

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF SALVADOR CHIRIBOGA v. ECUADOR
JUDGMENT OF AUGUST 29, 2011
(Interpretation of Judgment on Reparations and Costs)

In the case of Salvador Chiriboga,

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

Diego García-Sayán, President^{**}
Cecilia Medina Quiroga, Judge
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge, and,
Diego Rodríguez Pinzón, Judge *ad hoc*

also present,

Pablo Saavedra Alessandri, Secretary,^{***}

in accordance with 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 (hereinafter “the Rules of Procedure”),^{****} decides the request for interpretation of the judgment on reparations and costs in this case delivered by the Court on March 3, 2011 (hereinafter “the judgment”), submitted by the Republic of Ecuador (hereinafter “the State” or “Ecuador”) on June 2, 2011.

^{*} Judge Leonardo A. Franco, advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation of this judgment.

^{**} Under Article 4(2) of the Rules of Procedure, Judge Medina Quiroga ceded the Presidency to Judge Diego García-Sayán, who was the Vice President of the Court at the time of this case.

^{***} The Deputy Secretary, Emilia Segares Rodríguez, advised the Court that, for reasons beyond her control, she would be unable to attend the deliberation of this judgment.

^{****} The Court’s Rules of Procedure referred to in this judgment on interpretation correspond to the instrument approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009, which entered into force in 2010.

I
**INTRODUCTION OF THE REQUEST FOR INTERPRETATION
AND PROCEEDINGS BEFORE THE COURT**

1. On March 3, 2011, the Court issued the judgment on reparations and costs, which was notified to the parties on March 23, 2011.

2. On June 2, 2011, the State submitted a request for interpretation of the judgment, in keeping with Articles 67 of the Convention and 68 of the Rules of Procedure. The State asked the Court to interpret the judgment on reparations and costs specifically with regard to: (a) the situation of the domestic proceedings in light of the judgment of the Inter-American Court of March 3, 2011, owing to the need for an international ruling on how the domestic proceedings should proceed in relation to the purpose of the litigation that, in a subsidiary manner, was being examined by the said Court, and (b) the "substantiation of the amount of the compensation established by the Court."

3. On June 28, 2011, pursuant to the provisions of Article 68(2) of the Rules of Procedure and on the instructions of the President of the Court (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") forwarded a copy of the request for interpretation to the representatives of the victim (hereinafter "the representatives") and to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"). In addition, it informed the representatives and the Inter-American Commission that they should submit any written arguments they deemed pertinent, by July 28, 2011, at the latest.

4. On July 26, 2011, the representatives submitted their written arguments and asked the Court to reject the request for interpretation of the judgment of March 3, 2011, because it was "inadmissible and contrary to the norms of the inter-American system for the protection of human rights.

5. For its part, on July 28, 2011, the Commission submitted its written arguments and indicated "that there is no ambiguity in the judgment or any issue of inter-American public order that must be clarified; consequently, it had no observations to make in this regard."

II
COMPETENCE AND COMPOSITION OF THE COURT

6. 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.

7. Pursuant to this article, the Court is competent to interpret its own rulings. In order to examine the request for interpretation and make the corresponding ruling, if possible, the Court must have the same composition as when it handed down the judgment in question according to Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed of the same judges who handed down the judgment interpretation of which has been requested by the State.¹

III ADMISSIBILITY

8. The Court's 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 pertinent 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[, and]

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 filed the request for interpretation within the time frame established in Article 67 of the American Convention, because the judgment was notified to the parties on May 23, 2011, and the request was presented on June 2, 2011.

11. Moreover, and as this Court has ruled in its consistent case law clearly supported by the applicable laws, 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 for interpretation is to clarify the meaning of a ruling when one of the parties argues that the text of its operative paragraphs or its considerations lacks clarity or precision, provided that those considerations have a bearing on the said operative paragraphs.² Therefore, the modification or annulment of the judgment in question cannot be required by a request for interpretation.³

¹ When handing down the judgment on reparations and costs, the Court was composed of the following judges: Diego García-Sayán, President, Cecilia Medina Quiroga, Judge; Sergio García Ramírez, Judge; Manuel E. Ventura Robles, Judge; Leonardo A. Franco, Judge; Margarette May Macaulay, Judge; Rhadys Abreu Blondet, Judge, and Diego Rodríguez Pinzón, Judge *ad hoc*.

² Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits*. Judgment of the Court of March 8, 1998. Series C No. 47, para. 16; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on merits, reparations and costs*. Judgment of the Court of August 30, 2010. Series C No. 215, para. 11, and *Case of*

12. The Court will proceed to analyze the request for interpretation presented by the State and, as appropriate, make the pertinent clarifications. To this end, it will examine the questions raised by Ecuador, as well as the observations of the Commission and the representatives.

IV REGARDING THE DOMESTIC PROCEEDINGS IN VIEW OF THE JUDGMENT OF THE COURT OF MARCH 3, 2011

Arguments of the parties

13. The State indicated to the Court “the need for an international ruling on how the local proceedings should proceed with regard to the purpose of the litigation that, in a subsidiary manner, was being examined by the Inter-American Court. This was because, on April 7, 2010, [...] the legal proceedings continued by means of a new hearing before the First Civil Chamber of the Provincial Court of Pichincha, where the representatives of the Salvador Chiriboga family had returned to present a financial claim [...]” According to the State, the Quito Municipality “rejected the arguments of the representatives of Mrs. Salvador [Chiriboga], indicating that, since the purpose of the litigation was the same as that of the case before the Inter-American Court and the domestic proceedings, the Provincial Court should recuse itself and declare that the Inter-American Court has jurisdiction on this issue, to the extent that it is a subsidiary system.”

14. Consequently, the State asked the Court to expand the explanation of paragraphs 48, 61 and 93 of the judgment “in order to make it conclusive for the parties that the domestic proceedings cannot continue owing to the subsidiary nature of the inter-American system, because, by its nature, it is a system that functions solely and exclusively when the ineffectiveness of the national institutions or excessive delays in the administration of justice have been proved, as was determined in the judgment on merits in the Salvador Chiriboga case.”

15. In this regard, the representatives stated that, on March 31, 2011, immediately after being notified of the judgment, they submitted a brief from Mrs. Salvador Chiriboga to the First Civil and Mercantile Chamber of the Provincial Court of Justice indicating that, in the judgment handed down on March 3, 2011, “the amount of the fair compensation for her piece of property that was subject to expropriation [had been] established[...] according to the provisions of paragraphs 84 and 101 of [the said judgment.] Therefore, she “requested that Chamber to declare this so, because the central issue had been decided by the international court. Consequently, [the Chamber] should order that the case be closed.” According to the representatives, based on the said brief, the First Chamber of the Provincial Court of Pichincha,

Rosendo Cantú et al. v. Mexico. Interpretation of the judgment on merits, reparations and costs. Judgment of the Court of May 15, 2011. Series C No. 216, para. 11.

³ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits*, supra note 2, para. 16; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on merits, preliminary objection, reparations and costs*, supra note 2, para. 11, and *Case of Rosendo Cantú et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*, supra note 2, para. 11.

“in a decision of April 28, 2011, transferred the case to the Municipality [of the Metropolitan District] of Quito and to the Attorney General’s Office [and, in briefs presented on May 4, 2011],” they agreed the following: “(a) that now that the issue of fair compensation has been decided by the Inter-American Court, the case cannot continue at the domestic level, and (b) that all that is required is an order by the Chamber to transfer ownership of the property to the municipal entity so that it has a title deed.”

16. Based on the above, the representatives considered that, “[t]he effects of the judgment of March 3, 2011, handed down by the Court are clear to the State. Indeed, Mrs. Salvador Chiriboga’s representatives, who also act as her lawyers at the domestic level, agree fully that the Provincial Court is obliged to close the case, because the dispute that existed has ended with the judgment on reparations [and costs]. Thus, it is clear to all the parties that there is no reason to continue the domestic proceedings. In these circumstances, all the parties agree that the case should be closed [...]” However, the State did not mention this in its request for interpretation. Therefore, the representatives indicated that “it does not make any sense for [...] the State to maintain that an interpretation of the judgment is required when its conduct reveals that it understands fully the effects and consequences of the latter. In view of the foregoing, it is evident that there are no grounds for the Court to proceed to interpret this point.

17. The Commission did not add any observations other than those indicated in paragraph 5 of this judgment.

Considerations of the Court

18. In this regard, the Court finds it necessary to refer to paragraph 61 of the judgment on reparations and costs, which establishes the following:

The Court points out that, in the present case, the expropriation process through which the price of the property in question is determined is pending within the domestic jurisdiction (*supra* para. 48). However, the merits of the case were submitted and decided in this international jurisdiction on May 6, 2008, and both the State and the representatives have insisted that this Court has sufficient evidence to determine the value of the fair compensation (*supra* para. 19). In this regard, the Court recognizes that it corresponds to the States to establish the criteria to determine the payment of compensation under domestic law for an expropriation, according to its law and practice, provided that these are reasonable and in keeping with the rights recognized in the Convention. In the present case, the Court granted the parties six months from notification of the judgment on merits to reach an agreement, without them achieving this. In addition, the victim has waited more than 19 years for the determination of a final amount as fair payment for the expropriation of her property. In this regard, it would be unreasonable to continue waiting for a final judgment in the domestic jurisdiction when the judgment on merits reveals the State’s violation of the reasonable time to decide the matter. Therefore, pursuant to the object and purpose of the American Convention to provide effective protection to the right to private property, and based on the provisions of paragraph 134 of the judgment

on merits, the Court will determine the amount of the fair compensation in the international proceedings.

19. In addition, in the second to seventh operative paragraphs of that judgment, the Court ordered the payments that the State must make to María Salvador Chiriboga, based on the findings set out in the judgment.

20. The Court considers that the judgment on reparations and costs clearly reveals that this case was decided in the international jurisdiction, including the aspect of the fair compensation. In this regard, the Court recalls its consistent case law to the effect that all aspects of the obligation to provide reparation established by the international courts are governed by international law: including its scope, its methods, and the determination of the beneficiaries, none of which can be changed by the State by invoking domestic legal provisions.⁴ In addition, this Court observes that there is no dispute between the parties with regard to the effects of the said judgment. To the contrary, the parties agree that it is final. Consequently, this Court finds that it is unnecessary to rule in this regard.

V

SUBSTANTIATION OF THE AMOUNT OF THE COMPENSATION DETERMINED BY THE COURT

Arguments of the parties

21. The State considered that “the Court has not been clear when establishing a causal relationship between its findings to decide the value of the land (paras. 67, 69, 71, 73 and 82 and paras. 76, 79, 80 and 83), and the determination of the fair compensation (para. 84).” Thus it indicated that “clarification is required concerning the relationship between its findings and the amount resulting from that exercise.”

22. Similarly, the State indicated that, “given that the expert opinion of architect Estupiñán is the only one that takes into account the series of legal constraints on the land at the time of the expropriation, which did not grant the property “development possibilities,” and taking into account that the method of calculation used in that opinion is, by all accounts, the closest to the Court’s reasoning, the Ecuadorian State does not find that the elements used by the Court to arrive at an amount three times greater than that of the expert opinion are sufficiently clear [and] considers that the ‘cause and effect’ relationship between the findings and the determination of the amount can be interpreted in many different ways and lacks clarity.” Lastly, the State indicated that it “considers that the exercise of assessing general and private interests has not been developed in the [...] judgment.” Consequently, it asked the Court “to define with absolute clarity the way in which it arrived at the amount established in paragraph 84 of the judgment.”

⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of the Court of July 21, 1989. Series C No. 7, para. 30; *Case of Chaparro Álvarez v. Ecuador. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of the Court of November 26, 2008. Series C No. 189, para. 21, and *Case of Chocrón Chocrón v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of the Court of July 1, 2011. Series C No. 227, para. 175.

23. The representatives indicated that, “[t]hrough its request for interpretation, the State is seeking that the Court modify its judgment, which is contrary to the norms that govern the proceedings before the Inter-American Court of Human Rights. The State [...] again raises factual issues that the Court has already decided and indicates clearly its disagreement with the judgment delivered on March 3, 2011, which means that this request is also inadmissible [...].” Consequently, the representatives asked the Court to reject the request, “as it is not addressed at an interpretation, but on the contrary seeks to modify the judgment regarding which it says it seeks an interpretation.”

24. For its part, as previously indicated, the Inter-American Commission did not add any further arguments to those indicated in paragraph 5 of this judgment.

Considerations of the Court

25. In section B) 1 of the judgment on reparations and costs, the Court analyzed the measures, expert opinions and normative in the domestic and international proceedings.” In addition, in section B) 2, entitled “Determination of fair compensation by this Court,” it analyzed the different valuations provided to the Court (paras. 63 to 66 of the judgment). In this regard, the Court concluded that:

[...] according to the essential characteristics of the property, as well as the body of evidence, it can be concluded that it is a piece of rural land, owing to the absence of buildings and certain uses of the land, with particular characteristics owing to its urban location, on which limitations were imposed as regards its use and enjoyment in order to achieve environmental, ecological, and recreational benefits, which contribute to the preservation of the natural resources to the benefit of society, all of this evaluated to establish its fair price [...].

[...] Based on this, when the declaration of public interest was issued on May 13, 1991, the property already had legal limitations on its use, and therefore its market value had decreased.⁵

26. It is clear that, in the said judgment, all the expert opinions in the case file before the Court were assessed, without the Court considering any of them as decisive. Hence, paragraph 81 of the judgment established that:

Based on the claims for reparations, the Court weighed all the evidence provided by the parties, as well as the work and conclusions of the various expert opinions, which differ and are even divergent. All the opinions contained useful elements, although none of them, taken as a whole, was determinant. Therefore, the Court considers these opinions as elements to constitute the criteria established in this judgment.

⁵ Cf. *Case of Salvador Chiriboga v. Ecuador. Reparations and costs*. Judgment of the Court of March 3, 2011. Series C No. 222, paras. 73 and 82.

27. In section 2(b) the Court ruled on the “assessment of the just balance between general and private interests” (paras. 75 to 79 of the judgment) and in paragraph 83 of the judgment concluded that:

Additionally, in the judgment on the merits the Court established the existence of the legitimate interest of the expropriation based on reasons of public interest, based on the protection of the environment, which results in the social benefit of the Parque Metropolitano, which is of vital importance for Quito. The expropriated property makes an important contribution not only to the park itself, but also to society as a whole and the environment in general (*supra* para. 73). However the State failed to comply with the payment required by Article 21(2) of the Convention and with the criteria of reasonable times, to the detriment of the victim.

28. Finally, in paragraph 84 the judgment, the Court established the amount of fair compensation at the international level, based on the following criteria:

Therefore, in accordance with the claims of the parties, the legal restrictions affecting the property, which had an impact on its value given that the property object of the expropriation has been set aside for environmental protection and recreation, which is of great relevance and public interest for the Quito [...], based on the rational balance between public and private interests, the Court, based on criteria of reasonableness, proportionality, and fairness, establishes the sum of [...] a fair compensation at the international level; this includes the value of the property expropriated and any fixtures.

29. Under Article 63(1) of the American Convention, the Court has inherent powers to order reparations and, specifically, to determine the payment of fair compensation to the injured party. The Court also indicated in its judgment that the State had the obligation to pay the fair compensation derived from Article 21(2) of the American Convention (para. 35 of the judgment). Thus, the Court was clear in establishing in detail the probative elements that were assessed and the specific criteria developed by the Court in this case. Furthermore, based on criteria of reasonableness, proportionality, and equity, which is the usual practice of international courts,⁶ and of this Court itself,⁷ it established the fair compensation for the expropriated property.

⁶ Cf. Iran-US Claims Tribunal, *American International Group Inc. v. Islamic Republic of Iran*. Award No. 93-2-3-4; Iran-U.S.C.T.R 96 (1983); Iran-US Claims Tribunal, *Philips Petroleum Co. and The Government of the Islamic Republic of Iran*. Award No 425-39-21. Iran-U.S.C.T.R. 79 (1989); Permanent Court of International Justice Judicial Year 1937. *The Diversion of Water from the Meuse. Netherlands v. Belgium*. Para. 323; Grand Chamber *Case of Varnava and others v. Turkey* (Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90) Judgment, Strasbourg, September 18 2009. Paras. 224-225.

⁷ Cf. *Case of Garrido Baigorria v. Argentina. Reparations and costs*. Judgment of the Court of August 27, 1998. Series C No. 39, para. 79; *Case of Chocrón Chocrón v. Venezuela. Preliminary objections, merits, reparations and costs*, *supra* note 5, para. 192, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of the Court of July 5, 2011. Series C No. 228, para. 157.

30. Based on the foregoing, the Court notes that the question raised by the State reveals its discontent that the Court did not consider the expert opinion offered to the Court by the State as the determinant opinion. In addition, the question seeks for the Court to re-assess matters that have already been decided by the Court in its judgment in order to determine the amount of the fair compensation. In this regard, the Court has established the inadmissibility of re-evaluating factual and legal issues that were raised on the appropriate procedural occasion and on which the Court has adopted a decision.⁸

31. Based on the foregoing, the second question posed by the State is inadmissible because the judgment is clear as regards the elements that were assessed in order to determine the amount of the fair compensation, and the Court considers that the State is attempting to re-evaluate matters that have been decided by the Court, without any possibility that the ruling can be modified or expanded,⁹ in accordance with Articles 67 of the American Convention and 68 of its Rules of Procedure.

VI OPERATIVE PARAGRAPHS

32. 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 its Rules of Procedure,

DECIDES:

Unanimously

1. To declare the request for interpretation of the judgment on reparations and costs in this case filed by the State admissible in the terms of paragraphs 10 to 12 of this judgment on interpretation.

2. To reject as inadmissible the State's question on the domestic proceedings in relation to the ruling of the Inter-American Court in its judgment of March 3, 2011, in the terms of paragraphs 18 to 20 of this judgment.

⁸ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on reparations and costs*, supra note 2, para. 15; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*, supra note 2, para. 12, and *Case of Rosendo Cantú et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*, supra note 2, para. 12.

⁹ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits*, supra note 2, para. 16; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*, supra note 2, para. 11, and *Case of Rosendo Cantú et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*, supra note 2, para. 11.

3. To reject as inadmissible the State's question with regard to the substantiation of the amount of the compensation determined by the Inter-American Court, in the terms of paragraphs 25 to 31 of this judgment, insofar as it is not in keeping with the provisions of Article 67 of the Convention or the Rules of Procedure.

4. To require the Secretariat of the Inter-American Court of Human Rights to notify this judgment to the Republic of Ecuador, the Inter-American Commission on Human Rights, and the representative of the victim.

Done, at Bogotá, Colombia, on August 29, 2011, in the Spanish and English languages, the Spanish version being authentic.

Diego García-Sayán
President

Cecilia Medina Quiroga

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Diego Rodríguez Pinzón
Judge *ad hoc*

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán

President

Pablo Saavedra Alessandri
Secretary