

INTER-AMERICAN COURT OF HUMAN RIGHTS

**CASE OF ATALA RIFFO AND DAUGHTERS
v. CHILE**

**JUDGMENT OF NOVEMBER 21, 2012
(Request for Interpretation of Judgment
on Merits, Reparations and Costs)**

In the case of *Atala Riffo and daughters*,

The Inter-American Court of Human Rights (hereinafter, the "Inter-American Court" or the "Court") composed of the following judges¹:

Diego García-Sayán, President;
Manuel E. Ventura Robles, Vice-President;
Leonardo A. Franco, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu-Blondet, Judge;
Alberto Pérez Pérez, Judge;

Also present,

Pablo Saavedra Alessandri, Secretary and,
Emilia Segares Rodríguez, Deputy Secretary;

pursuant to Article 67 of the American Convention on Human Rights (hereinafter, the "American Convention" or "the Convention") and Article 68 of the Rules of Procedure of the Court² (hereinafter, the "Rules of Procedure"), rules on the request for interpretation of the Judgment on Merits, Reparations and Costs delivered by this Court on February 24, 2012 in

¹ According to Article 19(1) of the Rules of Procedure of the Inter-American Court, applicable to this case (*infra* note 2), which establishes that "[i]n the cases referred to in Article 44 of the Convention, a Judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case", Judge Vio Grossi, of Chilean nationality, did not participate in the processing of this case or in the deliberation of this Judgment.

² The Rules of Procedure approved by the Court at its Eighty-fifth Regular Period of Sessions held on November 16-28, 2009, apply in this case, in accordance with the provisions of Article 79 of said Rules of Procedure. Article 79.2 of the Rules of Procedure stipulates that "[i]n cases in which the Commission has adopted a report under Article 50 of the Convention before these Rules of Procedure have come into force, the presentation of the case before the Court shall be governed by Articles 33 and 34 of the Rules of Procedure previously in force. With respect to the reception of statements, the provisions of these Rules shall apply." Therefore, as regards the presentation of the case, Articles 33 and 34 of the Rules of Procedure approved by the Court at its Forty-ninth Regular Session, were applicable.

this case (hereinafter "the Judgment"), filed on June 5, 2012 by the representatives of Mrs. Atala Riffo (hereinafter, the "representatives").

I INTRODUCTION TO THE REQUEST FOR INTERPRETATION AND PROCEEDING BEFORE THE COURT

1. On February 24, 2012 the Court issued the Judgment, which was notified to the parties on March 20 of the same year.
2. On June 5, 2012 the representatives submitted to the Court a brief requesting an interpretation of the Judgment. In said brief, they requested that the Court: i) "[s]pecify the terms under which the competent state institution responsible for children should conduct an interview with V., for the purposes of paragraph 71, and, furthermore, that it clarify the meaning and scope of paragraph 71 of said Judgment, in the light of paragraphs 255, 299 and 313, differentiating between reparations, particularly rehabilitation and compensation"; ii) "[s]pecify the material circumstances in which it is possible to comply with the six-month period so that the girls M., V. and R, may indicate to the State whether they wish to receive psychological or psychiatric treatment, as rehabilitation for the violations of their human rights. The material circumstances should take into account the possibility of their attaining the necessary maturity, autonomy and independence to decide on this form of reparation freely and in an informed manner", and iii) to "add to the costs, the payment of fees and travel expenses incurred by the expert witness María Alicia Espinoza Abarzúa, who provided assistance to the officials of the Honorable Court in implementing the measure ordered, consisting of the interview with the girls M., V. and R".
3. On June 21, 2012, following the instructions of the President of the Court, the Secretariat of the Court forwarded the abovementioned communication to the State of Chile (hereinafter, the "Chile" or the "State") and to the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or "the Commission"). The State and the Inter-American Commission were also invited to submit any written arguments or comments deemed pertinent, no later than July 21, 2012.
4. On July 21, 2012, the State submitted its arguments and observations regarding the representatives' request for interpretation of the Judgment.
5. That same day, the Inter-American Commission forwarded its observations to the aforementioned request for interpretation by the representatives.

II JURISDICTION

6. Article 67 of the Convention establishes 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.

7. Pursuant to this Article, the Court is competent to interpret its rulings. In examining a request for interpretation, the Court will, whenever possible, be composed of the same judges who delivered the respective Judgment, in accordance with Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed of the same judges who issued the Judgment for which the representatives have requested an interpretation.

III ADMISSIBILITY

8. The Court must determine whether the request submitted by the representatives fulfills the requirements set forth in the provisions applicable to a request for interpretation of Judgment, namely, Article 67 of the Convention, cited previously, and Article 68 of the Rules of Procedure, which provides that:

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

10. The Court notes that the representatives presented their request for interpretation of the Judgment within the ninety-day period established in Article 67 of the Convention, given that it was notified on March 20, 2012.

11. As the Court has ruled previously in its consistent case law, clearly supported by the applicable legal rules, a request for interpretation of judgment must not be used as a means of challenging the judgment whose interpretation is sought. The sole purpose of such a request is to clarify the meaning of a ruling when one of the parties considers that the text of its operative paragraphs or of its considerations lacks clarity or precision, provided that these considerations have a bearing on those operative paragraphs.³ Therefore, the modification or annulment of the judgment in question cannot be sought through a request for interpretation.⁴

12. The Court will proceed to analyze the request for interpretation submitted by the representatives and, if appropriate, will make the pertinent clarifications. To do so, it will examine the points raised by the representatives, as well as the arguments offered by the State and the Commission.

IV ANALYSIS OF THE REQUEST FOR INTERPRETATION

³ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of Judgment on Merits*. Order of the Inter-American Court of Human Rights of March 8, 1998. Series C N°. 47, para. 16; and *Case of Salvador Chiriboga v. Ecuador. Interpretation of Judgment on Reparations and Costs*. Judgment of August 29, 2011. Series C No. 230, para. 11.

⁴ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of Judgment on Merits*, para. 16; and *Case of Salvador Chiriboga v. Ecuador. Interpretation of the Judgment on Reparations and Costs*, para. 11.

13. The representatives submitted the request for interpretation for the purpose of “determining the meaning and scope of three specific points related to the reparations”, namely: i) “obtaining the free and informed opinion of V. as to whether she considers herself an injured party”; ii) the “implementation of the rehabilitation, ordered as reparations by the Court in favor of M., V. and R.”, and iii) “payment of fees and expenses incurred by the expert witness María Alicia Espinoza.” Accordingly, the Court will proceed to analyze each of these points separately in order to determine whether or not the request is admissible.

A. Obtaining the free and informed consent of the girl V. regarding whether she considers herself an injured party

14. The representatives indicated that “[i]t is not clear to th[at] party that the State of Chile has understood the distinction made by the Court between compensation and other reparations,” given that “the State considers that the purpose of the interview with V. was to determine whether she would be considered a victim of the proceeding before the Court”. In this regard, the representatives argued that paragraphs 71, 255, 299 and 313 of the Judgment should be interpreted to mean that “the compensation cannot be disputed.” They added that “[a]ny other interpretation, would lead to the absurd conclusion that [the] Court has granted the offending State itself the possibility of determining who are the victims of human rights violations, and that the mode of compliance amounts to a further violation of V’s rights by violating her personal privacy.”

15. The State argued that “[t]he purpose of obtaining the free opinion of the girl V. seems to be perfectly clear in the wording of the Judgment”, since it understands that paragraphs 71 and 313 refer to “the need to consult the girl V. regarding the reparations that concern her, especially as regards the compensation payment”. Likewise, the State considered that the way in which paragraph 71 is worded establishes “guarantees [...] so that it is not the State, but rather the girl herself who freely decides whether or not she wishes to be considered as an injured party.” It added that “if the consultation with the girl refers to the reparations, the compensation must necessarily be considered as part of these.”

16. The Commission pointed out that “for the purposes of clarifying whether the compensation in favor of V. is conditional upon her expressing her wishes [...] an interpretation of the Judgment would be important.” It added that this “interpretation could benefit the process of compliance with this point.”

Considerations of the Court

17. The Court emphasizes that, under Article 63(1) of the American Convention, it has inherent powers to order reparations and, specifically, to order the payment of fair compensation to the injured party⁵. In particular, the Court recalls that the Judgment established the following:

“71. As mentioned previously, the girl V. did not participate in the hearing for reasons of *force majeure* (*supra* para.13) Based on the preceding considerations, the Court finds no grounds to consider that the girl V. is not in the same situation as her sisters (*infra* paras. 150, 176, 178 and 208). However, for the purposes of reparations, the competent national authority for children

⁵ Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of Judgment on Reparations and Costs*, para. 29, and *Case of Abrill Alosilla et al. v. Peru. Interpretation of Judgment on Merits, Reparations and Costs*. Judgment of November 21, 2011. Series C No. 235, para. 16.

must privately confirm the girl V's free opinion regarding whether she wishes to be considered as an injured party.

18. Regarding the rehabilitation measure of medical or psychological care, the Court ordered that:

"255. [...] the victims who request this measure of reparation, or their legal representatives, have a period of six months as from notification of this Judgment to advise the State of their intention to receive medical or psychological care.

19. As to the compensation, the Court ordered the following:

"299. [...] the Court deems it appropriate to establish, in equity, the sum of \$20,000 USD (twenty thousand dollars of the United States of America) for Ms. Atala and \$10,000 USD (ten thousand dollars of the United States of America) for each of the girls M., V., and R. as compensation for non-pecuniary damages.

[...]

313. As to the compensation ordered in favor of the girls M., V. and R., the State shall deposit the amounts in a solvent Chilean financial institution in United States dollars. The investments shall be made within the term of one year, under the most favorable financial terms allowed by law and banking practice, while the beneficiaries are minors. Said amounts may be withdrawn by the girls when they come of age, or before if this is in the girls' best interest, as the case may be, as established by a competent judicial authority. If, after 10 years counted from the time when each of the girls comes of age, the corresponding indemnities have not been claimed, these amounts shall be returned to the State with the accrued interest. As regards the girl V., for the purposes of reparations, the terms set forth in paragraph 71 of this Judgment shall apply.

20. Bearing in mind the provisions made in the above paragraphs, the Court considers it is clear that, for the purposes of reparations, it ordered the competent national authority for children to privately confirm the girl V's free opinion regarding whether she wishes to be considered as an injured party. In this regard, it should be noted that although the Judgment did not establish a specific procedure for obtaining her opinion, it did state that this should be done privately. Furthermore, the Judgment provided specific guidelines on the considerations to be taken into account in order to ensure a child's right to be heard. In particular, the Judgment described the way in which the proceeding was conducted by this Court with the girls M. and R. in paragraphs 68 and 69 thereof⁶, and in the section entitled

⁶ These paragraphs established that: in its Decision, the Court stated that children exercise their rights progressively, as they develop a greater degree of independence, and for this reason during early childhood their relatives act on their behalf. Clearly, the level of physical and intellectual development, experience and information varies widely among children. Therefore, when the hearing was held in accordance with the aforementioned Decision [...] it was taken into account that the three girls were then aged 12, 13 and 17 years of age and that, therefore, there might be differences in their views and in the level of personal independence for each of the girls to exercise her rights. In the instant case, the Court heard two of the girls on February 8, 2012. (*supra* para. 13). During the hearing, the staff members of the Secretariat were accompanied by psychiatrist María Alicia Espinoza⁶. Prior to commencing the proceeding, the delegation of the Secretariat of the Court held a prior meeting with the psychiatrist, consisting of an exchange of ideas, in order to ensure that the information provided was accessible and appropriate for the girls. Taking into account the international standards on a child's right to be heard [...], the girls M. and R. were, in the first place, informed jointly by the staff of the Secretariat of their right to be heard, the effects or consequences that their opinions might have in the dispute in this case, the position and arguments of the parties in the present case, and they were also asked whether they wished to continue participating in the proceeding. Subsequently, instead of conducting a unilateral examination, a conversation was held with each girl separately, in order to provide the girls with an appropriate environment of trust. During the proceeding neither of the parents and neither of the parties were present. Furthermore, the proceeding conducted with the girls was private, due to the request, both by the Commission and by the representatives in this case, that the identity of the girls remain confidential (*supra* note 3), and to the need to protect the girls' best interest and their right to privacy. In addition, the girls expressly requested that everything said by them during the meeting be kept in the

"Right of the girls M., V. and R. to be heard and have their opinions taken into consideration" it explained in detail the provisions concerning a child's right to be heard, in order to ensure that the child's intervention is in line with these conditions and does not harm his or her genuine interest. Therefore, the Court considers that there is no doubt that the State was ordered to obtain girl V's free opinion regarding whether she wishes to be considered as an injured party.

21. In this regard, the Court notes that there is a difference between the mode of compliance with the compensation for non-pecuniary damage addressed in paragraphs 299 and 313, and the rest of the reparations ordered (*supra* para. 19). In this respect, the Court specifies by way of interpretation that the compensation granted must be awarded under the terms established in paragraph 313 of the Judgment, and that therefore the State shall deposit the funds in the aforementioned financial institution, without the requirement to obtain the free opinion of the girl V., bearing in mind that those funds may be withdrawn by the beneficiaries when they come of age. As to the other measures of reparation ordered in favor of the girl V., these shall require her free opinion.

22. Furthermore, the Court considers that the various disputes that could arise as a result of obtaining the free opinion of the girl V. should be settled by the Court in the context of the process of monitoring compliance with Judgment.

B. Implementation of rehabilitation, ordered as reparations by the Court in favor of M., V. and R

23. The representatives argued that, because "the girls M., V. and R live under the guardianship and personal care of their father", "at the moment, none of them is in a position of independence and freedom to express her agreement to the psychological therapy in a completely free manner, and for this reason the measure of reparation ordered runs the risk of being inapplicable." Consequently, they asked the Court to "expressly indicate the material circumstances in which it is possible to apply the six-month period, that is, from the time they reach 18 years of age and complete their schooling."

24. The State argued that the request by the representatives "[would] imply an open contradiction of what was ordered in the Judgment and, far from being a request for interpretation, amounts to an attempt to modify the substance thereof." It further argued that "[t]he representatives' petition would leave [...] the State [...] in a position in which it is forced to delay compliance with the judgment."

25. The Commission considered it "reasonable to discuss this issue in the context of supervision in order to make the necessary adjustments." Similarly, it indicated that in the context of implementation of the Judgment it would be appropriate to take into account the information submitted by the representatives so as to "have certain flexibility in order to take into account circumstances such as those described, which could affect the preclusive nature of the term established in the Judgment."

Considerations of the Court

26. With regard to the rehabilitation measure of medical and psychological assistance ordered in paragraphs 254 and 255 of the Judgment, the Court stated the following:

strictest confidence. *Case of Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs.* Judgment of February 24, 2012. Series C No. 239, paras. 68 and 69.

254. As in other cases, the Court deems it necessary to order a measure of reparation that provides adequate care for the physical and mental ailments suffered by the victims, addressing their specific needs. Therefore, having confirmed the violations and damages suffered by the victims in the present case, the Court orders the State to provide them, freely and immediately, with appropriate and effective medical and psychological care for up to four years. In particular, the psychological treatment must be provided by State institutions and personnel specialized in treating victims of acts such as those that occurred in the instant case. When providing said treatment, the specific circumstances and needs of each victim must also be taken into account, so that they are offered family and individual treatment, as agreed upon with each one, after an individual evaluation. The treatments must include the provision of medicines and, where appropriate, transportation or other expenses that are directly related and are strictly necessary.

255. In particular, and where possible, the treatment must be provided at the health centers nearest to the victims' places of residence. The victims who request this measure of reparation have a period of six months from notification of this Judgment to advise the State, either in person or through their legal representatives, of their wish to receive medical or psychological care.

27. Based on said paragraph, the Court considers it clear that the State was ordered to provide said reparation immediately. What the Court established was a six-month period for the victims to advise the State of their wish to receive care, as of notification of the Judgment. Therefore, the representatives' request does not constitute a request for an interpretation of the terms of the Judgment, but rather seeks to change what was ordered therein, inasmuch as they requested that it should be understood that the measure could only be executed once the girls M., V. and R reach legal age and complete their education. Likewise, in the event that a dispute should arise between the parties on the manner in which the State should implement this measure, the Court will, as it has on previous occasions,⁷ assess the proper implementation of the reparation measures during the stage of monitoring compliance with Judgment, and will, in due course, assess any information and observations that the parties may submit in this regard during that stage.

28. Therefore, the Court concludes that this request for interpretation of judgment submitted by the representatives is inadmissible, because it does not constitute a request for an interpretation of the meaning and scope of the Judgment⁸, and does not fulfill the terms of Articles 67 of the American Convention and 31(3) and 68(1) of the Court's Rules of Procedure.

C. Payment of fees and expenses incurred by the expert witness María Alicia Espinoza

29. The representatives requested that the Court "add to the costs, the payment of fees and travel expenses incurred by the expert witness María Alicia Espinoza [...], who attended [...] the [...] Court" in the proceeding that took place in Santiago de Chile.

30. The State argued that "the representatives seek to use the request for interpretation as a means to add evidence regarding the expenses incurred by the expert witness, even though the procedural stage for doing so was not used due to negligence attributable to the representatives themselves." It added that the representatives "seek to attach [the vouchers for expenses] extemporaneously."

31. The Commission stated that it had "no observations to make" on this point.

⁷ Cf. *Case of Ticona Estrada et al. v. Bolivia*. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 199, para. 26.

⁸ Cf. *inter alia*, *Case Loayza Tamayo v. Peru*. Interpretation of the Judgment on Merits, para. 16; and *Case Abril Alosilla et al. v. Peru*. Interpretation of the Judgment on Merits, Reparations and Costs, para. 18.

Considerations of the Court

32. The Court notes that footnote number 304 of the Judgment established the following:

With regard to the proceeding ordered by the Court and held in Santiago de Chile [...] on February 6, 2012 the representatives reported that Ms. Atala "has had to defray the costs of transport for Ms. Alicia Espinoza and her young daughters, who were not in Santiago for the purpose of ensuring their appearance at [said] proceeding," for which reason they requested that the Court "take into consideration the costs incurred by Ms. Atala when determining the costs of this process" [...] However, no receipts for expenses were attached in relation to this last request.⁹

33. Bearing in mind the foregoing, the Court emphasizes that, in calculating the amount corresponding to costs and expenses, it took into account the fact that the representatives had presented a request, but did not submit any receipts to support it. Therefore, the Court considers that the request of the representatives to add the fees and travel expenses to the costs incurred by expert witness María Alicia Espinoza constitutes a new request related to factual and legal issues on which the Court has already made a decision. In this regard, the Court has established that a request for interpretation of judgment cannot address factual and legal matters that were raised at the proper procedural moment and on which the Court has already issued a ruling.¹⁰

34. Consequently, the request for interpretation is deemed inadmissible inasmuch as the Judgment is clear regarding the elements that were assessed to determine the amount awarded for costs and expenses. Also, the Court considers that the representatives seek to raise matters that have already been decided by the Court, without any possibility of the ruling being amended or extended¹¹, according to Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure. Therefore, the Court declares inadmissible the representatives' request for interpretation of this point.

V OPERATIVE PARAGRAPHS

35. Therefore,

THE COURT

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

DECIDES:

⁹ Cf. *Case of Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 302, footnote on page 304.

¹⁰ Cf. *Case of Loayza Tamayo v. Peru*. Interpretation of the Judgment on Reparations and Costs, para. 15; and *Case of Abril Alosilla et al. v. Peru*. Interpretation of the Judgment on Merits, Reparations and Costs, para. 17.

¹¹ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on Merits, supra note 1*, para. 16; and *Case of Rosendo Cantú et al. v. Mexico. Interpretation of Judgment on Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 15, 2011. Series C No. 225, para. 11.

By unanimity,

1. To declare admissible the request for interpretation of paragraphs 71, 255, 299 and 313 of the Judgment on Merits, Reparations and Costs in the present case, submitted by the representative of the victims, under the terms of paragraph 21 of this Judgment on Interpretation.
2. To determine by way of interpretation the meaning and scope of the provisions contained in the Judgment on Merits, Reparations and Costs, regarding the reparations for non-pecuniary damage, under the terms of paragraph 21 of this Judgment on Interpretation.
3. To reject the request for interpretation of Judgment submitted by the representatives of the victims, regarding the rehabilitation measure of medical and psychological assistance, in accordance with paragraphs 26 to 28 of this Judgment.
4. To reject the request for interpretation of Judgment submitted by the representatives of the victims, regarding the payment of fees and expenses, in accordance with paragraphs 32 to 34 of this Judgment.
5. To order the Secretariat of the Court to notify this Judgment to the State of Chile, the representatives of Ms. Atala Riffo and to the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary