scope of the judgment on reparations are clear from its language, given the position taken in respect of the first point raised in the request for interpretation (*supra* 17, in fine) the Court believes it would be useful to explore the point raised by Ecuador concerning the reasons why tax exemption was ordered for costs and expenses. It will, therefore, explain this part of the judgment on reparations.

V. ON THE USE AND ADMINISTRATION OF THE COMPENSATORY DAMAGES

22. As stated previously (*supra* 15), the Court will examine whether the tax exemption ordered in subparagraph b of operative paragraph four of the judgment on reparations applies to the “use and administration” of the amounts owed to the victim, his spouse and his daughter in the form of compensatory damages.

23. The State commented that “the amount that this Court set [...] is not subject to taxes of any kind at the time it is received, nor is it subject to withholding tax.” However, it argued that the use and administration of said amount, interest earned on it and the use of that interest are new revenue-generating circumstances and are and must be taxed, because they are not the amount ordered and paid but rather proceeds from the use to which the amount paid is put.”

24. For its part, the Commission stated the following:

The Court is not saying that the use to which the sum received as compensatory damages is put – either now or in the future- should be tax exempt if such use is taxable under local tax law. The Court has not granted some undefined, lifetime tax exemption; it has confined itself to the otherwise taxable compensatory damages and costs, as these are the issues it is called upon to decide.

25. For his part, Mr. Suárez Rosero described certain aspects of Ecuador’s tax system and the mechanisms that, in his view, would be used to tax the compensatory damages. In his comments he stated that Ecuadorian law prescribes a 1% tax surcharge on any monetary transaction effected through institutions in the financial system. These transactions include check cashing at financial institutions, bank deposits and any other investment or savings medium. For this reason, Mr. Suárez Rosero’s interpretation is that if payment is made in the form of some financial instrument such as a check, any financial institution in the system would deduct 1% of its face value at the time the check is cashed. If, on the other hand, payment were in cash, the 1%

would still be deducted when the beneficiaries credited it to an account or deposited it in an account with a financial institution.

26. When the Court figured the compensatory damages in the instant case, it factored in the material damages sustained by the victim and his next of kin. It added a sum for moral damages as well, determined on the basis of equity. In the case of Mr. Suárez Rosero, it added a sum for reimbursement of the costs resulting from proceedings in domestic courts. The resulting amount constitutes the “fair compensation” to which Article 63(1) of the Convention refers and must, therefore, be delivered promptly and in full to the beneficiaries named by the Court.

27. According to Mr. Suárez Rosero’s comments, financial institutions in Ecuador automatically apply the deduction required by law to all monetary transactions, which would be 1% of their total value. Both Mr. Suárez Rosero and the Commission proposed mechanisms to avoid application of the deduction to the payments ordered. The former suggested that the State should order the financial institutions in the system not to withhold that 1% of the payments. For its part, the Commission proposed that any surcharge be paid by the State or its agents.

28. The Court considers that no comment on the suggestions made by Mr. Suárez Rosero and the Commission is in order. It must, however, underscore the fact that the wording of the judgment makes it clear that the State has an obligation to pay the amounts ordered and to do so in full. For this reason, it is also incumbent upon the State to avail itself of whatever mechanisms will ensure full, prompt and efficient compliance with its obligations, under the conditions and within the time frame established in the judgment on reparations. Specifically, it means taking the necessary measures to ensure that the legal deduction that Ecuadorian financial institutions make on monetary transactions does not affect the beneficiaries’ right to receive the full amount ordered for them.

29. Once the beneficiaries have received full and effective payment of the fair compensation they are due, that compensation will become part of their respective assets. The use or administration of the compensation thereafter may be subject to all applicable Ecuadorian tax laws.

30. Therefore, the tax exemption on the payments the Court ordered for Mr. Rafael Iván Suárez Rosero and Mrs. Margarita Ramón de Suárez applies up to the time they receive the full amount they are owed in the form of the compensatory damages ordered in the second operative paragraph of the judgment on reparations, under the conditions and within the time period established in paragraphs 104, 105 and 108 to 111 of the judgment.

31. Further clarification is needed in the case of Micaela Suárez Ramón since, being a minor, her interests are a matter of particular concern. In paragraph 107 of the judgment on reparations, the Court held that

[i]n the case of the indemnization ordered for the minor Suárez Ramón, within six months of the date of notification of [the] judgment, the State shall establish a trust fund in a solvent and sound Ecuadorian financial institution, under the most favorable terms allowed by law and in

keeping with banking practices. The interest earned shall be added to the principal, which will be turned over to Micaela Suárez Ramón in full when she achieves her majority.

32. Under this order, the State is required to take all the measures necessary to ensure that the full amount ordered for the minor Macaela Suárez Ramón is deposited in said trust fund and that the amount shall not be subject to taxes of any kind at the time the trust is set up or to any withholding tax. In this regard, the Court has already stated that

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 [...] 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 dollars or others, the purchase of mortgage bonds, real estate, guaranteed securities or any other investment recommended by [...] banking practice, precisely as ordered by the Court (Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment of August 17, 1990 (Art. 67 American Convention on Human Rights). Series C No.9, paragraph 31).

As for the proceeds from the trust fund, the State is duty-bound to take the necessary measures to protect the minor's interests against inflation, insolvency, negligence or the incompetence of the trustee.

VI. ON PAYMENT OF COSTS AND EXPENSES

33. As previously stated (supra 19), the Court will also interpret operative paragraph three of the judgment on reparations, in light of operative paragraph four thereof, wherein exemption from payment of taxes on costs and expenses is ordered.

34. The State's contention was that "the amount fixed for the claimant's attorneys, Dr. Alejandro Ponce Villacís and Dr. Richard Wilson, is taxable" and made the following arguments to support its case:

- a) The amounts for the professionals who represent the claimants are for the practice of their profession.
- b) By ordering that the payments shall be exempt from any existing or future tax or surcharge, the Court is establishing an exemption; under the domestic legal system, exemptions may only be established by law and not by some foreign judgment.
- c) A principle of tax law reflected in Article 3 of the Ecuadorian Tax Code gives the State sole authority to establish, modify or extinguish taxes: no law, no tax.
- d) The sums for the attorneys' fees cannot nor should they be taxed merely because they represented the claimants; on the other hand, they cannot be exempt from the general taxes that other professionals in Ecuador must always pay.

35. For its part, the Commission argued that since the payment of fees was an element of the reparations, it should be accorded the same tax treatment that the payment of compensatory damages receives and that any tax upon them should be covered by the State.

36. Mr. Suárez Rosero's argument was that the State was mistaken; that what the Court had ordered was payment of costs and expenses, not fees. He further argued that had there been no violations on the State's part, the time and effort of his attorneys would never have been needed.

37. From the State's comments it is evident that the State's understanding is that the amounts it must pay to Mr. Suárez Rosero's attorneys would be for fees. However, from a reading of the judgment on reparations, particularly its paragraphs 20.g and 94, it is patently clear that a significant portion of the amounts ordered is for reimbursement of expenses that the State had already agreed to pay during the reparations phase.

38. The State, moreover, has not explained why it believes that its tax laws apply to the costs awarded for Mr. Richard Wilson, who worked as counsel for the victim from the American University's Human Rights Clinic in the United States, and a portion of the costs awarded for the victim's other attorney, Mr. Alejandro Ponce Villacís, who conducted some of his business out of this office.

39. The Court believes it would be useful to explain the considerations upon which it based its decision.

40. In its recent case law, and particularly since the current Rules of Procedure entered into force, the Court has recognized that costs are one element to be considered under the concept of reparations to which Article 63(1) of the Convention refers since they are a natural consequence of the effort made by the victim, his or her beneficiaries, or representatives to obtain a court settlement recognizing the violation committed and establishing its legal consequences (Garrido and Baigorria Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of September 3, 1998. Series C No. 39, para. 79)

41. In this context, the amount of the payment ordered for Mr. Suárez Rosero's attorneys was considered, at the time, fair and reasonable. The very essence of the Court's judgment on this point is that as part of the fair compensation of which Article 63(1) of the Convention speaks, it is both "fair" and "reasonable" that the victim's attorneys should receive said amounts promptly and in full. Were the State to deduct some percentage of those amounts for tax purposes, the amount received by the attorneys would not be the amount that the Court approved. This would constitute noncompliance with the judgment on reparations.

42. The Court's interpretation of this point is consistent with its case law (see, *inter alia*, Loayza Tamayo Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998. Series C No. 42, operative paragraph nine; and Blake Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999. Series C No. 48, operative paragraph four) and with that of the European Court of Human Rights, which, when it orders payment of costs, either orders the State to add on any taxes that may be owed (see, *inter alia*, European Court of Human Rights, *Bulut v. Austria*, judgment of 22

February 1996, Report of judgments and decisions 1996-II, operative paragraph four) or makes the calculation itself and orders payment of the resulting amount (see, inter alia, European Court of Human Rights, Young, James and Webster, judgment of 18 October 1982 (Article 50), Series A No. 55, operative paragraph two).

43. Both the Commission and Mr. Suárez Rosero suggested ways to avoid any adverse consequences to the attorneys by reason of taxes. The Court considers that any ruling on the manner of compliance is irrelevant. The Court has already stated that from the wording of the judgment, it is patently clear that the State has the obligation to pay the amounts ordered and to do so in full and that in order to fulfill this objective, Ecuador must employ the proper means to ensure that this obligation is discharged promptly and efficiently, under the terms and within the time limit ordered by the Court.

44. The Court considers therefore that the payment of the costs and expenses ordered for Mr. Suárez Rosero's attorneys may not be subject to any tax levied by the State.

VII.

45. Now, therefore,

THE COURT

DECIDES,

unanimously,

1. That the request filed by the State of Ecuador for interpretation of the January 20, 1999 Judgment delivered in the Suárez Rosero Case is admissible.

2. That the sums that the Court ordered in the judgment in question for Mr. Rafael Iván Suárez Rosero and Mrs. Margarita Ramadán de Suárez shall be paid promptly and in full. It is incumbent upon the State to exhaust all measures to ensure prompt and efficient fulfillment of this obligation, under the conditions and within the time limits established in that judgment and, in particular, to adopt suitable measures to ensure that the legal deductions that Ecuadorian financial institutions charge on all monetary transactions shall not abridge the beneficiaries' right to receive the full amounts ordered for them.

3. That the payment that the Inter-American Court of Human Rights ordered for the minor Micaela Suárez Ramadán in the judgment in question, shall be deposited in full in the trust fund mentioned in paragraph 107 of the judgment and that said amount shall not be subject to any tax at the time the trust fund is set up or to any tax withholdings.

4. That the attorneys for Mr. Suárez Rosero are to receive full and prompt payment of the costs and expenses that the Inter-American Court of Human Rights ordered in the judgment in question and that at time of payment, said amount shall not be subject to any deductions or taxes.

Done in Spanish and in English, the Spanish text being authentic, in San José, Costa Rica, May 29, 1999.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary