In the case of Chaparro Álvarez and Lapo Íñiguez,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal"), pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 59 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), decides on the request of interpretation of the Judgment on preliminary objections, merits, reparations and costs issued by the Court on November 21, 2007 in the case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador (hereinafter "the request for interpretation"), presented by the Republic of Ecuador (hereinafter "the State" or "Ecuador").

I. Presentation of the request for interpretation and proceedings before the court

1. On January 18, 2008 the State presented a request for interpretation of the Judgment on preliminary objections, merits, reparations, and costs issued in this case on November 21, 2007 [FN2] (hereinafter "the Judgment"), based on Articles 67 of the Convention and 59 of the Rules of Procedure. In its request the State referred to the reparation measure that orders the establishment of an "arbitration tribunal" for the determination of the "percentage of loss that Mr. Chaparro suffered as a result of the State's seizure and deposit of the Plumavit factory." Ecuador stated that it "rejects this reparation measure" and it requested that "the Inter-American Court explain the scope, purpose, and especially the grounds to impose an arbitration procedure on the Ecuadorian state" (highlighted in the original). On January 23, 2008 the Secretariat of the Court (hereinafter "the Secretariat"), following instructions of the Presidency of the Court (hereinafter "the Presidency"), reminded the State that, pursuant to Article 59(4) of the Rules of Procedure, "[a] request for interpretation shall not suspend the effect of the Judgment." [FN3] On February 27, 2008 the original of the request was received along with a note indicating that "the

Ecuadorian State […] did not accept the arbitration procedure [… and i]nstead, […] it offer[ed] a mediation process in the independent and specialized center of the Attorney General's Office."

[FN2] Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170.

[FN3] The Secretariat also informed the State that it would process the request for interpretation once the term given to the Inter-American Commission of Human Rights and the victims' representatives to present their corresponding requests for interpretation had expired.

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2. On February 13, 2008 the victims' representatives (hereinafter "the representatives") presented a communication through which they argued an alleged lack of will on behalf of the State to execute the Judgment, in the sense that it would be refusing to participate in the arbitration procedure ordered.

3. On February 18, 2008, the State's Deputy Agent declared that, "the Ecuadorian State sees itself in a legal impossibility to comply with an international obligation contrary to the nature of arbitration."

4. On March 13, 2008 the Secretariat, following instructions from the Presidency, asked the Minister of Foreign Affairs and Ecuador's Permanent Mission before the OAS that they confirm, no later than March 27, 2008, if what was expressed by the State's Agents was "the official position of the Esteemed State of Ecuador with regard to compliance with the Judgment issued by the Tribunal in the present case." On April 2, 2008 the State "ratif[ied] its position to not acknowledge the establishment of an arbitration tribunal."

5. On April 10, 2008, pursuant to Article 59(2) of the Rules of Procedure and following instructions from the Presidency, the Secretariat transmitted a copy of the request for interpretation, as well as of the State's other briefs and the notes from the Secretariat, to the Inter-American Commission of Human Rights (hereinafter "the Commission") and to the representatives, and it informed them that they had a non-renewable time limit until May 12, 2008 to present the written arguments considered appropriate. On May 7, 2008 the State presented a new official letter with the "confirmation of the state's position regarding the order to establish an arbitration tribunal." On May 9, 2008 the Court forwarded this official letter to the Commission and the representatives, extending until May 23, 2008 the term to present their observations to the request for interpretation.

6. On May 23, 2008 the representatives and the Commission presented the mentioned written statements.

II. Jurisdiction and Composition of the Court

7. Article 67 of the Convention states 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.

8. Pursuant to the above-cited provision, the Court has jurisdiction to interpret its judgments. To carry out the examination of the request for interpretation the Tribunal must, whenever possible, be composed of the same judges who delivered the corresponding judgment (Article 59(3) of the Rules of Procedure). On this occasion, the Court is made up of the same judges that announced the Judgment whose interpretation has been requested.

III. Admissibility

9. It corresponds to the Court to verify if the terms of the request for interpretation comply with the requirements established in the applicable provisions, specifically, Article 67 of the Convention and Articles 29(3) and 59 of the Rules of Procedure.

10. The Court verifies that the State presented the request for interpretation within the term established in Article 67 of the Convention, since the Judgment was notified to the State on December 18, 2007.

11. Article 29(3) of the Rules of Procedure states that "[j]udgments and orders of the Court may not be contested in any way."

12. Article 59 of the Rules of Procedure states, in what is relevant, 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.

13. As has been previously stated by this Tribunal, [FN4] the request for interpretation of a judgment may not be used as a means of appeal, but instead its exclusive objective is to clarify the sense of a judgment when any of the parties holds that the text of its operative paragraphs or its considerations lacks clarity or precision, as long as these considerations affect said operative paragraphs. Therefore, the modification or annulment of the corresponding judgment may not be requested through a request for interpretation.

[FN4] Cfr. Case of Loayza Tamayo. Interpretation of the Judgment on Merits. Order of the Court of March 8, 1998. Series C No. 47, para. 16; Case of Escué Zapata v. Colombia. Interpretation of the Judgment on Merits, Reparations, and Costs. Judgment of May 5, 2008 Series C No. 178,

para. 10, and Case of the Saramaka People v. Suriname. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 185, para. 9.

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14. Considering the terms in which the request and other briefs forwarded by the State were presented, the Court must issue a ruling regarding compliance or not with this requirement of admissibility.

15. The compensation measure ordered by the Court is the following:

232. Based on the above, and given the complexity of determining the commercial value of a company, which could include, inter alia, its capital, the financial situation, the capital investments, property and securities, assets and liabilities, operating flows, market potential and other matters, the Court considers that an arbitration tribunal should determine the percentage of loss that Mr. Chaparro suffered as a result of the State's seizure and deposit of the Plumavit factory. Despite the foregoing, the Court takes into account that the said factory had been in operation for several years and that, at the time of the facts, had received some loans to improve its productivity; consequently, the Court establishes, based on the equity principle, the amount of US$150,000.00 (one hundred and fifty thousand United States dollars) for this concept. If the amount decided during the arbitration procedure is greater that the amount ordered by the Court in this judgment, the State may deduct from the victim the amount established by this Court, based on the equity principle. If the amount decided in the arbitration procedure is less, the victim shall keep the US$150,000.00 (one hundred and fifty thousand United States dollars) established in this judgment. The amount established by the Court shall be delivered to Mr. Chaparro within one year at the latest of notification of this judgment.

233. The arbitration procedure indicated in the preceding paragraph must be of an independent nature, be carried out in the city in which Mr. Chaparro resides, and be pursuant to the applicable domestic laws concerning arbitration, provided that it does not contradict the decisions in this judgment. The procedure must commence within six months of notification of this judgment. The arbitration tribunal shall be composed of three arbitrators. The State and Mr. Chaparro shall each select an arbitrator. The third arbitrator shall be selected by mutual agreement between the State and Mr. Chaparro. If, within two months of notification of this judgment, the parties have not reached an agreement, the third arbitrator shall be selected by mutual agreement by the arbitrator selected by the State and the one selected by Mr. Chaparro. If the two arbitrators do not reach an agreement within the following two months, the State and Mr. Chaparro's representatives must present this Court with a slate of no less than two and no more than three candidates. The Court will decide the third arbitrator from among the candidates proposed by the parties. The amount decided by the arbitration tribunal must be delivered to Mr. Chaparro within one year of notification of its decision, at the latest.

16. The State presented its request for interpretation "[r]egretting that the judgment issued by the Inter-American Court is final and not open to appeal and that it has the effect of res judicata […] and therefore the parties affected through a judgment are left defenseless (emphasis added)." It expressed that "it rejects [the] reparation measure (emphasis added)" that consists in the establishment of an arbitration tribunal, because in the reparation ordered by the Court "there is

no submission to Ecuador's Law on Arbitration and Mediation," since the latter demands the signing of an "arbitration agreement" prior to the arising of the controversy in order to establish an arbitration tribunal, which does not exist in this case. It stated that Article 68(2) of the Convention demands "that the return process of the case to the domestic realm, in its compensatory component, maintain a minimum conformity with domestic law." It also argued that the measure ordered "besides illegal, contravenes the basic principle that governs the arbitral realm, specifically, the will of the parties to submit to arbitration" (emphasis added) and it is therefore "considered a non-recognition of a basic principle of a branch of Law," when "the reparation measures must be included within the framework […] of the general principles of law, source of international law pursuant to Article 38 of the Statute of the International Court of Justice." Before the negative to comply with the establishment of the arbitration tribunal, the State proposed, first of all, a mediation instead of the arbitration procedure and it then stated that "it only acknowledges and will only acknowledge the amount set in equity by the Inter-American Court for damages derived from the seizure of the PLUMAVIT factory (emphasis added)."

17. On the other hand, the State referred to the manner in which the arbitrators should be appointed and it expressed that "it [should] also respond to the parties' decision, who may decide on the number of members and even on [their] identity." The State also asked "[w]hat happens if the compensatory amount implies an enrichment or impoverishment for Mr. Chaparro? Who will respond for this? Would it be a valid precedent for future judgments or agreements based on amicable solutions? What if the compensatory amount, due to the little evidence there would be, increases excessively up to the point of stripping an important part of the Ecuadorian population of their social rights?" The State also asked the Court to answer the following questions: "What would be the instrument of origin of the tribunal's jurisdiction? What procedural regulations would apply to this independent domestic arbitration procedure? Where can we find the statutory regulations for the objection to the arbitrators? Where can we find the impossibility records of a mediation?" Besides, the State considered it "contradictory[] that the Court set, on one hand, based on the equity principle an amount of money due to the loss of value of the Plumavit factory and, on the other, it acknowledges the complexity of said quantification" since "one cannot use an equity criterion and, at the same time, expect to transfer the valuative load to an arbitration tribunal that would use different criteria to those set by the Inter-American Court."

18. In this regard, the Commission argued that, "the request presented by the State does not comply with the normative requirements necessary to be considered a request for interpretation and therefore it should not be received." Additionally, it considered that "the brief the State presented to the Court does not request an interpretation by the latter of the sense or scope of the judgment […] but instead it seeks a revision and reconsideration of the final and unappealable judgment issued by the Court because it does not agree with certain aspects of the same." It added that in this case none of the situations in which the jurisprudence of the Court has admitted the possibility of revision is present. Finally, it stated that the State's "declarations do not coincide with what is stated in Article 68(1) of the American Convention and with the basic principle of the State's international responsibility, supported by international jurisprudence, according to which the States must comply with their international obligations in good faith (pacta sunt servanda)."

19. The representatives argued that "the claim of the Ecuadorian State requesting that the arbitration procedure […] be carried out pursuant to domestic law lacks all grounds," since the judgment itself states that said procedure will be carried out "pursuant to applicable domestic legislation […] as long as it does not contravene what is stipulated in this Judgment" and because Article 27 of the Vienna Convention prohibits invoking domestic law "as a justification for its failure to perform a treaty."

20. The Court verifies that the State has repeatedly expressed, in its communications of January 18, February 18, February 27, April 2, and May 7, 2008, its refusal to comply with the reparation measure ordered by the Tribunal, which constitutes the object of the present request for interpretation. The State acknowledges explicitly that it is presenting a challenge to the judgment, when it holds that it "hopes that the Court, if possible, will rectify its error or at least will justify its decision" (emphasis added) and that "[w]e must not forget that in Law things are undone just as they are done and an unsubstantiated measure such as the one ordered must admit the exceptional use of a corrective measure not anticipated but necessary" (emphasis added). Based on this, the Court must declare the request for interpretation of the Judgment inadmissible, since the State is presenting a request for a revision of the reparation determined by the Tribunal.

21. Similarly, this Court has stated that an appeal for review is admissible in exceptional cases, when a fact that has come to light after the judgment has been delivered affects the contents of the decision, or reveals a substantial defect in it. [FN5] However, in this case, there is no fact or relevant situation unknown when the judgment was issued that, if known, would have modified its result, but instead the State is questioning the Court's jurisdiction to order certain reparation measures allegedly contrary to domestic law and allegedly contrary to the general principles of law. Due to the aforementioned, the requirements necessary for the Court to revise its judgment are not met.

[FN5] Cfr. Case of Genie Lacayo. Application for Judicial Review of the Judgment of January 29, 1997. Order of the Court of September 13, 1997. Series C No. 45, paras. 10 to 12, and Case of Juan Humberto Sánchez v. Honduras. Interpretation of the Judgment on Preliminary Objections, Merits, and Reparations. Judgment of November 26, 2003. Series C No. 102, para. 15.

VIII. Operative Paragraphs

22. 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 Rules of Procedure,

Decides:

Unanimously,

1. To declare inadmissible the request for interpretation of the Judgment on preliminary objections, merits, reparations, and costs issued on November 21, 2007 in the terms of paragraphs 20 y 21 of this judgment.
2. To request the Secretariat of the Tribunal to notify the present Judgment to the representatives of the victims, the State of Ecuador, and the Inter-American Commission of Human Rights.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on November 26, 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