

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Rochela Massacre v. Colombia
Doc. Type:	Judgement (Interpretation of the Judgment on the Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Cecilia Medina Quiroga; Judges: Manuel E. Ventura Robles; Diego Garcia-Sayan; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu Blondet
Dated:	28 January 2008
Citation:	Rochela Massacre v. Colombia, Judgement (IACtHR, 28 Jan. 2008)
Represented by:	APPLICANTS: the “Jose Alvear Restrepo” Legal Cooperative and the CEJIL
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In the Case of the Rochela Massacre,

the Inter-American Court of Human Rights (hereinafter referred to as “the Inter-American Court” or “the Court”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter referred to as “the Convention” or “the American Convention”) and Article 59 of the Court’s Rules of Procedure (hereinafter referred to as “the Rules of Procedure”), decides on the request for interpretation of the Judgment on the merits, reparations and costs rendered by the Court on May 11, 2007, in the case of the massacre of La Rochela v. Colombia (hereinafter referred to as “the request for interpretation”), filed by the State of Colombia (hereinafter referred to as “the State” or “Colombia”).

I. FILING OF THE REQUEST FOR INTERPRETATION AND PROCEDURE BEFORE THE COURT

1. On September 3, 2007 the State filed a request for interpretation of the Judgment on the merits, reparations and costs [FN1] rendered in the instant case on May 11, 2007 (hereinafter referred to as “the Judgment”), based on Articles 67 of the Convention and 59 of the Rules of Procedure. In the request for interpretation, the State requested the “clarification of the [J]udgment [...] considering that there are [...] doubts arising thereto” as to the compensation for non-pecuniary damage, the public release of the results of the criminal proceedings and the payment of costs and expenses.

[FN1] Cf. Case of the Rochela Massacre. Merits, Reparations and Costs. Judgment of May 11, 2007. C Series No. 163.

2. On September 4, 2007, in accordance with Article 59(2) of the Rules of Procedure and following instructions given by the President of the Court, the Secretariat of the Court (hereinafter referred to as "the Secretariat") forwarded a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission" or "the Inter-American Commission") and to the representatives of the victims and their next of kin (hereinafter referred to as "the representatives") and let them know that they had a non-postponable term until October 4, 2007 to submit the written arguments they considered pertinent. Furthermore, the State was reminded of the fact that, pursuant to Article 59(4) of the Rules of Procedure, "[t]he request for interpretation does not suspend the effect of the Judgment." On October 3 and 4, 2007 the representatives and the Commission respectively filed the above-mentioned written arguments.

II. COURT JURISDICTION AND COMPOSITION

3. Article 67 of the Convention sets forth that

[t]he 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.

4. In accordance with the above-mentioned article, the Court has jurisdiction to interpret its own judgments. When performing the analysis of the request for interpretation, the Court must have, if possible, the same composition it had at the time of rendering the respective Judgment (Article 59(3) of the Rules of Procedure). On this occasion, the Court judges are the same who rendered the Judgment of which the interpretation has been requested.

III. ADMISSIBILITY

5. It is within the Court's functions to verify if the terms of the request for interpretation fulfill the requirements set forth in the applicable provisions, that is, Article 67 of the Convention and Articles 29(3) and 59 of the Rules of Procedure.

6. Article 29(3) of the Rules of Procedure sets forth that "judgments and orders of the Court may not be contested in any way."

7. Article 59 of the Rules of Procedure –in its pertinent part- sets forth 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. A 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.

8. The Court verifies that the State filed the request for interpretation within the term set forth in Article 67 of the Convention, as notice of the Judgment was served upon the State, the Inter-American Commission and the representatives on June 8, 2007.

9. On the other hand, as previously decided by this Court [FN2], a request for interpretation of a judgment must not be used as a means of objection; its only purpose must be to disentangle the meaning of a decision when one of the parties claims that the text of the operative paragraphs or fundamentals lacks clarity or precision, provided those considerations have influence in the said operative part. Consequently, the amendment or annulment of the respective judgment cannot be claimed through a request for interpretation.

[FN2] Cf. Case of Loayza Tamayo. Interpretation of Judgment on the Merits. Court Decision of March 8, 1998. C Series No. 47, par. 16; Case of La Cantuta. Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of November 30, 2007. C Series No. 173, par. 9 and Case of the Dismissed Congressional Employees (Aguado Alfaro et al). Interpretation of Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2007. C Series No. 174, par. 11.

10. In order to analyze the admissibility of the request for interpretation filed by the State and -should it be the case-, in order to clarify the meaning or the scope of the Judgment, the Court shall separately analyze the three different situations submitted before it, as well as the relevant comments made by the Commission and the representatives.

IV. SITUATION OF MMES. PAOLA MARTÍNEZ ORTIZ AND BLANCA HERRERA SUÁREZ

11. The State pointed out that for the benefit of these two permanent companions of two of the victims declared deceased by the Court in its Judgment, a compensation was ordered in order to “fairly balance the compensation they received at domestic level, which was lower than that awarded to the spouses.” However, the State indicated that paragraph 270 of the Judgment sets forth that at the time of liquidation of the reparations ordered, the amounts granted at domestic level may be deducted in the administrative-law proceedings. For that reason, the State “requests that the Court clarifies if the amount paid by virtue of the domestic proceedings must be deducted out of the \$30,000 [thirty thousand United States dollars or the equivalent amount in Colombian currency] ordered in the Judgment.”

12. On that matter, the Commission expressed that “the payment of the compensation in the amount of \$30,000 [thirty thousand United States dollars or the equivalent amount in Colombian currency] corresponds to the amount the Court decided to award in equality in order to balance the disadvantage of the compensation received for their status of [permanent] female companions.” It further expressed that “[i]t would be illusional to expect to deduct the amount paid from the compensation ordered, when the said amount was ordered so as to even the payments made by Colombia.”

13. The representatives considered that “even though the Judgment may be somehow confusing in this respect, a thorough analysis thereof reveals that the Court intention could not have been to order to discount the compensations received as moral damages by Mmes. Martínez and Herrera at domestic level out of the \$30,000 [thirty thousand United States dollars or the equivalent amount in Colombian currency].” With regard to that, they expressed that “the Court award[ed] a compensation for non-pecuniary damage of \$70,000 [seventy thousand United States dollars or the equivalent amount in Colombian currency] to the spouses and the permanent companions of the victims who were not compensated at domestic level”, that is to say, according to the representatives, “the Court considered that, in equality, the spouses and permanent companions of the victims of the massacre should receive a \$70,000 compensation [seventy thousand United States dollars or the equivalent amount in Colombian currency] as non-pecuniary damage”. They added that in case of discounting the amounts received at domestic level, Mmes. Martínez and Herrera “would end up receiving a total compensation of \$30,000 [thirty thousand United States dollars or the equivalent amount in Colombian currency] as non-pecuniary damage, an amount significantly lower than the \$70,000 [seventy thousand United States dollars or the equivalent amount in Colombian currency] ordered by the Court for the other permanent companions of the victims.” Consequently, the representatives conclude that “discounting the domestic compensations of these two ladies would lead to an openly inconsistent result, as it would aggravate the inequality situation that paragraph 268 seeks to remedy.”

14. The Court verifies that there is an underlying doubt in the question posed by the State regarding the meaning or the scope of the judgment, reason for which it sets forth the proper interpretation.

15. At the time of fixing the payment of compensations for non-pecuniary damage, the Court considered that the reparation awarded to victims’ next of kin by the State was adequate -within the context of the State’s administrative jurisdiction, to which the next of kin had resorted. [FN3] However, the Court considered the case of surviving victim Arturo Salgado Garzón and of Mmes. Paola Martínez Ortiz and Blanca Herrera Suárez as an exception to the above. In these three cases, the Court considered that there was not a suitable reparation within the domestic scope. [FN4] Apart from these cases, the Court fixed a compensation for non-pecuniary damage for the twelve deceased victims, as no compensation was set at domestic level for the suffering of these victims, and for the next of kin who did not receive any compensation at domestic level nor were they included in the partial agreement on reparations. [FN5] As it can be seen, these are three different reparation scenarios.

[FN3] Cf. Case of the Rochela Massacre, note 1 above, par. 266.

[FN4] Cf. Case of the Rochela Massacre, note 1 above, pars. 266 to 268.

[FN5] Cf. Case of the Rochela Massacre, note 1 above, par. 267 and 271 to 273.

16. With regard to Mmes. Paola Martínez Ortiz and Blanca Herrera Suárez the Court stated the following:

268. In the first place, as to Mmes. Paola Martínez Ortiz and Blanca Herrera Suárez, respective female permanent companions of victims Luis Orlando Hernández Muñoz and Samuel Vargas Páez, at domestic level they received a compensation amount lower than that awarded to the spouses formally married to other victims. In accordance with the case law of this Court and pursuant to Article 2(15) of the Rules of Procedure, it becomes necessary to award them a compensation for non-pecuniary damage in order to equal the compensations received, as that provision determines the equality of treatment to spouses and to permanent companions. That is why the Court equitably determines the amount of \$ 30,000.00 (thirty thousand United States dollars or the equivalent amount in Colombian currency) for each of Mmes. Paola Martínez Ortiz and Blanca Herrera Suárez.

17. In the next paragraph, the Court analyzed the case of surviving victim Arturo Salgado Garzón, who had not received adequate reparation within the domestic scope either. With regard to Mmes. Martínez and Herrera and Mr. Salgado, the Court clearly stated the following:

270. At the time of the liquidation of the reparations ordered by this Court in the two precedent paragraphs, the State may deduct the amounts it awarded at domestic level in the administrative-law proceedings by way of "moral damages."

18. A reparation scenario which differs from the ones above was analyzed by the Court in paragraphs 271 to 273: that of the next of kin who did not receive a compensation at domestic level nor were they included in the partial agreement on reparations. As to the permanent companions who were included in this reparation scenario, the Court ordered the payment of \$ 70,000.00 (seventy thousand United States dollars) or the equivalent amount in Colombian currency. [FN6]

[FN6] Cf. Case of the Rochela Massacre, note 1 above, par. 273.

19. As already explained, the Court developed different arguments in each reparation scenario. In the first place, it analyzed what was repaired within the domestic scope, it set forth which cases it considered properly repaired and which not, so as to subsequently fix a fair compensation for all those who turn to the Colombian administrative-law jurisdiction. Then it analyzed the case of the people who were not compensated in the domestic scope and it fixed the corresponding compensation.

20. In view of the above, the Court rejects the arguments of the representatives in the sense that, when effecting the discount from the amount received at domestic level, Mmes. Martínez and Herrera would receive an amount significantly lower than that received by the permanent companions who did not receive a compensation at domestic level. In effect, the situation of inequality that it is sought to remedy is the situation, which existed among those who exhausted the administrative-law jurisdiction in Colombia, and not among those ones who did it and those who did not. Considering that these are two different situations, the operating equity criterion is different.

21. In accordance with the above, the Court considers that the question posed by the State is about a paragraph of the Judgment, the grammatical interpretation of which is enough to determine its meaning and scope. In this sense, the Court clarifies that the State may discount out of the US\$ 30,000 (thirty thousand United States dollars) fixed by this Court for each of Mmes. Martínez and Herrera, the compensations for non-pecuniary damage that they received at domestic level.

V. REGARDING THE PUBLIC RELEASE OF THE RESULTS OF THE CRIMINAL PROCEEDINGS

22. The State pointed out that the Judgment ordered that the results of the criminal proceedings of the instant case were released to the public. On that respect, "the State requests the Inter-American Court to clarify what is implied by the fulfillment of this measure of paragraph 295. Is it necessary to make a special release? What does the Court mean by "criminal results"? Does it also include a release of the acquittals? Should it be made public every time a judgment relating to the case is rendered?"

23. The Commission considered it appropriate that the State "carries out the pertinent investigations in order to put an end to the impunity of the case and gives those investigations the greatest degree of publicity possible, according to the reparation spirit that motivates it; in recognition of the importance of the elucidation of the facts, the determination of the pertinent liabilities and the end of the impunity of the case so as to mitigate the damage caused and so that the Court contributes to be a guarantee of non repetition of facts such as the ones of the instant case."

24. The representatives considered that the questions posed by the State "reveal a certain indetermination as to the reparation measure ordered, and therefore it would be important that the Court specifies a compliance modality." They pointed out that, "the measure clearly ponders that the "facts" are released to the public." As to that, they considered that "it is necessary to release the facts set forth by the judgments at domestic level, and not only the punishments or the operative parts", which would be "consistent with what the Court normally orders with regard to its own judgments." On the other hand, the representatives expressed that "the compliance modality must be similar to that used by the Court to release the facts set forth and the punishments imposed by its own judgments." In this sense, they suggested that, "the Court obliges the State to periodically publish (every 6 or 12 months), in a newspaper of national reach, a summary of the procedural progress and the judgments rendered (facts as well as convictions or acquittals) in compliance with the obligation to identify, prosecute and punish those responsible for the La Rochela massacre". Finally, they requested that "[t]his summary is previously shown to the victims' representatives."

25. With regard to what has been requested by the State, even though it does not strictly constitute a hypothesis of Judgment interpretation but rather a discussion regarding its compliance, the Court considers it is convenient to clarify the meaning and scope of this reparation.

26. Among the satisfaction measures and the guarantees of non-repetition adopted by the Court in its judgment, the obligation to investigate the facts which generated the violations of the instant case was included, as well as the identification, prosecution and punishment of those responsible for them. [FN7] After stating some precisions as to the scope of this obligation, the Court pointed out the following:

295. In the light of the precedent considerations, within a reasonable term, the State must efficiently conduct the criminal proceedings in litigation and those which may be instituted, and it must take all the measures necessary to allow the elucidation of the facts of the instant case, in order to determine the responsibility of those who participated in said violations, taking into account what has been expressed by this Court in paragraphs 151 to 198 of the [...] Judgment. The results of these proceedings shall be released to the public by the State, in such a way that the Colombian society is informed of the truth regarding the facts of the massacre of La Rochela.

[FN7] Cf. Case of the Rochela Massacre, note 1 above, pars. 287 to 295.

27. For the instant case, the court clarifies that, in the context of the ordered reparation, the meaning of the expression “results of the criminal proceedings” corresponds to the criminal judgments of final nature, which lead to the end of the procedure and resolve the main controversy, whether these are acquittals or convictions. These results must be made known to the public, so that society may know the facts analyzed and, should it be the case, those responsible for them. The release mechanisms shall be analyzed in the context of the monitoring of compliance with the Judgment.

VI. AS TO THE PAYMENT OF COSTS AND EXPENSES

28. The State expressed that the Judgment ordered the payment of \$2,000 (two thousand United States dollars) or the equivalent amount in Colombian currency as expenses for each family group of the deceased victims and for Mr. Arturo Salgado. With regard to that, the State asks whether “it is possible to deliver the said payment to the representatives of the victims’ next of kin in the procedure before the Court” or whether “it has to be made directly to the person the family group appoints for that purpose.” The State explains that this doubt arises because “normally, in Colombian cases, the non-governmental organization which represented the victims’ next of kin in the proceedings before the Inter-American Court takes care of collecting the compensations.” Furthermore, the State asks, “what the State must do in the event the family group does not appoint a person to receive this amount in its name and stead” and adds another question by stating “if the lack of appointment derives from a disagreement among the next of kin [,] How must the State proceed in this event?”

29. The Commission considered that paragraph 305 of the Judgment “is clear when setting forth the modality of the corresponding payment and does not consider that it is necessary to address the other aspects mentioned by the State as they constitute hypotheses of possible scenarios and not material situations which require a clarification by the Court.”

30. The representatives expressed that in paragraph 305 “the Court does not specify how to make” the payment of the amount that has been awarded as expenses. Regarding that matter, they considered that “the payment must be made directly to the victim’s next of kin and not to their legal representatives.” Additionally, they considered that “in order to determine which member of the family group is to receive the payment ordered in paragraph 305, the Court must follow the order set forth in paragraph 251 of the Judgment for the delivery of the compensation awarded as consequential damages.” P. 2155

31. As to that, paragraph 305 of the Judgment sets forth that:

305. The Court takes into account that the victims and their representatives incurred expenses during both the domestic and the international proceedings of the instant case. On the one hand, the representatives have requested that the Court takes into account “the patrimonial detriment [the victims’ next of kin] have suffered as a consequence [...] of the search for justice, truth and reparation.” The Court notes that although no payment receipts have been presented, it is presumed that the victims’ next of kin had to cover numerous expenses - some with the aid of their representatives-, during the domestic administrative and criminal proceedings, which have lasted for more than 17 years, as well as in all the other complaints of denouncement of facts and the search of justice they have undertaken with regard to the facts of the La Rochela massacre. By virtue of the above, the Court equitably determines the amount of \$ 2,000.00 (two thousand United States dollars or the equivalent amount in Colombian currency) for the family group of each deceased victim and for surviving victim Arturo Salgado Garzón. Family groups of the deceased victims shall appoint a person to represent them so that he/she collects the above-mentioned amount. The State shall make the payments within one year.

32. The Court notes that this paragraph of the Judgment is clear when stating that the family groups and Mr. Arturo Salgado Garzón are the ones to be delivered the payment awarded by way of expenses.

33. As to the second question posed by the State, although it does not correspond precisely to a case of Judgment interpretation, the Court considers that if a person is not appointed to receive the payment for expenses or in case the family group does not come to an agreement on the matter, it is admissible to proceed as set forth in the Judgment regarding the modality of compliance of payment compensations. In that sense, in case the beneficiaries of the payment do not receive the amount awarded within the term set forth by the Court due to reasons for which they themselves are responsible, the State shall deposit the said amount in an account or certificate of deposit of a solvent Colombian financial institution, in United States dollars and under the most favorable financial terms allowed by the legislation and the banking practices. If the amount corresponding to the expenses is not claimed after 10 years, it shall be returned to the State plus the accrued interest.

VII. OPERATIVE PARAGRAPHS

34. Now therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Pursuant to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Court's Rules of Procedure,

UNANIMOUSLY DECIDES:

1. To declare the request for interpretation of the Judgment on the merits, reparations and costs rendered on May 11, 2007 in the Case of the Rochela Massacre as being admissible, according to what has been pointed out in paragraphs 8, 14, 25, 32 and 33 of this Judgment.
2. To define the scope of what has been set forth in paragraph 270 of the Judgment on the merits, reparations and costs rendered on May 11, 2007, in the terms of paragraph 21 of this Judgment.
3. To define the scope of what has been set forth in paragraph 295 of the Judgment on the merits, reparations and costs rendered on May 11, 2007, in the terms of paragraph 27 of this Judgment.
4. To define the scope of what has been set forth in paragraph 305 of the Judgment on the merits, reparations and costs rendered on May 11, 2007 in the terms of paragraphs 32 and 33 of this Judgment.
5. To request the Court Secretariat to serve notice of this Judgment upon the victims representatives and their next of kin, upon the State of Colombia and the Inter-American Commission on Human Rights.

Written in Spanish and in English, the Spanish text being authentic, in San José, Costa Rica, on January 28, 2008.

Sergio García Ramírez
President

Cecilia Medina Quiroga
Manuel E. Ventura Robles
Diego García-Sayán
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary