

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

OF MARCH 31, 2014

REQUEST FOR PROVISIONAL MEASURES

CASE OF ARTAVIA MURILLO ET AL. ("FECUNDACIÓN IN VITRO") v. COSTA RICA

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") issued in this case by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on November 28, 2012.¹ The Court ruled that the Republic of Costa Rica (hereinafter "the State" or "Costa Rica") was internationally responsible for violating the right to private life and family life and the right to humane treatment [personal integrity] in relation to personal autonomy, sexual health, and the right to enjoy the benefits of scientific and technological progress and the principle of non-discrimination, to the detriment of 18 persons, given the effects of the judgment issued by the Constitutional Chamber of the Supreme Court of Costa Rica on March 15, 2000, wherein it declared the unconstitutionality of Executive Decree No. 24029-S. Said Executive Decree was issued by the Ministry of Health on February 3, 1995, and it authorized the use of In Vitro Fertilization (IVF) techniques in the country for conjugal couples and it regulated its implementation. This judgment of unconstitutionality implied the prohibition of IVF in Costa Rica and, specifically, caused the interruption of the medical treatment which some of the victims in this case had started and which led some victims to travel out of the country to obtain IVF. The Court established that its Judgment constituted *per se* a form of reparation and, additionally, ordered the State to carry out specific measures of reparation and indicated that it would monitor the full compliance with the Judgment.

2. The briefs of June 20, August 21, and December 20, 2013, and their attachments, wherein the State provided information on compliance with the Judgment.

* Judge Manuel E. Ventura Robles, of Costa Rican nationality, did not participate in the deliberation and signing of the Judgment in this case, nor did he hear or deliberate on this Order, pursuant to that provided in Articles 19(2) of the Statute of the Court and 19(1) of the Rules of Procedure of the Court.

¹ In the Judgment on preliminary objections, merits, and reparations and costs, the Court declared that Costa Rica is internationally responsible for the violation of: i) the right to humane treatment [right to personal integrity], enshrined in Article 5(1) of the American Convention on Human Rights; ii) the right to personal liberty, enshrined in Article 7 of the American Convention; iii) the right to privacy [honor and dignity], enshrined in Article 11(2) of the Convention; and iv) rights of the family, enshrined in Article 17(2) of the Convention, all in relation to Article 1(1) of the American Convention, to the detriment of Grettel Artavia Murillo, Miguel Mejías Carballo, Andrea Bianchi Bruna, Germán Alberto Moreno Valencia, Ana Cristina Castillo León, Enrique Acuña Cartín, Ileana Henchoz Bolaños, Miguel Antonio Yamuni Zeledón, Claudia María Carro Maklouf, Viktor Hugo Sanabria León, Karen Espinoza Vindas, Héctor Jiménez Acuña, María del Socorro Calderón Porras, Joaquinita Arroyo Fonseca, Geovanni Antonio Vega Cordero, Carlos Eduardo de Jesús Vargas Solórzano, Julieta González Ledezma and Oriéster Rojas Carranza. The full text of the Judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/Seriesc_257_esp.pdf

3. The briefs of July 18, 2013 and February 5, 2014, wherein Mr. Boris Molina Acevedo, representative of twelve of the victims, filed his observations to the State's reports. (*supra* Having Seen clause 2).

4. The briefs of July 20 and October 23, 2013, wherein Mr. Huberth May Cantillano, representative of six of the victims, filed his observations to the reports filed by the State on June 20 and August 21, 2013 (*supra* Having Seen clause 2). The representative May Cantillano did not file observations to the State's report of December 20, 2013 (*supra* Having Seen clause 2).

5. The brief of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of August 13, 2013, wherein it filed its observations to the State's report of June 20, 2013, and to the corresponding observations of the representatives of the victims in relation to compliance with the Judgment (*supra* Having Seen clauses 2 to 4). The Commission did not file observations to the State's reports of August 21² and December 20, 2013 (*supra* Having Seen clause 2).

6. The briefs filed as *amici curiae* in relation to the monitoring of compliance with the Judgment in this case.³

7. The brief of March 19, 2014, wherein the representative May Cantillano requested that the Court, "[b]ased on Article 63(2) of the American Convention on Human Rights," render specific "measure[s] of protection pending the implementation of the Judgment" (*infra* Considering clause 4) and that "the parties be summoned to a hearing [...] in order to analyze the noncompliance with the judgment and the reasons for the noncompliance."

8. The notes of the Secretariat of the Court of March 24, 2014, wherein it provided a copy of the aforementioned brief of March 19, 2014, to the parties and the Inter-American Commission, as well as the President of the Tribunal for the pertinent actions to be taken.

CONSIDERING THAT:

1. The Court issued a Judgment in the *case of Artavia Murillo et al. ("In Vitro Fertilization") V. Costa Rica* on November 28, 2012 (*supra* Having Seen clause 1).

2. Article 63(2) of the American Convention provides that "[in] cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration."

3. Pursuant to the terms of Article 27 (Provisional Measures) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"),

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.
[...]

² By way of a communication of August 4, 2013, the Commission requested an extension of two weeks to provide observations to the State's report of August 23, 2013, which was ordered by the President of the Court on that same day.

³ Filed on July 30, 2013, and January 7, 2014 by Marcela Leandro Ulloa and Gerardo Mejía Rojas, representatives of the "*Grupo a Favor del In Vitro [Group in Favor of In Vitro]*", and the brief filed on December 11, 2012, by Ofelia Taitelbaum Yoselewich, *Defensora de los Habitantes de Costa Rica*.

3. In contentious cases before the Court, victims or alleged victims, or their representatives, may submit to it a request for provisional measures, which must be related to the subject matter of the case.
[...]

4. The representative May Cantillano requested that, “[b]ased on Article 63(2) of the American Convention [...] that a direct order addressed to the Ministry of Health be decreed by way of a precautionary measure to the implementation of the judgment, to permit that specific clinics offer, under supervision, IVF services,” and that “the [Costa Rican Social Security Institute] (CCSS for its acronym in Spanish) be ordered to provide this service within no more than six months, under the terms of Executive Decree 24.029 –if no other more favorable regulation exists- and under scientific medical standards and protocols.” The representative based his request for the measures stating that “notwithstanding” that the Judgment issued in this case “is *res judicata* in substance, its effects are *erga omnes*, [...] and i]n particular it is the obligation of Costa Rican institutions to guarantee measures of non-repetition of this conduct[, ...] which pursuant to the reports rendered by the State of Costa Rica [...], it still has not complied with the essential point: the prohibition of IVF is still in force.” The representative exposed, among others, the following arguments:

- a) the purpose of the request “is that the general effects of the [J]udgment rendered in this proceeding are not illusory and [...] to prevent irreparable damage to the victims not named in the proceeding but whose substantive legal situation is identical to that of the petitioners”;
- b) “those persons who need the technique of [IVF] do not have access to it in the country and must travel to other countries in order to use it, which implies a continual violation of the rights in the Convention which the Court declared had been violated in the [J]udgment issued in this case;”
- c) “a group of couples that have been diagnosed as infertile and have a medical recommendation to use the technique of IVF have not been able to carry out the technique in Costa Rica, which causes them serious, irreparable and irreversible damage to their life project and their rights to form a family, and to freely and autonomously make decisions regarding their reproductive rights with serious harm to their right to health”;
- d) these persons “have brought a suit against the State and the [Costa Rican Social Security Institute] CCSS in the administrative contentious jurisdiction, the instance wherein the representatives of the CCSS as well as the [S]tate argue in their answer brief the absence of a law that authorizes what this Court has declared as a right, a stance which in practice implies a violation of Article 27 of the Vienna Convention on the Law of Treaties of 1969, since the [S]tate cannot, due to provisions of internal law, fail to carry out its international responsibility,” and
- e) “the implementation of the judgments of the Inter-American Court [...] encompasses the jurisdiction to carry out the decision.”

5. This request for provisional measures was filed by one of the representatives of the victims in a case before the Court, which is currently in the stage of monitoring of compliance with Judgment (*supra* Having Seen clauses 1 to 6). Notwithstanding, in regard to the beneficiaries of the mentioned request for measures, the Court notes that the request seeks to benefit an undetermined number of persons that are not victims in this case but that the representative affirms would be harmed by the prohibition of the use of the technique of IVF in Costa Rica and the lack of regulation regarding its implementation (*supra* Considering clause 4(a) and (c)).

6. In regard to the relationship between the request for provisional measures with the case of *Artavia Murillo et al. ("In vitro Fertilization") V. Costa Rica*, the Court notes that the measures requested by the representative are closely related to the material purpose of the measures of reparation ordered by the Court in declarative paragraphs 2, 3, and 4 and paragraphs 336 and 338 of the Judgment (*infra* Considering clause 7), even though they are not the same measures.

7. In the Judgment in this case, the Inter-American Court decided that "the Constitutional Chamber's decision [adopted in 2000,] resulted in the undisputed fact that IVF is not practiced in Costa Rican territory and that, therefore, couples wishing to use this technique cannot do so in this country."⁴ This Court concluded that the prohibition that resulted in such a judicial decision involved a disproportionate harm that violated the rights to personal integrity, personal liberty, private life, intimacy, reproductive autonomy, and access to reproductive health services and the right to form a family of the 18 persons who are victims in this case.⁵ Upon providing the corresponding Reparations to the Judgment, the Court, in addition to ordering that Costa Rica implement measures aimed at specifically redressing the pecuniary and non-pecuniary damage to the 18 victims in this case, due to the effects generated from the international responsibility of the State, it also ordered the adoption of "Guarantees of Non-repetition." This involves measures of a more general nature, aimed at changing the structural or legal situation that caused or had an impact on the human rights violations in this specific case. In this regard, the Judgment provided the following guarantees of non-repetition in paragraphs 336 to 338 and in declarative paragraphs 2 to 4:

336. First, and taking into account the considerations in this Judgment, the pertinent State authorities must take the appropriate measures to ensure that the prohibition of the practice of IVF is annulled as rapidly as possible so that those who wish to use this assisted reproduction technique may do so without encountering any impediments to the exercise of the rights that this Judgment has found to have been violated (*supra* para. 317). The State must provide information on the measures taken in this regard within six months.

337. Second, the State must, as soon as possible, regulate those aspects it considers necessary for the implementation of IVF, taking into account the principles established in this Judgment. In addition, the State must establish systems for the inspection and quality control of the qualified professionals and institutions that perform this type of assisted reproduction technique. The State must provide information every year on the gradual implementation of these systems.

338. Third, in the context of the considerations made in this Judgment (*supra* paras. 285 to 303), the Costa Rica Social Security Institute must make IVF available within its health care infertility treatments and programs, in accordance with the obligation to respect and guarantee the principle of non-discrimination. The State must provide information every six months on the measures adopted in order to make these services available gradually to those who require them and on the plans that it draws up to this end.

8. In regard to that which was ordered in paragraphs 336 to 338, it can be considered that the measures involve annulling the prohibition of IVF, regulating its implementation, and establishing a system of inspection and gradually making the treatment available by way of the public health system, which Costa Rica must implement at a regulatory, institutional, or by other means necessary in order to make the exercise of human rights effective and prevent the reoccurrence of violations such as those that have occurred in the

⁴ Cf. *Case of Artavia Murillo et al. ("In Vitro Fertilization") V. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2012, Series C, No. 257, para. 159.

⁵ Cf. *Case of Artavia Murillo et al. ("In Vitro Fertilization") V. Costa Rica*, *supra* nota 4, paras. 314 to 317.

contentious case resolved by the Court. Upon ordering the measures, the Court reminded Costa Rica of the obligations derived from Article 2 (Domestic Legal Effects) of the Convention, and it noted that “it must prevent the recurrence of human rights violations such as those that have occurred and, therefore, adopt all necessary legal, administrative and other measures to prevent similar events from occurring in the future, in compliance with its obligation of prevention and to guarantee the fundamental rights recognized by the American Convention.”⁶

9. In other cases, the Court has dismissed requests for provisional measures that implied the assessment of information related to compliance with the measures of reparation ordered in the Judgment and considered that said information must be assessed in the framework of the stage of monitoring of compliance with the Judgment.⁷

10. The Court considers that the information and arguments exposed by the representative May Cantillano in the request for provisional measures, in relation to the prohibition of the use of IVF in Costa Rica and its implementation (*supra* Considering clause 4), must be assessed within the stage of monitoring of compliance with the Judgment of November 28, 2012, in the framework of the reparations ordered by the Court (*supra* Considering clause 7) and pursuant to the norms of the Convention that regulate its powers to monitor compliance⁸. Consequently, the Court considers the adoption of the provisional measures requested in this case by the representative to be inadmissible.

11. Notwithstanding, the Court recalls that States Parties to the Convention must fulfill in good faith their international treaty obligations such as the obligation to comply with the decisions of this Court, which constitutes a basic principle of international law (*pacta sunt servanda*).⁹ They must also ensure the effects of such a treaty (*effet utile*) in terms of their domestic laws.¹⁰ In this sense, Costa Rica must implement the measures of reparation under the terms stated in the Judgment as efficiently as possible, taking into account that they are aimed at ensuring compliance with the obligations to guarantee human rights to a generality of persons under its jurisdiction, thereby transcending this specific case.

12. In regard to the request to summon a private hearing on the Monitoring of Compliance with the Judgment (*supra* Having Seen clause 7 and Considering clause 4), the Court does not consider it necessary to consent to such a request given the current state of the Monitoring of Compliance with the Judgment. The Court shall assess, in due time, the information and observations made by the parties and the Commission, once it receives the observations to the State’s brief of December 20, 2013, to which submission by the representative Hubert May and by the Inter-American Commission are pending, as well as the observations to the State’s brief of August 21, 2013, to which submission by the

⁶ Cf. *Case of Artavia Murillo et al. (“In Vitro Fertilization”) V. Costa Rica*, *supra* nota 4, paras. 334-335.

⁷ In this regard, see: *Case of the Saramaka People V. Suriname*. Request for Provisional Measures and Monitoring of Compliance with Judgment. Order of the Court of September 4, 2013, Considering clause 23; *Case of the Mayagna Community (Sumo) Awas Tingni V. Nicaragua*. Provisional Measures. Order of the Court of November 26, 2007, Considering clauses 10 and 11, and *Case of Juan Humberto Sánchez V. Honduras*. Request for provisional measures. Order of the Court of February 7, 2006, Considering clause 8.

⁸ Cf. *Case of the Mayagna Community (Sumo) Awas Tingni V. Nicaragua*, *supra*, Considering clause 12, and *Case of the Saramaka People V. Suriname*, *supra*, Considering clause 22.

⁹ Cf. International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights), Advisory Opinion OC-14/94, December 9, 1994, Series. A No. 14, para. 35, and *Case of García Asto and Ramírez Rojas V. Perú*. Monitoring of Compliance with Judgment. Order of November 26, 2013, Considering clause 4.

¹⁰ Cf. *Case of Ivcher Bronstein V. Perú*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of García Asto and Ramírez Rojas*, *supra*, Considering clause 5.

Commission is pending (*supra* Having Seen clauses 4 and 5). In addition, the Court considers it important that the representatives of the victim file their observations to the measures of reparation that they have not previously addressed in their briefs (*supra* Having Seen clauses 3 and 4), namely: i) provide psychological treatment to the victims who so desire such treatment; ii) implement permanent educational and training programs and courses on human rights, reproductive rights, and non-discrimination aimed at judicial employees; iii) payment of compensation for pecuniary and non-pecuniary damages, and iv) the reimbursement of costs and expenses. The representatives must present their observations within a period of two weeks, as of the notification of this Order. The Inter-American Commission must file its observations in a period of four weeks, as of notification of this Order.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of the powers established in Article 63(2) of the American Convention and Articles 27, 31(2) and 69 of its Rules of Procedure,

DECIDES TO:

1. Declare the request for provisional measures filed by Mr. Hubert May Cantillano, representative of the victims, inadmissible given that the matter as filed before the Court is not considerable as a provisional measure pursuant to Article 63(2) of the American Convention on Human Rights, but rather must be assessed within the framework of the monitoring of compliance stage of the Judgment rendered on November 28, 2012 in the case of *Artavia Murillo et al. ("In Vitro Fertilization") V. Costa Rica*.
2. Dismiss the request for a summons to a private hearing on compliance with the Judgment in this case, and require the representatives of the victims and the Inter-American Commission to file the observations indicated in Considering clause 12 of this Order in the periods provided therein.
3. Require the State to adopt all of the measures that are necessary to give effectively and promptly implement the measures of reparation that were ordered by the Court in the Judgment, pursuant to Article 68(1) of the American Convention on Human Rights.
4. Require the Secretariat of the Court to provide legal notice of this Order to the representatives of the victims, the State of Costa Rica, and the Inter-American Commission on Human Rights.

Judge Eduardo Vio Grossi presented a Concurring Opinion to the Court, which accompanies this Order.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Diego García – Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac- Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI,
ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MARCH 31, 2014,
REQUEST FOR PROVISIONAL MEASURES
CASE OF ARTAVIA MURILLO ET AL. ("IN VITRO FERTILIZATION")
v COSTA RICA.**

This concurring opinion to the Order indicated in the abovementioned title is issued based on the fact that although the decision to dismiss the requested provisional measures is one I share, it is not for the reasons noted therein, which is "*that the matter as filed before the Court is not considerable as a provisional measure pursuant to Article 63(2) of the American Convention on Human Rights, but rather must be assessed within the framework of the monitoring of compliance stage of the Judgment rendered on November 28, 2012 in this case,*" but rather because, it is my opinion that in this matter and given that provided in the American Convention on Human Rights, hereinafter the Convention, has precluded the power of the Inter-American Court of Human Rights, hereinafter the Court, to render provisional measures, that is, it was not authorized to render such an order.

The reasons for the stance taken in this opinion has been presented in other opinions issued by those mentioned in the footnotes¹ and they are, among others, the following.

For one thing, in that provisional measures were created as part of the process by which the Court hears a case, that is, when the Court hears the case in exercise of its contentious jurisdiction.² Article 63(2) of the Convention³, the norm which established provisional measures, distinguishes between those measures which the Court can decree "*in the matters it has under consideration*" and in those in which it can decree

¹ Particularly in the Dissenting opinions of July 15, 2011, regarding the Orders of the Court in "*Provisional Measures regarding the Republic of Colombia, Case of Gutiérrez Soler V. Colombia,*" of June 30, 2011; "*Provisional Measures regarding the United States of Mexico, Case of Rosendo Cantú et al. V. Mexico,*" of July 1, 2011, and "*Provisional Measures regarding the Republic of Honduras, Case of Kawas Fernández V. Honduras,*" of July 5, 2011, and the brief in the *Complaint brief*, related to the Orders, filed before the Court on August 17, 2011.

² Art.62(3) of the Convention. "*The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.*"

³ "*In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.*"

"in matters which have not been submitted to the Court." In fact, in the Rules of Procedure of the Court, adopted by the Court, that distinction is not only made, rather it provides that, regarding the matters under its consideration, provisional measures can be adopted *"in any stage of the proceeding,"*⁴ which, without a doubt and as indicated below, ends in a final judgment.

It is clear that this case does not involve a matter⁵ that has not yet been filed before the Court. Moreover, under such a hypothesis, for the Court to decree provisional measures, it would be necessary for the Inter-American Commission on Human Rights, hereinafter the Commission, to request the measures, and such a request has not been made. To the contrary, it was Mr. Huberth May Cantillano, representative of the victims in this case, who made the request, and at that, *"during the implementation stage of the judgment."*

What remains irrefutable is that the Court has heard the matter in which a request for provisional measures has been made, and the case has ended in a final and not subject to appeal judgment.⁶ Thereby lacking the power to modify or complement it, the Court can only render a decree orders in this regard that unequivocally stem from powers specifically expressed in the Convention, the Statute or Rules of Procedure of the Court.

Indeed, once the judgment in a case has been rendered, the Court can only, pursuant to that which is stated in the Convention, interpret it if this is so required⁷ and inform the General Assembly of the Organization of American States, in the annual report it must provide, if it has not been carried out.⁸ In turn and under such a hypothesis, the

⁴ Art. 27, 1 and 2: *"1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention. 2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission"*

⁵ "Case" and "matter" are, in this regard, synonyms pursuant to the Convention, and it alludes to "matters" only in the text of Article 63(2), while in five other provisions it refers to "cases" (Art.57: power to appear before the Court, Art. 61 its jurisdiction, Art. 65: the obligation to report its work to the General Assembly of American States yearly, Art.68(1): the obligation to comply with the judgments and Art. 69: provide notification. But, it is also in the Statute of the Court, where in two of its provisions it refers to "matters." In one, it refers to the powers of the President of the Court, which may apply to the advisory opinions of the Court as well as administrative matters (Art. 12(2)), and in the others, it refers to the contentious jurisdiction (Art. 19(1), (2) and (3)), and impediments and powers of the judges in contentious matters). Also, the Rules of Procedure of the Court, approved by it, uses the text "case" in 32 of its articles (Arts, 2(3), 2(17), 16, 17, 19, 20, 21, 22, 23, 25, 26, 27(3), 30, 32, 34, 35, 36, 37, 38, 39(1), 39(2), 39(4), 40(1), 40(2), 41(2), 42(6), 43, 44(1), 44(3), 48(1)(b),(d),(e), 51(1) and 51(10). And only in one article, specifically Article 27(2), regarding provisional measures ordered per request of the Commission, does it use the term "matter".

⁶ Art.67, first phrase, of the Convention: *"[t]he judgment of the Court shall be final and not subject to appeal."*

⁷ Art. 67, second phrase, of the Convention. *"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."*

⁸Art. 65 of the Convention: *"To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the*

Statute only mentions the annual report⁹ and, in turn, the Rules of Procedure regulate the judgment on reparations and costs,¹⁰ the interpretation of the judgment,¹¹ the monitoring of compliance with the judgments and other decisions of the Court¹² and the correction of notorious errors regarding edits or calculations.¹³ It must be stated that, particularly given the request made by Mr. May Cantillano that precautionary measure be decreed “*during the implementation stage*” that in the rules of procedure regarding monitoring of compliance, the possibility of rendering provisional measures is also not established.

In sum, based on the principle of public law that only what is established by law can be done and considering that the Court does not have the power to render provisional

previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.”

⁹ Art. 30 Statute of the Court: “*The Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court’s ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.*”

¹⁰ Art. 66: “*1. When no specific ruling on reparations and costs has been made in the judgment on the merits, the Court shall set the date and determine the procedure for the deferred decision thereon. 2. If the Court is informed that the victims or their representatives, the respondent State, and, if applicable, the petitioning State have reached an agreement with respect to the execution of the judgment on the merits, it shall verify that the agreement accords with the Convention and rule accordingly.*”

¹¹ Art. 68: “*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. 2. The Secretary shall transmit the request for interpretation to all those participating in the case and shall invite them to submit any written comments they deem relevant within the time limit established by the Presidency. 3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same Judges who delivered the judgment whose interpretation is being sought. However, in the event of death, resignation, impediment, recusal, or disqualification, the judge in question shall be replaced pursuant to Article 17 of these Rules. 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.*”

¹² Art. 69: “*1. The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations to those reports by the victims or their legal representatives. The Commission shall present observations to the State’s reports and to the observations of the victims or their representatives. 2. The Court may require from other sources of information relevant data regarding the case in order to evaluate compliance therewith. To that end, the Tribunal may also request the expert opinions or reports that it considers appropriate. 3. When it deems it appropriate, the Tribunal may convene the State and the victims’ representatives to a hearing in order to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing. 4. Once the Tribunal has obtained all relevant information, it shall determine the state of compliance with its decisions and issue the relevant orders. 5. These rules also apply to cases that have not been submitted by the Commission.*”

¹³ Art. 76: “*The Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified.*”

measures once a final and not subject to appeal ruling has been rendered by the Court, if it were to grant such measures, this would imply that the case is still under consideration, that the controversy it has heard and resolved in fact continues.

As such, if such measures are rendered it would be important for the Court to recognize that the corresponding judgment, which declared that *"there has been a violation of a right or freedom protected"* in the Convention, and thus, provided *"the injured party be ensured the enjoyment of his right or freedom that was violated"*¹⁴, has not fulfilled its objective, has not been sufficient to *"avoid the irreparable harm"* that the violation caused in each person, that is, that it has not resolved the matter or case that was filed before the Court and thus it is paramount that such measures be issued.

For the abovementioned reasons, I consider that perhaps it should be necessary that in judgments where the Court declares a violation of the Convention, the Court expressly recall the State's general and permanent obligation to *"respect the rights and freedoms recognized"* in the Convention and to *"ensure to all persons subject to their jurisdiction the free and full exercise of those rights,"*¹⁵ and that this specifically includes the obligation to *"avoid irreparable damage to persons"*¹⁶ involved in the case and matter at hand. Perhaps, it would be similarly convenient for the Court to order that, as part of the monitoring of compliance with the respective judgment, that it be informed of the measures adopted by the State to eradicate the situations of extreme gravity or urgency that gave rise to the provisional measures rendered in the case in order to *"avoid irreparable damage to persons."*

And, certainly, all this does not prevent the Court from once again ordering provisional measures regarding the same persons named in the case that was previously decided by the Court, either in a new matter filed before the Court or in one that has not yet been filed, if the Commission so requests.

EDUARDO VIO GROSSI
Judge

¹⁴ Art. 63.1 of the Convention: *"If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."*

¹⁵ Art. 1.1 of the Convention: *"The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."*

¹⁶ Art.63(2) of the Convention.

Pablo Saavedra Alessandri
Secretary