

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF ROSENDO CANTÚ *ET AL.* v. MEXICO**

**JUDGMENT OF MAY 15, 2011**

***(Interpretation of judgment on preliminary objection,  
merits, reparations and costs)***

In the case of Rosendo Cantú *et al.*

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Diego García-Sayán, President  
Leonardo A. Franco, Judge  
Manuel E. Ventura-Robles, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge, and  
Alejandro Carlos Espinosa, Judge *ad hoc*

also present,

Pablo Saavedra Alessandri, Secretary,<sup>1</sup>

pursuant to Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 68 of the Rules of Procedure of the Court<sup>2</sup> (hereinafter “the Rules of Procedure”) decides on the request for interpretation of the judgment on preliminary objection, merits, reparations and costs in this case delivered by the Court on August 31, 2010 (hereinafter “the judgment”), submitted by the United Mexican States (hereinafter also “the State” or “Mexico”) on December 29, 2010.

**I**

**INTRODUCTION OF THE REQUEST FOR INTERPRETATION  
AND PROCEEDING BEFORE THE COURT**

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<sup>1</sup> For reasons beyond her control, the Deputy Secretary Emilia Segares Rodríguez was not present for the deliberation of this judgment.

<sup>2</sup> Rules of Procedures approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

1. On August 31, 2010, the Court handed down the judgment, and the parties were notified on October 1 of that same year.

2. On December 29, 2010, the State submitted a request for interpretation under Articles 67 of the Convention and 68 of the Rules of Procedure. Mexico asked the Court to clarify the meaning and scope of:

a) “Paragraph 105 [of the judgment], directly related to paragraphs 104, 106 and 161 thereof, in order to clarify whether the indication determining the participation of soldiers in the acts perpetrated against Mrs. Fernández Ortega [constitutes] prejudgment of those allegedly responsible, as regards their number and specific status as military personnel,”<sup>3</sup> and

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<sup>3</sup> The paragraphs mentioned by the State indicate:

104. Given that more than eight years have passed since the facts occurred, the State has not provided any evidence in the proceedings of the present case that would contradict that the rape of Mrs. Rosendo Cantu took place, the Court considers it reasonable to grant weight to the evidence and the presumptions that arise from the case file [...] regarding the occurrence of a rape by the soldiers against Mrs. Rosendo Cantú. To conclude the contrary would mean that the Court permits the State to seek protection in their negligence and ineffective criminal investigation so as to diminish their responsibility for the violation of Article 5 of the Convention.<sup>3</sup>

105. As indicated by the Court since its first contentious case, for an international Court the criteria for the assessment of evidence is less formal than in the domestic legal system. Its procedure, being one of an international Court, presents particularities and characteristics which pertain only to it, to which all the procedural elements of domestic courts do not automatically apply to it. International protection of human rights should not be confused with criminal justice. For the effects and purposes of the judgment before this Court, the elements of proof that arise from the body of evidence are sufficient to derive the aforementioned conclusions. The standards or requirements of proof are not those of a criminal court, given that it is not the Court’s role to determine individual responsibilities or to assess, under those criteria, the same evidence.

106. Based on the above, the Court finds it proved that Mrs. Rosendo Cantú was the victim of acts that constitute rape, committed by two soldiers in the presence of six others at a stream near her home where she went to wash clothes.

161. In no case does the rape of someone by military personnel bear any relationship to the military discipline or mission. To the contrary, the offense committed by military personnel against Mrs. Rosendo Cantú affected juridical rights protected by domestic law and the American Convention, such as the victim’s personal integrity and dignity. It is evident that such conduct is openly contrary to the obligations to respect and to protect human rights, and consequently, is excluded from the competence of the military jurisdiction. Based on the foregoing, the Court concludes that the intervention of the military justice system in the preliminary investigation of the rape was contrary to the parameters concerning the exceptional and restrictive nature of that system and involved the application of the military jurisdiction that functioned without taking into account the nature of the acts involved. This conclusion is valid in the present case, even though the incident is only at the investigation stage by the Military Public Prosecutor’s Office. As revealed by the criteria indicated above, the incompatibility of the American Convention with the intervention of the military justice system in this type of case does not refer merely to the act of prosecution, which is the responsibility of a court, but essentially to the investigation itself, because this procedure constitutes the beginning and the necessary grounds for the subsequent intervention of an incompetent court. Based on the above, the Court finds that the State violated the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mrs. Rosendo Cantú. As in previous cases when it has found that the military criminal jurisdiction is not competent, the Court considers that it is not necessary to

b) “Paragraph 161 of the judgment and, if appropriate, clarify whether its interpretation of the involvement of the military jurisdiction in the investigation into the facts constitutes prejudgment with regard to those probably responsible for the violations indicated in that paragraph.”

3. On January 12, 2011, under the provisions of Article 68(2) of the Rules of Procedure and on the instructions of the President of the Court, the Secretariat of the Court (hereinafter also “the Secretariat”) sent a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) and to the *Organización del Pueblo Indígena Tlapaneco/Me’phaa (OPIM)* [Tlapaneco/Me’phaa Indigenous Peoples Organization], the *Centro de Derechos Humanos de la Montaña “Tlachinollan”* [Tlachinollan” Mountain Human Rights Center] and to the Center for Justice and International Law (CEJIL) (all hereinafter “the representatives”) giving them until February 11, 2011, to submit any written arguments they considered pertinent.

4. On February 11, 2011, the Inter-American Commission submitted its written arguments, and considered “the State’s assertions and conclusions inadmissible and irreceivable,” because the State was not asking the Court to interpret the meaning or scope of the ruling, but rather it was seeking a revision and reconsideration of the final non-appealable judgment because it disagreed with the decisions therein. The Commission also indicated that the State had the opportunity to litigate the issues on which it had requested interpretation at the appropriate procedural moment, and that there were no grounds for reopening the discussion.

5. On February 11, 2011, the representatives forwarded their written arguments and asked the Court to declare the request for interpretation inadmissible. They argued that (a) the State was attempting to modify the Court’s judgment by asking it to address factual and legal issues that had been brought up during the analysis of the merits of the case and specifically decided in the judgment, and (b) there was no reasonable doubt with regard to the meaning or scope of the aspects about which the interpretation was requested. In addition, they considered that the State was trivializing the proven facts and, consequently, weakening the operative paragraphs of the judgment, resulting in a lack of compliance with them.

## II COMPETENCE AND COMPOSITION OF THE COURT

6. Article 67 of the Convention establishes that:

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rule on the other arguments concerning the independence and impartiality of the military justice system or the possible violation, based on the same facts, under other Inter-American instruments.

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.

7. Pursuant to this article, the Court has competence to interpret its judgments. In order to examine the request for interpretation and to rule on it, in accordance with Article 68(3) of the Rules of Procedure, the Court must, if possible, have the same composition as when it handed down the judgment in question. On this occasion, the Court is composed of the same judges who adopted the judgment the interpretation of which has been requested by the State.

### III ADMISSIBILITY

8. The Court must verify whether the request for interpretation meets the requirements established in the applicable norms, namely Article 67 of the Convention, cited above, and Article 68 of the Rules of Procedure, the relevant part of which states:

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which 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.

9. In addition, Article 31(3) of the Rules of Procedure establishes that “judgments and orders of the Court may not be contested in any way.”

10. The Court observes that the State presented its request for interpretation of the judgment within the 90-day period established in Article 67 of the Convention, because the request was submitted on December 29, 2010, and the parties were notified of the judgment on October 1, 2010.

11. As this Court has ruled previously and in its consistent case law, clearly supported by the applicable norms, a request for interpretation of judgment must not be used as a means of contesting the judgment whose interpretation is requested. The exclusive purpose of the request is to clarify the meaning of a ruling when one of the parties argues that the text of its operative paragraphs or of its considerations lacks clarity or precision,

provided that those considerations have a bearing on the operative paragraphs.<sup>4</sup> Therefore, the modification or annulment of the judgment in question cannot be sought through a request for interpretation.<sup>5</sup>

12. Furthermore, the Court has established that a request for interpretation of judgment cannot address factual and legal issues that were already raised at the proper procedural moment and on which the Court has made a ruling.<sup>6</sup>

13. The Court will proceed to analyze the request for interpretation presented by the State and, if appropriate, make the pertinent clarifications. To do so, it will examine the points raised by Mexico, as well as the arguments of the Inter-American Commission and the representatives.

#### *Arguments of the parties*

14. The Mexican State declared its willingness to comply with all aspects of the Court's judgment in strict observance of its international commitments. It affirmed that compliance with the judgment "constitutes an element of public order that the Mexican authorities are obliged to observe, arising from the obligations assumed [...] before the inter-American system for the protection of human rights," and it reiterated "that it will continue to promote all necessary measures to comply with its international obligations in light of the judgment." Mexico based its request for interpretation on six arguments that are summarized below.

15. First, it noted that paragraph 105 of the judgment indicates that the Court does not have competence to determine individual responsibilities, despite which, in paragraph 161, in relation to paragraphs 104 and 106, it refers to military personnel as participants in the perpetration of the offenses denounced by Mrs. Rosendo Cantú. In this regard, the State indicated that this "should be clarified, since it individualizes the number of persons who intervened and specifically indicates that they were soldiers." The Court

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<sup>4</sup> Cf. *Case of Loayza Tamayo v. Peru*. Interpretation of judgment on the merits. Order of the Inter-American Court of Human Rights of March 8, 1998. Series C No. 47, para. 16; *Case of Escher et al. v. Brazil*. Interpretation of the judgment on the preliminary objections, merits, reparations and costs. Judgment of the Inter-American Court of Human Rights of November 20, 2009. Series C No. 200, para. 11; and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru*. Interpretation of the judgment on preliminary objections, merits, reparations and costs. Judgment of the Inter-American Court of Human Rights of November 24, 2009. Series C No. 198, para. 11.

<sup>5</sup> Cf. *Case of Loayza Tamayo v. Peru*. Interpretation of the judgment on merits, *supra* note 5, para. 16; *Case of Valle Jaramillo et al. v. Colombia*. Interpretation of the judgment on merits, reparations and costs. Judgment of the Inter-American Court of Human Rights of July 7, 2009, para. 8, and *Case of Escher et al. v. Brazil*, *supra* note 5, para. 11..

<sup>6</sup> Cf. *Case of Loayza Tamayo v. Peru*. Interpretation of the judgment on reparations and costs. Judgment of the Inter-American Court of Human Rights of July 3, 1999. Series C No. 53, para. 15; *Case of the Miguel Castro Castro Prison v. Peru*. Interpretation of the judgment on merits, reparations and costs. Judgment of the Inter-American Court of Human Rights of August 2, 2008. Series C No. 181, para. 26, and *Case of Escher et al. v. Brazil*, *supra* note 5, para. 12.

“identif[ied] eight individuals who are part of a [military] institution as those responsible [for raping Mrs. Rosendo Cantú],” a determination that, according to the State, “does not fall within the Court’s competence [because] it is not incumbent upon the Court to establish specific individual criminal responsibilities.” It also indicated that it is essential to consider that “in the domestic sphere, [...] the case is still at the preliminary investigation stage, so that the determination of criminal responsibilities for the alleged offenses perpetrated against [Mrs.] Rosendo Cantú will be derived from these investigations, including whether or not State agents were involved in the facts.” Consequently, it concluded that “as the investigation is ongoing [...] direct criminal responsibility cannot be attributed to eight State agents and, in particular, their status as military personnel or any other characteristics, such as the institution to which they belong, cannot be individualized or specified.”

16. Second, the State affirmed that the judgment “is not compatible with the criteria [of the Court] consisting in not attributing individual responsibilities since, on the one hand, [...] it asserts that eight military personnel participated in the rape [...] and, on the other, it states that individualizing those responsible is not one of Court’s competences.” Hence, in its case law, the Court “has abstained [...] from attributing individual responsibility or making direct accusations.” The State reproduced several quotes from different cases heard by the Court where it had indicated that it was not a criminal court that analyzed individual criminal responsibilities

17. Third, Mexico stated that the corresponding criminal responsibility had not yet been legally determined, because criminal proceedings were ongoing. These are the domestic criminal proceedings “that [will] permit identifying [those responsible] and thus establish whether they are agents of the State and the institution to which they belong.” It reiterated that “irrespective of whether or not those responsible belong to a specific institution, the investigations will be carried out under the ordinary system of justice, as the Court ordered.”

18. Fourth, the State argued that “the ruling made [by the Court] in its judgment that it was military personnel who perpetrated the rape [...] appears to run counter to the American Convention itself [...] and even to the guarantees established in the Constitution of the United Mexican States.” In this regard, in order to attribute direct responsibility to military personnel, the authorities must follow a procedure that permits duly attributing participation in the facts and, if appropriate, the guilt of the State agents. Proceeding in any other way could violate articles 14, 16 and 20 of the Constitution, as well as articles 8, 24, and 25 of the Convention owing to failure to provide adequate judicial guarantees and protection, especially regarding the presumption of innocence. The State highlighted that “all the stages of the investigation in this case will be carried out exhaustively in order to elucidate the facts and thereby safeguard the constitutional rights of the accused,” and it indicated that “if the authorities do not respect these principles, which are also in keeping with the standards set by [the] Court, they would be violating the provisions of Mexican law and the guarantees established in the [...] Convention.”

19. Fifth, Mexico reiterated the need for the Court to “clarify the meaning of paragraph 105 of the judgment in relation to paragraphs 104, 106, 107 and 161.” In this regard, it pointed out that, having established in paragraph 105 that it was not incumbent on the Court to establish individual responsibilities, the Court then “refers to the rape of Mrs. [...] Rosendo Cantú.” According to the State, “the Court proceeded to evaluate the facts within its specific contentious jurisdiction in the area of human rights, as revealed by paragraph 107[.] This matter becomes important because, in paragraph 194, [...] the Court itself emphasized [...] the guiding principles that should be observed in criminal investigations into human rights violations. According to the provision that domestic legislation must be adapted to the Convention, it is important that the Court take into consideration that, once each of [those] principles has been complied with [...] in the investigations into the rape allegedly committed by soldiers, [...] it will not depend solely and exclusively on the Public Prosecution Service to determine whether or not a crime has been committed, [...] but rather on the ruling that, if appropriate, is issued by the competent judicial authority.” Consequently, the judgment should not “be interpreted as a order or instruction that necessarily leads to the criminal prosecution of eight soldiers [...] or imposing punishment on the eight individuals referred to in the judgment because, in addition to the fact that the Court cannot individualize responsibilities, it did not order these measures.” The State therefore requested that “the scope of paragraphs 104, 106 and 161 be clarified, both because [the] Court did not establish individual criminal responsibilities (because it confined its ruling to its contentious jurisdiction) and because, in the tenth operative paragraph, it ordered that the investigations be conducted and, as appropriate, criminal proceedings be filed against those found responsible so that the competent judicial authority could rule on the existence of criminal responsibilities and, if appropriate, impose the legal punishments and consequences.” The State concluded that the judgment “is unclear” and therefore requested clarification of whether “it should be understood in the sense that the investigations and the criminal prosecution must have the specific sole and unequivocal result of punishing eight soldiers.”

20. Finally, sixth, the State affirmed that it was “concerned [...] that the Court’s decision entails a violation of the principle of the presumption of innocence established in Article 8(2) of the Convention, [...] given that paragraph 105 in relation to paragraphs 104, 106, 107 and 161 suggests that, based on the judgment, the domestic public prosecution and judicial authorities must necessarily seek out and punish eight guilty parties.”

21. The Inter-American Commission recalled that for an international court, the standards for appraising evidence are less formal than under domestic legal systems and that, in its proceedings, the Inter-American Court can find indications of the participation of agents that entail the State’s responsibility. It considered that the State had the opportunity to litigate the issues raised in the request for interpretation at the appropriate procedural moment and that there was no basis for reopening the discussion on matters that the Court had already decided. It added that the State’s arguments ran counter to the basic principles of the international responsibility of States; that they are “contrary to what the Court established in its judgment and represent disregard for what it decided as well as a threat to the binding nature of the rulings of the Inter-American Court and its

authority.” Finally, the Commission noted that a fundamental aspect to be considered in this case in order to establish the international responsibility of the State was whether members of the army participated, without individualizing them or punishing their conduct. Based on the foregoing, the Commission reiterated that the State’s request was unnecessary and inadmissible and did not meet the legal requirements to be considered a request for interpretation.

22. The representatives affirmed that the State’s arguments reveal its disagreement with the Court’s decision and its wish that it be modified, even though its meaning and scope are clear. First, the State seeks to question facts that have been proven by the Court and, to this end repeats arguments that it had already submitted “and ingeniously indicates an alleged undue interference by the Court in the sphere of domestic criminal justice.” Regarding the latter, the representatives indicated that, during the proceedings before the Court, the State argued the absence of evidence that could confirm the participation of State agents in the rape of the victim, and the Court expressly decided this matter in the judgment. The representatives also affirmed that the State “questions the Court’s competence to consider these facts proven” even when “it is evident [...] that [the Court] attributes the conduct that violated human rights to a specific public authority, which is what enables the Court to attribute it to the State.” In this regard, if the Court “did not have the power to establish the facts of the case, including that the authors of a human rights violation belonged to a State entity, it could not perform its functions.” The representatives highlighted that, as noted in the judgment, the evidence produced during the proceedings was sufficient for the Court to find State responsibility, and that the State did not provide any evidence in the proceedings before the Court that would contradict that Mrs. Rosendo Cantú was raped.

23. The representatives added that the State’s allegation that the Court had interfered in the sphere of the domestic criminal justice system should be dismissed, because “establishing how the facts occurred does not imply attributing individual criminal responsibilities.” The Court “did not make any assertions [...] concerning aspects such as the guilt of certain identified individuals, the punishment to be applied, the existence of aggravating factors, the identification of masterminds or the concurrence of offenses, [but rather it is the] State that [...] must elucidate [these matters]. To claim [...] that the clarifications made by the Court in its judgment regarding the military entity to which the attackers belonged [...] and their number was equal to determining criminal responsibilities can only be the result of a wrongful interpretation, denoting disagreement with the judgment.” It also reveals an erroneous understanding of the particular nature of criminal responsibility, which cannot be determined without the full identification of the individuals on whom this responsibility falls, a matter not addressed in the judgment.” In addition, and given that the Court “respects the domestic jurisdiction, it is assumed that guarantees of due process will be respected in the investigation and trial with regard to the facts. To claim the contrary [would] imply indicating that [the Court] was [potentially] responsible for human rights violations arising from the execution of the mandate that the Convention confers on it.” The representatives also affirmed that the Court had not incurred in any form of prejudgment. This would only have occurred “if the matter upon which it had ruled [...] were the same as that upon which the Mexican



ministerial and jurisdictional instances will have to rule.” The Court deals with State responsibility, based on the American Convention, and the national jurisdictional authorities with subjective criminal responsibility, in application of the provisions of domestic law.

24. Finally, the representatives asserted that the State “had interpreted the judgment in bad faith, in order to justify the presentation of its request.” The judgment clearly established that the acts committed by the military personnel against the victim were not limited to those verified in the sphere of the search for justice, but rather encompassed what happened when Mrs. Rosendo Cantú was raped and tortured. This is so evident from the judgment that to reach the State’s conclusions [...] could be the result of a process contrary to the principle of *pacta sunt servanda*.” The State “used a deliberately wrongful interpretation to argue an alleged lack of clarity in the judgment that in actual fact was non-existent.” The meaning and scope of the judgment are clear and a request for interpretation is only admissible if the aspects of the judgment whose meaning requires clarification are related to the operative paragraphs of the judgment. In this case, the Court not only ordered the State to conduct the pertinent investigation into the facts, but also indicated criteria to be followed in complying with this obligation, obviating the “need for the respective paragraphs to be clarified by the Court’s interpretation.” Based on the foregoing, the representatives asked the Court to declare the State’s request inadmissible.

## 2. *Considerations of the Court*

25. The Court observes that, although the State’s assertions were divided into six sections, the truth is that Mexico’s allegations do not correspond to “six arguments,” but rather to a repetition, that can be summarized under the following aspects: (a) the competence of the Court to determine international responsibility in contrast to individual responsibility and the determination of the facts made by the Court in this case, and (b) the alleged violation by the Court of the principle of the presumption of innocence. The Inter-American Court will refer to these aspects, as well as to the interpretation of the expression “act committed by military personnel” questioned by the State.

### a) *General considerations*

26. The Court finds it appropriate to recall that, based on the probative elements presented to the Court, it found that the rape of Mrs. Rosendo Cantú by two soldiers in the presence of six others had been proved. Among other matters, this entailed a violation of her personal integrity, constituting an act of torture in the terms of Article 5(2) of the American Convention and Article 2 of the Inter-American Convention to Prevent and Punish Torture. The Court highlighted that in order to determine the international responsibility of the State, the “probative requirements and standards are not those of a criminal court, because it is not incumbent on this Court to determine individual responsibilities or assess that evidence, using those criteria.”

27. The Inter-American Court arrived at this conclusion based, *inter alia*, on the following elements: (a) the victim's testimony, (b) the military presence in the area on the day of the facts; (c) the psychological evaluation of Mrs. Rosendo Cantú; (d) the testimony of witnesses who were present shortly after the rape; (e) information revealed by a specific physical examination undergone by Mrs. Rosendo Cantú after the rape, and (f) the fact that, more than eight years after the attack, the State has not offered any evidence that would contradict that it had occurred. The Court indicated that the State had not reported any progress in the investigation opened by the authorities that would discredit the indications pointing at the existence of the rape by military personnel and noted that, to the contrary, the State's defense was based on ignorance as to whether the rape had taken place and its authorship, which can be attributed directly to its own authorities. To conclude otherwise would entail allowing the State to hide behind the negligence and ineffectiveness of the criminal investigation to evade its responsibility for violating the right recognized in Article 5 of the American Convention.

28. Additionally, the Court found that the State was internationally responsible for violating Mrs. Rosendo Cantú's rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the Convention, in relation to Articles 1(1) and 2 thereof. Furthermore, the Court found that the State had failed to comply with the obligation established in Article 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women to the detriment of the victim. In addition to the facts recognized by the State,<sup>7</sup> the Court considered proved, *inter alia*, the following omissions and irregularities in the investigation: (a) the State did not undertake an immediate investigation despite being aware of the facts before the complaint was filed, it did not provide prompt medical assistance to the victim in order to collect forensic evidence and did not file a criminal complaint immediately for the alleged offense against an indigenous girl; (b) an employee of the Public Prosecution Service made it difficult for Mrs. Rosendo Cantú to file her complaint, a situation that required the intervention of another public servant so that the first one fulfilled her legal obligations; (c) the victim, who at the time did not speak Spanish, was not provided with an interpreter but had to be assisted by her husband, which in the Court's opinion was not appropriate to respect her cultural diversity, to ensure the quality of the content of her statement, and to protect the confidentiality of the complaint; (d) it was not guaranteed that the minimum attention and privacy due to the victim of this type of offense would be respected when the rape complaint was made; to the contrary, the complaint was made in a place with other people present, and the victim could even have been heard by people she knew; (e) there is no record that the authorities in charge of the investigation collected or obtained the immediate evidence on other elements such as the clothes that Mrs. Rosendo Cantú was wearing on the day of the events; (f) the victim was not

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<sup>7</sup> The State acknowledged its international responsibility in relation to the following facts: the delay in providing medical care and assessment; the lack of specialized attention to the victim as a minor at the time of the complaint; the delay in opening the investigations which have taken eight years without the authorities having been able to determine the truth of the facts and the corresponding responsibilities, and the effects on the psychological integrity of the victim arising from the delay in undertaking the investigations.

provided with adequate medical and psychological care, and (g) the investigations into the case were archived for three years and ten months. Even though the Court appreciated the adoption of certain measures, it indicated that the State's actions were insufficient and, in some cases, inappropriate to meet the requirements of due diligence in a rape investigation.

29. The Court has already determined in the admissibility requirements that a request for interpretation should seek clarity or precision in the operative paragraphs of the judgment or in considerations that have a bearing on the operative paragraphs thereof (*supra* para. 11). In this case, the State requested the interpretation of certain paragraphs of the judgment without specifying their possible relevance to the operative paragraphs; the only exception to this is the reference or connection that the State makes to the tenth operative paragraph of the judgment, with the request that this paragraph be clarified. This operative paragraph clearly and precisely orders the State to conduct the investigation under the ordinary justice system efficiently and within a reasonable time and, if appropriate, the criminal proceedings that it is processing in relation to the rape of Mrs. Rosendo Cantú, in order to determine the corresponding criminal responsibilities and to apply, as appropriate, the punishments and other consequences established by law, all in accordance with paragraphs 211 to 213 of the judgment.

30. In this regard, the Court observes that, in its references to the tenth operative paragraph of the judgment, Mexico correctly understands "the State's obligation to maintain any inquiries that may be initiated against military personnel within the ordinary jurisdiction"; that "the State is ordered to continue its investigations in the ordinary jurisdiction even if it is decided to investigate military personnel and file proceedings against them," and that the military justice system is the inappropriate jurisdiction for the investigation of human rights violations. This reveals that the State understood the simple and clear mandate arising from the Court's judgment. Furthermore, the Court underscores that, in its request for interpretation, the State itself affirmed that "in the tenth operative paragraph, the Court ordered [the State] to conduct the investigations and, as appropriate, to file criminal proceedings against those who are found responsible so that the competent judicial authority may decide whether criminal responsibility exists and, as appropriate, apply the legal punishments and consequences." Thus, the Court ordered that the competent authorities of the domestic system of justice determine the corresponding criminal responsibilities. Consequently, there is no lack of clarity in the Court's decision in the operative paragraph in question, and the State has revealed this in its arguments, so that the request submitted by Mexico in this regard is inadmissible.

31. Moreover, the Court observes the State is attempting to make the Court rule on factual and legal issues upon which it has already adopted a decision (*supra* para. 12). Specifically, it indicated that, since the preliminary inquiry into the facts is underway in the domestic jurisdiction, investigations into the alleged offenses committed continue and will determine the corresponding responsibilities, as well as whether State agents were involved. The foregoing reveals that Mexico questioned the Court's competence to establish the proven facts in this case and the consequent declaration of international responsibility. The Court's case law has established repeatedly that a request for

interpretation of judgment shall not be used as a means to contest the decision of which an interpretation is sought (*supra* para. 11). Consequently, the interpretation requested on this aspect is also inadmissible.

*b) Material competence of the Court*

32. Notwithstanding the foregoing, and with regard to the Court's alleged lack of competence to determine individual criminal responsibilities, the Court advises the State that its consistent case law is expressly affirmed in the judgment. From reading the judgment, it is clear that the Court has not exceeded its competence, nor has it determined individual criminal responsibilities. In its request for interpretation brief, Mexico equates the determination of the State's international responsibility for the acts of its agents with the determination of individual criminal responsibilities. The latter would require, among other matters, the individualization and identification of the alleged perpetrators and their respective criminal punishments, which cannot be deduced from the judgment. In fact, the Court did not evaluate the conduct of possible authors of the facts under domestic criminal law, nor did it include dogmatic reasoning or arguments on the interpretation of criminal law or rule on the punishment or what this should consist of. To the contrary, in accordance with the basic principles of international law, in order to establish whether the State's international responsibility is entailed in a case submitted to its consideration, the Inter-American Court must determine whether its agents have committed an act or omission. Thus, the decision as to whether the State has incurred international responsibility entails the examination of the acts of the agents of the different State organs and bodies. Consequently, in any case in which the Court has found the international responsibility of the State concerned, it has found that this arose from an act or omission of one or more State agents.

*c) Presumption of innocence*

33. Regarding the Court's alleged violation of the principle of presumption of innocence, this Court has indicated that this principle is one of the pillars of judicial guarantees,<sup>8</sup> since it means that the accused does not have to prove that he has not committed the offense of which he is charged, because the *onus probandi* corresponds to his accuser,<sup>9</sup> and it establishes that a person may not be sentenced and convicted unless his criminal responsibility has been fully proved. Furthermore, the Court has held that this principle is an essential element for the effective exercise of the right to defense and accompanies the accused during the processing of the proceedings until a final judgment

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<sup>8</sup> Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of the Inter-American Court of Human Rights of November 12, 1997. Series C No. 35, para. 77; *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of the Inter-American Court of Human Rights of November 21, 2007. Series C No. 170, para. 145, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010 Series C No. 220, para. 182.

<sup>9</sup> Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of the Inter-American Court of Human Rights of August 31, 2004. Series C No. 111, para. 154, and *Case of Cabrera García and Montiel Flores v. Mexico, supra* note 10, para. 182.

determining his guilt has been delivered.<sup>10</sup> In this regard, the presumption of innocence is violated if, before the accused is found guilty, a judicial decision concerning him reflects the opinion that he is guilty.<sup>11</sup>

34. As the Court has mentioned previously, the judgment in this case did not determine any individual criminal responsibility for the rape of the victim (*supra* para. 32), and State agents were not specifically individualized and identified. Consequently, the Court cannot be attributed with any violation of the presumption of innocence. Indeed, the Court has established clearly in its case law that the presumption of innocence corresponds to “any person accused of a crime,”<sup>12</sup> and it is not incumbent on the Court, under its competence as an international human rights court, to prosecute or convict individuals. What is striking about the State’s argument is that it suggests that the Court, in its task of determining the State’s international responsibility by verifying that the violations were the consequence of the acts of State agents, has violated the principles established in the Convention, the treaty that the Court applies and interprets, and compliance with which it monitors by means of its case law. Moreover, the Court ordered that the competent national authorities determine the individual criminal responsibilities, and it will be in the context of these investigations that the State must ensure compliance with the judicial guarantees referred to in its brief.

*d) Interpretation of “act committed by military personnel” –military jurisdiction*

35. Lastly, in section “(a) Object of the interpretation” of the request for interpretation, Mexico asked the Court to confirm whether the reference to the “act committed by military personnel against Mrs. Rosendo Cantú,” in paragraph 161 of the judgment, “is restricted to the assessment made by the Court [...] regarding the intervention of the military justice system in the investigation into the facts and, therefore, does not constitute prejudgment with regard to the alleged perpetrators of the violations described in that paragraph.”

36. The contested paragraph is sufficiently clear. The Court notes that the purpose of the question posed by the State in its request for interpretation is not to clarify or define more accurately the content of any operative paragraph of the judgment, nor to determine the meaning of the judgment due to a lack of sufficient clarity or precision in its operative paragraphs or in its considerations. The interpretation of this fragment that Mexico is requesting does not derive from the literal meaning of what was indicated in that paragraph or in any other part of the judgment, and cannot be sustained logically. The

<sup>10</sup> Cf. *Case of Ricardo Canese v. Paraguay*, *supra* note 11, para. 154, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 10, para. 183.

<sup>11</sup> *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 10, para. 184.

<sup>12</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of the Inter-American Court of Human Rights of September 18, 2003. Series C No. 100, para. 129; *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of the Inter-American Court of Human Rights of November 17, 2009. Series C No. 206, paras. 119 to 121, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of the Inter-American Court of Human Rights of November 23, 2010 Series C No. 218, para. 205.

fragment questioned by the State makes clear that a rape committed by military personnel bears no relationship to the military mission or discipline and, consequently, its investigation is excluded from the competence of military courts.

**VI**  
**OPERATIVE PARAGRAPHS**

37. Therefore,

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of the Rules of Procedure of the Court,

**DECIDES:**

Unanimously:

1. To reject the request for interpretation of the judgment on preliminary objection, merits, reparations, and costs delivered on August 30, 2010, in the terms of paragraphs 25 to 36 of this judgment.
2. To order the Secretariat of the Court to notify this judgment to the United Mexican States, the representatives of the victims, and the Inter-American Commission on Human Rights.

Done at Panama City, Panama, on May 15, 2011, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Alejandro Carlos Espinosa  
Judge *Ad Hoc*

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary