

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Ernestina and Erlinda Serrano Cruz v. El Salvador
Doc. Type: Judgement (Interpretation of the Judgment of Merits, Reparations and Costs)
Decided by: President: Sergio Garcia Ramirez;
Vice President: Alirio Abreu Burelli;
Judges: Oliver Jackman; Antonio A. Cancado Trindade; Manuel E. Ventura Robles; Alejandro Montiel Arguello

Judge Diego Garcia-Sayan abstained from hearing the instant case pursuant to articles 19(2) of the Statute and article 19 of the Court's Rules of Procedure. Judge Cecilia Medina Quiroga informed the Court that due to reasons of force majeure, she could not be present at the deliberations and signing of the instant Judgment.

Dated: 9 September 2005
Citation: Serrano Cruz v. El Salvador, Judgement (IACtHR, 9 Sep. 2005)

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In the Case of the Serrano Cruz Sisters,

The Inter American Court of Human Rights (hereinafter “the Inter American Court”, “the Court” or “Tribunal”), according to article 67 of the American Convention on Human Rights (hereinafter called “the Convention” or “the American Convention”) and article 59 of the Court's Rules of Procedure (hereinafter “the Rules”), resolves regarding the request for interpretation of judgment on the merits, reparations and costs entered by the Court on March 1, 2005, in the Case of the Serrano Cruz Sisters (hereinafter “the interpretation request”), brought by the State of El Salvador (hereinafter “the State” or “El Salvador”) on June 26, 2005.

I. JUDGMENT ON THE MERITS, REPARATIONS AND COSTS

1. The Court entered judgment on the merits, reparations and costs, on March 1, 2005; in which it

DECLAR[ED]:

6 votes for and one against, that:

1. The State violated the judicial guarantees and judicial protection enshrined in articles 8(1) and 25 of the American Convention [...], in conjunction with Article 1(1) of the latter, to the detriment of Ernestina and Erlinda Serrano Cruz and their next of kin, in the terms of paragraphs 53 to 107 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

Six votes for and one against, that:

2. The State breached the right to personal integrity consigned in article 5 of the American Convention [...], in relation to article 1(1) of said, to the detriment of the next of kin of Ernestina and Erlinda Serrano Cruz, in the terms of paragraphs 111 to 115 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

Five votes for and two against, that:

3. It would not pronounce judgment on the alleged violation to the right of protection of the family, right to a name, rights of the child, respectively upheld in articles 17, 18 and 19 of the American Convention [...], in the terms of paragraph 125 of the [...] Judgment.

Judges Cançado Trindade e Ventura Robles informed the Court their dissenting Opinions

Six votes for and one against, that:

4. It would not pronounce judgment on the alleged violation to the right to life enshrined in article 4 of the American Convention [...], in relation to article 1(1) of the same to the detriment of Ernestina and Erlinda Serrano Cruz, in the terms of paragraphs 130 to 132 of the [...] Judgment.

Judge Cançado Trindade informed the Court his dissenting Opinion.

AND DECID[ED]:

Six votes for and one against, that:

[...]

12. The State is obliged to pay Mrs. Suyapa Serrano Cruz the amount fixed in paragraph 152 of the [...] Judgment, for expenses incurred due to the material damages inflicted upon the victim's next of kin, some of which were incurred by the "Asociación Pro Búsqueda" (Association for the Search of Missing Children), in the terms of paragraph 152 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

13. The State is obliged to compensate the victims and their next of kin for non material damages caused, the amount set in paragraph 160 of the [...] Judgment, in favor of Ernestina Serrano Cruz, Erlinda Serrano Cruz, María Victoria Cruz Franco, Suyapa, José Fernando, Oscar, Martha, Arnulfo and María Rosa, all bearing the Serrano Cruz surname, in the terms of paragraph 160 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

[...]

15. The State Shall pay compensation amounts and reimburse costs and expenses, and also adopt the measures of reparation set forth in resolution eight of this Judgment, within one year of the notification of this judgment, in the terms of paragraph 208 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

[...]

19. The State shall deposit the compensations ordered in favor of Ernestina and Erlinda Serrano Cruz in an account or a deposit certificate in a reliable national banking institution, in United States dollars and in the most favorable financial conditions allowed by legislation and banking practice of El Salvador. If, after ten years, the compensation has not been able to be claim, the sum shall be delivered with the respective interests, to the siblings of

Ernestina and Erlinda in equal parts, who shall have a term of two years to claim the compensation. After this time, if not claimed, it shall be returned to the State in the terms of paragraph 210 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

20. The amount to be paid for damages in favor of María Victoria Cruz Franco, the mother of Ernestina and Erlinda Serrano Cruz, shall be delivered to her children in equal parts, in the terms of paragraph 211 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

21. The payment of the compensation ordered in favor of the sisters Ernestina and Erlinda Serrano Cruz, shall be made directly to them. If either of them has passed away, the payment shall be made to their heirs in the terms of paragraph 212 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

[...]

23. If due to causes that can be attributable to the victims next of kin, the beneficiaries of the compensation are unable to claim said compensation in the term of one year as indicated, the State shall deposit the payment amounts in an account or certificate deposit in a reliable Salvadoran financial institution, in US Dollars, in the terms of paragraph 215 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

[...]

25. It shall oversee for the full compliance of this Judgment, and shall deem the instant case as concluded once the State has fully implemented all of the provisions in this Judgment. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken in compliance with the terms of paragraph 217 of the [...] Judgment.

Judge ad hoc Montiel Argüello informed the Court his dissenting Opinion.

[...]

2. On March 29, 2005, the Court notified the parties involved about the Judgment entered on the merits, reparations and costs.

II. COURT JURISDICTION AND COMPOSITION

3. Article 67 of the Convention establishes 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.

Pursuant to the aforementioned article, the Court is competent to interpret its rulings, and in order to examine the request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment (article 59(3) of the Rules). On this occasion, the Court is composed of the judges who entered the Judgment on the merits, reparations and costs, whose interpretation has been requested by the State, with the exception of Judge Cecilia Medina Quinoa, who informed the Court that due to reasons of force majeure she could not be present at the deliberations and signing of the instant Interpretation Judgment.

III. INTRODUCTION AND PURPOSE OF THE REQUEST FOR INTERPRETATION

4. On June 26, 2005, the State brought a request for interpretation of the Judgment on the merits, reparations and costs, pursuant to Articles 67 of the Convention and 59 of the Rules.

5. The request for interpretation was based on three aspects: a) “[its] concern for the scope of the measures ordered by the Court in compensation for non pecuniary damages to María Victoria Cruz Franco, [the mother of Ernestina and Erlinda Serrano Cruz,] because when the Judgment was delivered she was deceased”; b) the distribution of the non pecuniary damages compensation in favor of María Victoria Cruz Franco; e c) “the reasons that led the Honorable [] Court to establish the amounts the State must pay for compensation”.

IV. PROCEEDINGS BEFORE THE COURT

6. Pursuant to the provisions set forth in article 59(2) of the Rules, and following instructions by the President of the Court (hereinafter called “the President”), the Secretary of the Court (hereinafter “the Secretary”) transmitted a copy of the request for interpretation of the Judgment on the merits, reparations and costs to the Inter American Commission on Human Rights (hereinafter called “the Commission”) and to the victims representatives and their next of kin (hereinafter called “the representatives”) on June 28, 2005, and notified the parties to the case that they were awarded a period of thirty days to submit any written comments they might see relevant. In addition it also submitted a note to the State reminding it, that pursuant to article 59.4 of the Rules, “[] a request for interpretation shall not suspend the effect of the judgment”.

7. The representatives submitted their written comments on the request for interpretation, in which they requested the Court, inter alia, “to dismiss the request for interpretation of the Judgment inasmuch as it was a hidden appeal ”.

8. The Inter American Commission, after an extension granted by the President, submitted its written allegations on the request for interpretation on August 15, 2005, indicating, inter alia, “the request filed by the Salvadoran State does not comply with the required standards to be considered a request for interpretation.”

V. ADMISSIBILITY

9. The Court is empowered to verify whether the terms of the request for interpretation comply with applicable norms.

10. Article 67 of the Convention establishes 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

11. Article 59 of the Rules establishes, non pertinent that:

1. The 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.

[...]

4. The request for interpretation shall not suspend the effect of the Judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a Judgment.

12. Article 29(3) of the Rules, establishes that “[J]udgments and orders of the Court may not be contested in any way”.

13. The Court verified that the State filed the request for interpretation of Judgment on June 26, 2005, within the deadline established in article 67 of the Convention (*supra* para. 10), since the Judgment on the merits, reparations and costs was notified to El Salvador on march 29, 2005.

14. On the other hand, as previously established by this Tribunal, a request for interpretation of a Judgment should not be used to contest the judgment, but rather, its objective should be to exclusively clarify the meaning of a ruling when one of the parties holds that the text on resolutions, or on its considerations lacks clarity or precision, provided that these considerations affect the part containing the resolutions, and consequently, the amendment or elimination of the respective judgment cannot be claimed through the request for interpretation. [FN1]

[FN1] Cfr. Case of Lori Berenson Mejía. Request for the interpretation of the Judgment on the Merits, Reparation, and Costs (Art. 67 of the American Convention on Human Rights). Judgment of June 23, 2005. Series C No. 128, para. 12; Case of Juan Humberto Sánchez. Request for Interpretation of the Judgment on the Preliminary Objections, Merits, Reparation and Costs. (Art. 67 of the American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 14; and the Case of Cesti Hurtado. Interpretation of the Reparations Judgment. (Art. 67 of the American Convention on Human Rights). Judgment of November 27, 2001. Series C No. 86, para. 31.

15. Also, the Court established that the request for interpretation of a judgment cannot consist in the submission of factual and legal foundations previously laid during the proceedings, and to which the Tribunal has already entered a judgment. [FN2]

[FN2] Cfr. Case of Lori Berenson Mejía. Request for Interpretation of the Judgment on the Merits, Reparation and Costs, *supra* note 1, para. 11; Case of Juan Humberto Sánchez. Request for Interpretation of the Judgment on Preliminary Objections, Merits and Reparations, *supra* note 1, para. 40; and Case of Loayza Tamayo. Interpretation of the Judgment on Reparations (Art. 67 American Convention on Human Rights). Judgment of June 3, 1999. Series C No. 53, para. 15.

16. To analyze the admissibility of the request for interpretation submitted by the State, on March 1, 2005, and to clarify the meaning or scope of the Judgment on the merits, reparations and costs, the Court shall subsequently analyze the three aspects submitted by the State (supra para. 5), but in the inverse order to the order submitted, starting with the third aspect, (“the reasons that led the Honorable Court to establish the amounts that the State must pay for compensation for non pecuniary damages”) subsequently referring to the other aspects: compensation imposed by the Court for non pecuniary damages, in favor of María Victoria Cruz Franco and the distribution of the compensation amount.

VI. ON THE COMPENSATION AMOUNTS FIXED BY THE COURT

17. Arguments of the State

a) “express[ed] its concern regarding the reasons that led the Honorable Court to establish the amounts the State must pay for compensation, since it seems these sums are not in accordance with the alleged damages caused” since in para. 130 of the Judgment on the merits, reparations and costs, the Court established that it could not presume that the right to life was affected, and in addition, Judge ad hoc, in his dissenting opinion, indicated his disagreement with all resolution issues on reparations because he considered that there had not been a violation in this Case; and

b) the aforementioned ruling was primarily based “on the fact that El Salvador was sentenced [for] violating Article[s] 8(1) and 25 of the American Convention [...], in conjunction with article 1(1), and that notwithstanding any individual analysis of the judicial proceedings filed in the First Instance Court of Chalatenango,[...] regarding the alleged abduction from personal care of minors Erlinda and Ernestina Serrano Cruz, comprised of 503 useful pages, it can be stated that from the date the claim was filed it has been dealt with in accordance with the criminal law in force [...]”.

18. Arguments of the Commission

a) “ The State [...] does not attempt that [the Court] interpret the meaning or scope of the judgment[...], but rather seeks a review and reconsideration of the final and unappealable judgment entered by the Court, because it disagrees with its content.” There is no situation that could be regarded as deserving the possibility of a review of the Judgment. “And therefore this is an appeal, inadmissible in accordance with the Court’s procedures”; and

b) Regarding the compensation amounts, “the criteria that the Court used to base the concept of non material damages in paragraphs 156 to 161 of the Judgment, whose interpretation is sought by the State, is clear and sufficient”. The argument of El Salvador that the compensation is not in accordance with the damages caused, constitutes a direct challenge to the contents and scope of the Judgment, contrary to the conventional meaning of the Judgment interpretation figure. The State is not expressing a doubt but rather a disagreement with respect to the amounts fixed and seeks their amendment through a “hidden appeal”.

19. Arguments of the representatives

- a) They request to the Court to “dismiss the request for interpretation filed by the State[,] on the grounds that it seeks to repeal, in an inappropriate and hidden fashion, the Judgment entered by the Court; and
- b) in addition, the State “submitted its arguments in an attempt to be released from its responsibility with regards to the violation of the rights established in articles 8(1) and 25 of the American Convention”. The State had the opportunity to prove that it had not incurred on international responsibility. Notwithstanding, the Court reached a conclusion contrary to that expressed by the State. The Tribunal’s reasoning regarding the domestic judicial investigation is “quite clear and broad”.

Remarks of the Court

20. The Court verified that the third aspect referred to in the request for interpretation, regarding the “reasons that led the [] Honorable Court to establish the amounts the State must pay as compensation”, does not seek that the Court interprets the meaning or scope of the Judgment, but rather that the State consider that the aforementioned amounts “are not in accordance with the alleged damages caused”, as previously expressed, and that therefore it is using the request for interpretation as a way to challenge the Judgment and claim that the Court amend the amounts established as compensation for damages caused as a consequence of the violations stated in the Judgment.

21. In addition, the State is submitting arguments on the proceedings carried out at the First Instance Court of Chalatenango related to the investigation of the whereabouts of Ernestina and Erlinda Serrano Cruz, that are connected to the violation of articles 8(1) and 25 of the Convention (supra para. 17(b)) declared by the Court. With this, the State is submitting factual and legal issues to the consideration of the Court that had been previously decided upon by the Tribunal in relation to the Judgment on the merits, reparations and costs (supra para. 1).

22. Regarding this, paragraphs from 133 to 137, 142 to 145, 152 and 156 to 160, of the Judgment, clearly establish the grounds on which the Court entered the Judgment on the merits, reparations and costs for pecuniary and non pecuniary damages caused as a result of the violation to articles 8(1), 25 and 5 of the Convention, in relation to article 1(1) of the same instrument, and on which it fixed the corresponding equal amounts. In addition, paragraphs 54 to 107 and 112 to 115 of the previously mentioned judgment also duly reason the violations to the norms of the Convention as declared by the Court.

23. Due to the foregoing considerations, the Court decides to dismiss the request for interpretation regarding the third aspect put forward, “the reasons that led the [] Honorable Court to establish the amounts that the State must pay as compensation”, due to its inconsistency with the provisions set forth in Articles 67 of the Convention, and 29(3) and 59 of the Rules.

VII. COMPENSATION FOR NON PECUNIARY DAMAGES INFLICTED TO THE MOTHER OF ERNESTINA AND ERLINDA SERRANO CRUZ

24. Arguments of the State

- a) expressed its “concern for the measures ordered by the [...] Court [...], because when the Judgment was delivered [Mrs. María Victoria Cruz Franco, the mother of Ernestina and Erlinda Serrano Cruz ...], was deceased”;
- b) Article 30 of the Code of Private International Law states that “[e]ach State enforces its own legislation to declare the extinction of the civil personality of an individual as a result of natural death” and the Salvadoran Civil Code in force, sets forth in article 77 [... that] the person ends at the time of its natural death”. “In this sense, in accordance with the Salvadoran Legislation, a person is entitled to rights while the person exists [,] therefore, since Mrs. Cruz Franco was deceased at the time the judgment was entered, she was not entitled to compensation for non pecuniary damages, and consequently could not transmit those rights to her children through succession”; and
- c) “express[ed] [its] surprise [...] at the affirmation of the [] Honorable Court that the right to claim compensation for non material damages is transferable through inheritance, and considers the inputs [of the Tribunal] of great importance in this regard, since this situation must be clearly determined for purposes of executing the judgment”.

25. Arguments of the Commission

- a) “The State[...] does not seek that the [Tribunal] interprets the meaning or scope of the judgment, but rather that it reviews and reconsider the final and unappealable judgment entered by the Court, because it disagrees with the decisions contained in it”. “Consequently this is a hidden appeal, inadmissible in accordance with the rules of the Court”
- b) the State does not seek that the Court clarifies any doubt regarding the meaning and scope of the ruling by which the mother of the Serrano Cruz sisters was awarded the beneficiary status, “but rather that the Tribunal reviews the judgment whose interpretation it requested; and
- c) article 63(1) of the Convention is quite broad with respect to reparation, and does not limit it to the internal legislation of each individual State. “Consistent with its jurisprudence and competition, at the time of deciding on the beneficiaries in the instant case, the Court deemed that the mother of the victims should be considered the beneficiary of the reparation for non pecuniary damages”. The Judgment of the Court clearly establishes the criteria set up to determine beneficiaries.

26. Arguments of the Representatives

- a) “the Court must reject the request made by the State since it does not fulfill the requirements for an interpretation”;
- b) from its first judgment, the Court established that victims, alive or dead, are entitled to reparation in accordance with the provisions set forth in article 63(1) of the Convention. “This right is acknowledged when the Court concludes that the State has incurred on International Responsibility [...]. The ownership of the right to be repaired starts with the determination of responsibility and does not extinguish insofar as the State has not complied with its obligation to repair”;
- c) the Court “recognized the years of suffering caused to Mrs. Cruz Franco for the disappearance of her daughters and for the inability of the State to locate them”. The reasoning of the Court regarding the determination of the non pecuniary damages is dully grounded. The Court took into account the fact that Mrs. Cruz Franco had died and established the manner in

which the State should pay the compensation amount. The determination of the Court to compensate Mrs. Cruz Franco does not need further clarification, and neither does the manner and terms of reparation payment”; and

d) requested the Court to establish that the State should not invoke internal law provisions to circumvent compliance with the terms of the Judgment.

Remarks of the Court

27. The Court confirmed that the first aspect referred to by El Salvador in its request for interpretation, which is “[its] concern on the scope of the decision of the [] Court relative to the compensation for non pecuniary damages awarded to María Victoria Cruz Franco” (supra para. 24), does not seek that the Court interprets the meaning or scope of the judgment, but rather, the State seeks that the Court determines compensations based on the internal laws of El Salvador, for which it quoted the provisions set forth in the Code of Private International Law and in the Civil Code of El Salvador on the natural person. The State is using the request for interpretation as a means to appeal the Judgment and attempts that the Court amend its decision to award compensation to María Victoria Cruz Franco for the damages suffered.

28. The grounds on which the Court based the compensation established in the Judgment on the merits, reparations and costs in favor of María Victoria Cruz Franco for non pecuniary damages suffered up to her death as a consequence of the violation to articles 8(1), 25 and 5 of the Convention, in relation to article 1(1) of the same instrument, are clearly set forth in paragraphs 133 to 137, 142 to 146 and 156 to 160 of the instant decision, as well as the violations to the norms of the Convention to the detriment of Mrs. Cruz Franco, in paragraphs 54 to 107 and 112 to 115, declared by the Court in the previously referred to Judgment.

29. The Court established that article 63(1) of the Convention which refers to reparations, reflects a customary law which moreover is one of the fundamental principles of contemporary International Law on the responsibility of the States. As the Tribunal established, International Law regulates every aspect of the obligation to repair (scope, nature, mode and determination of beneficiaries) and a defendant State cannot modify or fail to comply with the obligation to repair by invoking provisions or difficulties in its internal laws. [FN3] For the above reasons, the Tribunal is not limited by the responsible State’s internal laws to provide for the various repair measures.

[FN3] Cfr. Case of Acosta Calderón. Judgment of June 24, 2005. Series No. 129, para. 146 and 147; Case of YATAMA. Judgment of June 23, 2005. Series C No. 127, para. 231 and 232; and the Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 122 and 123.

30. The above-mentioned article 63(1) of the Convention empowers the Inter American Court to determine the measures that will lead to repair the consequences of a violation and regulate all aspects thereof. [FN4]

[FN4] Cfr. Case of Acosta Calderón, *supra* note 3, para. 147; Case of YATAMA, *supra* note 3, para. 257; Case of Fermín Ramírez, *supra* note 3, para. 123.

31. In the instant case, the Tribunal decided on a compensation for the damages caused to María Victoria Cruz Franco up to her death, as a result of the violation to the rights enshrined in articles 8(1) (Judicial Guarantees), 25 (Judicial Protection) and 5 (Personal Integrity) of the Convention, in relation to article 1(1) of said instrument. In this Case, the Tribunal decided that the suffering inflicted to the aforementioned person from June 1995 to her death on March 30, 2004, had caused non pecuniary damages, and therefore entitled her to receive the corresponding reparation [FN5]. Therefore, the Court fixed a compensation generated by the damages suffered by Mrs. Cruz Franco while she was alive, and which is transmitted to her heirs, in this case to her children.

[FN5] Cfr. Case of Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 48(80), 48(81), 159 and 160(b).

32. From the first Judgment delivered by the Court to the most recent, in all cases when the Court has decided on a matter of reparations, it has held that an indemnification is to be paid for non pecuniary damages suffered by the victims up to the time of their death, as well as to victims of forced disappearance [FN6] and for the many years of suffering of the victim's next of kin, even if they are deceased at the moment the Court enters its Judgment. [FN7] Even in cases in which the responsible State and the representatives of the victims reach an agreement on reparations, the State has committed to pay a compensation for non pecuniary damages caused to deceased victims. [FN8] In all these cases the Court has established that the compensation should be paid to the next of kin.

[FN6] Cfr. Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 179 and 191; o Case of Huilca Tecse. Judgment of May 3, 2005. Series C No. 121, para. 92, 98, 99 and 100; Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 98, 118 and 120; Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 303(a); Case of Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 216 and 217; Case of 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para. 248, 250.a) and 252; Case of Molina Theissen. Reparations (art. 63(1) of the American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 66, 67 and 73; Case of Myrna Mack Chang. Judgment of November 25, 2003. Series C No. 101, para. 261-263; Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 96, 99, 103, 104 and 85; Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 174, 178 and 164; Case of Caracazo. Reparations (art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 100, 101, 102 and 110; Case of Trujillo Oroza. Reparations (art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 84, 85 and 89; Case of Bámaca Velásquez. Reparations (art. 63(1) American Convention on Human Rights Judgment of

February 22, 2002. Series C No. 91, para. 61 and 67; Case of the “Street Children” (Villagrán Morales et al). Reparations (art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 88-90 and 91(a); Case of the “Panel Blanca” (Paniagua Morales et al). Reparations (art. 63(1) of the American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 106; Case of Castillo Páez. (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 86; Case of Garrido and Baigorria. (art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 49 and 50; Case of Caballero Delgado and Santana. Reparations (art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997. Series C No. 31, para. 52; Case of Neira Alegría et al. Reparations (art. 63(1) American Convention on Human Rights). Judgment of November 19, 1996. Series C No. 29, para. 56, 57, 58 and 61.b); Case of El Amparo. Reparations (art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 35-38 and 41(b); Case of Caballero Delgado and Santana. Judgment of December 8, 1995. Series C No. 22, para. 68 and 69; and Case of Aloeboetoe et al. Reparations (art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 52, 54 and 66.

[FN7] Cfr. Case of Moiwana Community, supra note 6, para. 179 and 191; Case of Huilca Tecse, supra note 6, para. 91, 92, 98, 99 and 100; Case of Molina Theissen. Reparations, supra note 6, para. 70; Case of Myrna Mack Chang, supra note 6, para. 264(c); Case of Bulacio, supra note 6, para. 85, 102 and 104; Case of Las Palmeras. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 57; Case of Trujillo Oroza. Reparations, supra note 6, para. 53(f) and 88(d); and the Case of the “Street Children” (Villagrán Morales et al). Reparations, supra note 6, para. 92(b).

[FN8] Cfr. Case of Huilca Tecse, supra note 6, para. 101; and Case of Benavides Cevallos. Judgment of June 19, 1998. Series C No. 38, para. 48 and third resolution item.

33. The European Court of Human Rights has followed this same criteria upon determining the Compensation for damages suffered by victims who have died, bearing in mind the non pecuniary damages suffered up to the time of their death, and held that the compensation amount be transferred to their heirs through succession. [FN9]

[FN9] Cfr. Akdeniz v. Turkey, no. 25165/94, § 153, ECHR, judgment of 31 May 2005; Ipek v. Turkey, no. 25760/94, § 237; ECHR, judgment of 17 February 2004; Çiçek v. Turkey, no. 25704/94, § 204; ECHR, judgment of 27 February 2001; Taş v. Turkey, no. 24396/94, § 102; e ECHR, judgment of 14 November 2000; y X. v. France, judgment of 31 March 1992, Series A, no. 234-C, § 54.

34. In several cases, the Inter American Court has also determined the distribution of compensation amounts based on standards that do not necessarily agree with the provisions set forth in the internal laws, for which it has weighted the effects of its rulings against the facts of the case. [FN10]

[FN10] Cfr. Case of Carpio Nicolle et al, supra note 6, para. 98 and 99; Case of Gómez Paquiyauri Brothers, supra note 6, para. 200; Case of 19 Merchants, supra note 6, para. 230; Case of Juan Humberto Sánchez, supra note 6, para. 164, 165 and 178; Case of Caracazo. Reparations, supra note 6, para. 91, 93, 101, 102 and 111; Case of Bámaca Velásquez. Reparations, supra note 6, para. 52, 53 and 67; Case of the “Panel Blanca” (Paniagua Morales et al). Reparations, supra note 6, para. 96 and 187; Case of Castillo Páez. Reparations, supra note 6, para. 90; Case of Garrido and Baigorria. Reparations, supra note 6, para. 55, 56 and 65; Case of Caballero Delgado and Santana. Reparations, supra note 6, para. 60 and 61; Case of Neira Alegría et al Reparations, supra note 6, para. 60 and 61; Case of El Amparo. Reparations, supra note 6, para. 40, 41 and 42; and Case of Aloeboetoe et al. Reparations, supra note 6, para. 77 and 97.

35. Finally, the Court recalls that States cannot invoke the provisions set forth in their domestic laws to justify non-compliance with international obligations. [FN11] The Tribunal has especially held that

[] regarding domestic laws, and regarding reparations ordered by the Court, their compliance shall not be subjected to modification or non-observance by the respondent States through invocation of provisions of their own domestic laws. [FN12]

[FN11] Cfr. Case of YATAMA, supra note 3, para. 257; Case of Caesar. Judgment of March 11, 2005. Series C No. 23, para. 133; Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 148.

[FN12] Baena Ricardo Case et al. Competition. Judgment of November 28, 2003. Series C No. 104, para. 61. On the same lines, Cfr. Acosta Calderón Case, supra note 3, para. 147; YATAMA Case, supra note 3, para. 257; and Fermín Ramírez Case, supra note 3, para. 123.

36. Due to the foregoing reasons, the Court decides to dismiss the request for interpretation related to the aspect set forth by the State about “[its] concern for the scope of the measures ordered by the [...] Court in compensation for non pecuniary damages to María Victoria Cruz Franco” (supra para. 24), because it does not adapt in its terms to the provisions set forth in Articles 67 of the Convention and 29(3) and 59 of the Regulation.

VIII. DISTRIBUTION OF THE COMPENSATION FIXED BY THE COURT BY WAY OF NON-PECUNIARY DAMAGES SUFFERED BY THE MOTHER OF ERNESTINA AND ERLINDA SERRANO CRUZ

37. Arguments of the State

El Salvador requested the Court to “explain the scope of the decision [...] enacting that the compensation awarded to Mrs. Cruz Franco should be delivered to her children on an equitable basis, and particularly whether this order includes Erlinda and Ernestina Serrano Cruz”. “To this respect, since it is evident that there is more than a reasonable doubt regarding the survival or existence of the aforementioned girls, [...], it should be understood that they should also be

called to the succession originated by the same mother, and under equal conditions as the other siblings. Therefore, the US\$ 80[,000[,00 awarded to Mrs. Cruz Franco by way of non pecuniary damages should be divided into [] eight equal parts”.

38. Arguments of the Commission

- a) “the judgment is clear in paragraphs from 208 to 216 and does not require further interpretation by the Court”. “[There] is no gap whatsoever in the ruling of the Tribunal”; and
- b) the judgment is clear upon deciding: that the compensation awarded to Mrs. Cruz Franco should be delivered to her children in equitable parts; that two of those parts should be awarded to Ernestina and Erlinda Serrano Cruz; and the rules that have to be followed to pay Ernestina and Erlinda Serrano Cruz.

39. Arguments of the Representatives

The representatives expressed that “[the request of the State] is something the Honorable Court should assess at the time of pronouncing the corresponding Judgment”.

Remarks of the Court

40. The Court deems that the scope of the ruling in the Judgment on the merits, reparations and costs is clear, in regards of the persons to whom the compensation shall be delivered for non pecuniary damages caused to María Victoria Cruz Franco. Nevertheless, in order to dissipate any doubts the State might have in this regard, the Tribunal deems convenient to establish the decision set forth in paragraph 211 with greater clarity as well as in resolution twenty of the previously mentioned Judgment, where it was established that the payment of the compensation awarded to the above mentioned person by way of non pecuniary damages “shall be delivered to her children on an equitable bases”.

41. The provisions set forth in paragraph 211 and in resolution number twenty of the Judgment on the merits, reparations and costs, should be understood bearing in mind the declarations of the Court in other parts of the same Judgment, such as in paragraphs 48(2), 48(6), 48(8), 97 in fine, 112 in fine, 130, 131 and 210.

42. Concerning paragraphs 48(2), 48(6) and 48(8), the Tribunal deemed proven that:

On May 31, 1996, the Association for the Search of Disappeared Children [...] lodged a complaint before the Office of the Ombudsman for Human Rights for the alleged disappearance of 145 children during the armed conflict in El Salvador; among these, the previously mentioned Association denounced the case of the alleged disappearance of the sisters Ernestina and Erlinda Serrano Cruz, presumably occurring in June 1982 in Chalatenango. [...]

[...]

The Association for the Search of Disappeared Children has received around 721 requests for the search of disappeared children during the armed conflict, of which it has resolved about 246.

[...]

[...]

[...] Some of the approximately 52 cases of disappeared children during the military operation called “guinda de mayo” in 1982 were solved and all the youngsters located by the Association for the Search of Disappeared Children were alive when found.

43. In paragraph 97 in fine of the Judgment on the merits, reparations and costs, when it refers to the violation to articles 8 (Judicial Guarantees) and 25 (Judicial Protection) of the Convention, in relation to article 1(1) of the same instrument, the Tribunal indicated that:

[...] it is worthwhile highlighting that the proceedings omitted are of great importance, inasmuch as there is the possibility that Ernestina and Erlinda are alive, since the disappeared children located by the Association for the Search of Disappeared Children were all found alive.

44. In paragraph 112 in fine, upon referring to the violation of article 5 (Right to Personal Integrity) of the Convention, in relation to 1(1) of the same instrument, the Court established that:

[...] The next of kin of Ernestina and Erlinda have seen throughout the years how other families have located their family members disappeared during the armed conflict, fundamentally due to the search carried out by the Association for the Search of Disappeared Children, but their family has not received any assistance from the State to this end. All the youngsters found so far by the Association for the Search of Disappeared Children who were reported missing during the military operation of 1982, called “guinda de mayo”, have been found alive [...].

45. Along the same lines, in paragraphs 130 and 131, upon referring to the alleged violation of article 4 (Right to Life) of the Convention, in relation to article 1(1) of the same instrument, the Court deemed that:

upon analyzing the evidence submitted in the instant case, we find no element that could lead to the conclusion that the sisters Ernestina and Erlinda Serrano Cruz could have been arbitrarily deprived of their right to life. Therefore, the Court deems that it is not competent to enter a judgment on the alleged forced disappearance of Ernestina and Erlinda, or to assert that their right to life was affected inasmuch as it cannot presume, like in other cases, that the alleged facts are based on the crime of forced disappearance.

[...] To this respect, and as mentioned previously in the [...] Judgment (supra para. 97), there are possibilities that the sisters Ernestina and Erlinda Serrano Cruz might be alive, inasmuch as all the youngsters found by the Association for the Search of Disappeared Children, who disappeared when they were small children during the “guinda de mayo” operation of 1982, were found alive. [...].

46. Pursuant to the provisions set forth in the above mentioned paragraphs and to enforce Article 63(1) of the Convention, the Tribunal established a compensation for Ernestina and Erlinda Serrano Cruz for the non pecuniary damages caused as a consequence of the violation of articles 8(1) and 25 of the Convention, in relation to article 1(1) of the same instrument, to their

detriment, and bearing in mind that they could be alive, the Court determined the following in paragraph 210:

[...] The payment of the compensations established in favor of Ernestina and Erlinda Serrano Cruz must be deposited in an account or a deposit certificate in a solvent financial institution of El Salvador, in US Dollars, and under the most favorable conditions allowed by the Salvadoran legislation and banking practices. If after ten years the compensation has not been claimed, this amount, including the interests earned, shall be distributed in equal parts among the siblings of Ernestina and Erlinda, who will have a term of two years to claim it, after which time, if no one has claimed the compensation amount, it shall be returned to the State.

47. The Tribunal clearly established that there is the possibility that Ernestina and Erlinda Serrano Cruz are alive, a fact that was taken into account by the Court when it entered the judgment both on the violations to the Convention and upon establishing the reparations. Reason why, with regards to the reparations, the Court has established the manner in which the State shall consign the payment of the compensation in favor of the sisters.

48. Consequently, upon indicating in paragraph 211 as well as in resolution number twenty of the Judgment on the merits, reparations and costs, that the payment of the compensation for non pecuniary damages in favor of María Victoria Cruz Franco, the mother of Ernestina and Erlinda Serrano Cruz, “shall be delivered to her children in equal parts”, the Court understands that Ernestina and Erlinda should also be taken into account as daughters of Mrs. Cruz Franco, in the same manner as the other six living children of the aforementioned person, inasmuch as the Tribunal has clearly established that the former might be alive. In paragraph 210 and on resolution number nineteen, the Tribunal determined the manner to proceed in the event that the amounts consigned in favor of Ernestina and Erlinda Serrano Cruz are not collected in a term of ten years.

49. Likewise, the Tribunal clearly established that the amount of US\$ 80.000,00 (eighty thousand US Dollars) set up in paragraph 160.b) of the Judgment on the merits, reparations and costs on compensation for the non pecuniary damages suffered by María Victoria Cruz Franco, the mother of Ernestina and Erlinda Serrano Cruz, shall be distributed among her eight children, that is: Martha, Suyapa, Arnulfo, José Fernando, María Rosa, Oscar, Ernestina and Erlinda, all with the surname Serrano Cruz. The amounts of this distribution corresponding to Ernestina and Erlinda, namely, US\$ 10.000,00 (ten thousand US Dollars) for each one, shall increase the amounts that correspond to them as compensation for the non pecuniary damages suffered by them, as set forth in paragraph 160(a) of the Judgment on the merits, reparations and costs. The State shall consign the payment of both sums in an account or deposit certificate on behalf of the former, pursuant to the provisions set forth in paragraph 210 of the Judgment on the merits, reparations and costs, and if these amounts are not collected in a ten year period, the total amounts, including the interests earned, shall be delivered to their siblings on an equal basis, in conformance with the provisions in paragraph 210.

50. In accordance with the foregoing, the Tribunal has determined the meaning and scope of the provisions set forth in paragraph 211 and also in resolution twenty of the Judgment on the merits, reparation and costs.

IX. RESOLUTIONS

51. By virtue of the above stated reasons,

THE INTER AMERICAN COURT OF HUMAN RIGHTS

In accordance with article 67 of the American Convention on Human Rights and articles 29(3) and 59 of the Rules

DECIDES:

Unanimously,

1. To dismiss the request for interpretation of the Judgment on the merits, reparations and costs in the Serrano Cruz Sisters Case lodged by the State, with regards to the “reasons that led the [] Honorable Court to establish the amounts the State must pay by way of compensation” and “[its] concern for the scope of the measures ordered by the [...] Court as compensation for non pecuniary damages caused to Mrs. María Victoria Cruz Franco, because she was deceased when the Judgment was delivered”, due to the fact that its terms are not consistent with the provisions in articles 67 of the Convention and 29(3) and 59 of the Rules.

2. Define the meaning and scope of the ruling in paragraph 211 and resolution twenty of the Judgment on the merits, reparations and costs, in terms of paragraphs 40 to 50 of the instant Interpretation Judgment.

Judge ad hoc Montiel Argüello informed the Court of his concurring opinion which accompanies the present Judgment.

Done in both Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on September 9, 2005.

Sergio García Ramírez
President

Alirio Abreu Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Manuel E. Ventura Robles

Alejandro Montiel Argüello
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

CONCURRENT OPINION OF JUDGE MONTIEL ARGÜELLO

1. I gave my affirmative vote to the resolutions of the previous Judgment on the Interpretation of Judgment of March 1, of this year, in the Case of the Serrano Cruz Sisters vs. El Salvador. The request for interpretation lodged by El Salvador refers to three issues:

- a) The awarding of compensation for non pecuniary damages in favor of Mrs. María Victoria Franco who was deceased;
- b) The assignment of the compensation amount to her children; and
- c) The relation between the compensation amounts and the damage caused.

2. With respect to the first two issues, the State agent pointed out that in paragraph 13 of my Dissenting Opinion in the previously mentioned Judgment I had stated, “I deem that the right to claim compensation for non pecuniary damages is not assignable to the heirs...”. That opinion is based on the fact, that to my judgment, the referred right is very personal in such a way that it cannot be assigned or seized by a creditor.

3. The thesis of the Court opposed that of the State, and awarded the compensation to Mrs. María Victoria Franco and, consequently the request of the agent of El Salvador is not for an interpretation of the Judgment but rather to appeal the same, which is inadmissible.

4. With regard to the awarding of the aforementioned compensation on behalf of the children of the deceased mother, the Judgment refers to all of them, including Ernestina and Erlinda; therefore it is deemed fit to precise the scope of this provision.

5. Finally, concerning the third issue, about the request for interpretation, the petitioner points out that the Court recognizes that since it does not have competence on the alleged forced disappearance of the Serrano Cruz sisters it cannot presume, as in other cases, that a violation to the right to life was committed, and the request also quotes paragraph 13 of my Dissenting Opinion, which states that in the instant case there has not been a violation of any right under the jurisdiction of the Court.

6. The Court did not endorse my thesis and decided that there had been a violation to the rights enshrined in articles 5, 8(1) and 25 of the American Convention on Human Rights. The decision of the Court regarding the existence of the violation and the amount of the compensation as reparation may not be considered a matter for interpretation inasmuch as it is clear, and consequently, the request is inadmissible.

Alejandro Montiel Argüello

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Judge ad hoc

Pablo Saavedra Alessandri
Secretary