

**Inter-American Court of Human Rights**

**Case of Juan Humberto Sánchez v. Honduras**

**Judgment of November 26, 2003**  
***(Interpretation of the Judgment***  
***of Preliminary Objections, Merits and Reparations)***

In the Juan Humberto Sánchez case,

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

Antônio A. Cançado Trindade, President  
Sergio García Ramírez, Vice President  
Hernán Salgado Pesantes, Judge  
Máximo Pacheco Gómez, Judge  
Oliver Jackman, Judge, and  
Alirio Abreu Burelli, Judge;

also present,

Manuel E. Ventura Robles, Secretary, and  
Pablo Saavedra Alessandri, Deputy Secretary;

in accordance with Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")\* decides on the request for interpretation of the judgment on preliminary objections, merits and reparations delivered by the Court on June 7, 2003, in the Juan Humberto Sánchez case (hereinafter "the judgment delivered"), submitted by the State of Honduras (hereinafter "the State") on October 6, 2003.

**I**

**COMPETENCE AND COMPOSITION OF THE COURT**

1. 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.

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\* In accordance with the Order of the Court of March 13, 2001, on the Transitory Provisions to the Rules of Procedure of the Court, this judgment on interpretation of the judgment on preliminary objections, merits and reparations is delivered according to the Rules of Procedure adopted in the Order of the Court of November 24, 2000.

According to this article, the Court is competent to interpret its judgments and, when examining a request for interpretation, should, if possible, have the same composition that it had when it delivered the respective judgment (Article 58(3) of the Rules of Procedure). On this occasion, the Court is composed of the judges who delivered the judgment on preliminary objections, merits and reparations, interpretation of which has been requested by the State.

## II INTRODUCTION OF THE REQUEST FOR INTERPRETATION AND ITS PURPOSE

2. On October 6, 2003, the State submitted a request for interpretation of the judgment on preliminary objections, merits and reparations, in accordance with Article 67 of the American Convention and Article 58 of the Rules of Procedure.

3. In the request for interpretation, the State formulated considerations on the following aspects of the judgment of June 7, 2003: the composition of the Court at the public hearing and at the time the judgment was delivered; the Court's assessment of the evidence and determination of the proven facts in the judgment; the determination of the reparations and the respective beneficiaries. It also requested the Court to consider that, although the appeal for review does not exist in the American Convention, or in the Statute of the Inter-American Court of Human Rights<sup>1</sup> (hereinafter "the Statute"), or in the Rules of Procedure of the Court, this is not sufficient grounds for rejecting the said remedy, because "in the instant case, [relevant facts] have occurred that the State considers fraudulent"; consequently, the State also files an appeal for review of the judgment that was delivered in relation to the Court's consideration of the document entitled "*Informe Secreto*" [Secret report], which was attached to the application submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") as attachment 1.

## III PROCEEDING BEFORE THE COURT

4. In a note of October 7, 2003, the Secretariat of the Court (hereinafter "the Secretariat") transmitted a copy of the request for interpretation to the Inter-American Commission and to the representative of the victim and his next of kin (hereinafter "the representatives of the victims") and, in accordance with Article 58 of the Rules of Procedure, invited them to present any written arguments they deemed pertinent by October 31, 2003, at the latest.

5. On October 31, 2003, the Commission and the representatives of the victims presented their briefs with observations on the request for interpretation of judgment in the instant case.

## IV ADMISSIBILITY

6. As indicated above (*supra* 2 and 3), the State requested the Court to interpret and review the judgment it had delivered on June 7, 2003.

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<sup>1</sup> Adopted by Resolution No. 448 of the OAS General Assembly at its ninth session, held in La Paz, Bolivia, in October 1979.

7. The Court must now verify whether the terms of the request for interpretation comply with the applicable norms. As a condition for the admissibility of the request for interpretation of judgment, Article 67 of the Convention requires that this request should be made “within ninety days from the date of notification of the judgment.” The Court has confirmed that the judgment on preliminary objections, merits and reparations in this case was notified to the State on July 9, 2003. Therefore, the request for interpretation, dated October 6, 2003, was presented within the appropriate time limit (*supra* 2).

8. Article 29 of the Rules of Procedure of the Court stipulates that:

1. The judgments and orders for discontinuance of a case shall be rendered exclusively by the Court.

[...]

3. Judgments and orders of the Court may not be contested in any way.

9. While the relevant paragraph of Article 58 of the Rules of Procedure establishes that:

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

10. Article 25 of the Statute indicates that:

1. The Court shall draw up its Rules of Procedure.

2. The Rules of Procedure may delegate to the President or to Committees of the Court authority to carry out certain parts of the legal proceedings, with the exception of issuing final rulings or advisory opinions. Rulings or decisions issued by the President or the Committees of the Court that are not purely procedural in nature may be appealed before the full Court.

3. The Court shall also draw up its own Regulations.

11. Regarding objections to the decisions adopted in the proceeding before the Inter-American Court, the Court has stated that:

Only the decisions of the President or of the committees of the Court [constituted in accordance with Article 25 of the Statute of the Court] may be contested before the full Court, but any other decision, including those issued when deciding on preliminary objections may not be contested.<sup>2</sup>

12. In relation to the review of a judgment of the Court, both Article 25 of the Statute, and Articles 6 and 29 of the Rules of Procedure, establish that decisions issued by the President or the committees of the Court, which are not merely

<sup>2</sup> *Castillo Páez case*. Order of the Court of September 10, 1996, *Sistematización de las Resoluciones Procesales de la Corte Interamericana de Derechos Humanos-Compendio: agosto 1986-Junio 2001* [Systematization of the Procedural Decisions of the Inter-American Court of Human Rights-Compendium: August 1986-June 2001]. Series F, No. 1, Tome III, seventh considering paragraph, pp. 892-896; and *Loayza Tamayo case*. Order of the Court of June 27, 1996, Seventh considering paragraph.

procedural in nature, shall be appealed before the full Court. In practice, even though no express reference is made to these principles, they have been used for the Court to modify orders that had been adopted by the President, such as those relating to public hearings and the respective summons, because the parties have appealed against the order of the President,<sup>3</sup> because one of the parties has objected to some of the points in the summons,<sup>4</sup> because of objections when one of the parties has supervening information about impediments concerning the judge *ad hoc*,<sup>5</sup> because of simple observations by the parties,<sup>6</sup> such as when a witness is unable to appear to give testimony; or, even *de officio*,<sup>7</sup> owing *inter alia* to the programming of the Court's activities.

13. In the instant case, the State's requests refer to interpretation and review of the judgment based on Article 67 of the American Convention and Article 58 of the Rules of Procedure of the Court, "because the State is in total disagreement with the meaning and scope of the judgment" and because "the judgments that this [...] Court should deliver, must be reasoned" (*supra* 3).

14. As indicated by several international courts, the task of interpretation that corresponds to an international court entails the clarification of a text, not only as regards the decisions in the operative paragraphs, but also as regards determining the scope, meaning and purpose of its considerations. As this Court has indicated, the request for interpretation of a judgment:

should not be used as a means to appeal but rather it should have as its only purpose to clarify the meaning of a ruling when one of the parties maintains that the text in its operative parts or in its considerations lacks clarity or precision, provided that such considerations have a bearing on the operative parts and, therefore, modification or annulment of the respective judgment cannot be petitioned through a request for interpretation.<sup>8</sup>

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<sup>3</sup> Cf., *Paniagua Morales et al. case*. Order of the Court of November 14, 1997; *Paniagua Morales et al. case*. Order of the Court of September 23, 1997; *Blake case*. Order of the Court of January 28, 1996; and *Cayara case*. Order of the Court of January 30, 1993.

<sup>4</sup> Cf., *Baena Ricardo et al. case*. Order of the Court of January 24, 2000; *Bámaca Velásquez case*. Order of the Court of August 29, 1998; and *Genie Lacayo case*. Order of the Court of November 28, 1995.

<sup>5</sup> Cf., *The case of the 19 Tradesmen*. Order of the Court of September 8, 2003.

<sup>6</sup> Cf., *Las Palmeras case*. Order of the Court of May 28, 2001; *the "La Nación" newspaper case*. Provisional measures. Order of the Court of May 21, 2001; *Case of Haitians and Dominicans of Haitian Origin in the Dominican Republic*. Provisional measures. Order of the Court of August 7, 2000; *Baena Ricardo et al. case*. Order of the Court of January 25, 2000; *Olmedo Bustos et al. case*. Order of the Court of November 9, 1999; *Bámaca Velásquez case*. Orders of the Court of September 1, 1998 and June 16, 1998; and *Fairén Garbí and Solís Corrales case*. Order of the Court of September 28, 1987.

<sup>7</sup> Cf., *Case of the Peace Community of San José de Apartadó*. Provisional measures. Order of the Court of November 13, 2000.

<sup>8</sup> *Cesti Hurtado case*. Interpretation of the judgment on reparations. (Art. 67 of the American Convention on Human Rights). Judgment of November 27, 2001. Series C No. 86, para. 31; similarly, *Ivcher Bronstein case*. Interpretation of the judgment on merits. (Art. 67 of the American Convention on Human Rights). Judgment of September 4, 2001. Series C No. 84, para. 19; *Suárez Rosero case*. Interpretation of the judgment on reparations. (Art. 67 of the American Convention on Human Rights). Judgment of May 29, 1999. Series C No. 51, para. 20; *Loayza Tamayo case*. Request for interpretation of the judgment of September 17, 1997. Order of the Court of March 8, 1998. Series C No. 47, paras. 16 and 18; *Eur. Court H.R., Hentrich v. France, (interpretation), Judgment of 3 July 1997*, Reports of Judgments and Decisions 1997-IV, para. 16; *Eur. Court H.R., Allenet de Ribemont v. France, (interpretation), judgment of 7 August 1996*, Reports of Judgments and Decisions 1996-III, paras. 17 and 23; and *Eur. Court H. R., Ringelsen v. Austria, (interpretation)*, Judgment of 23 June 1973, Series A, Vol. 16, para 13.

15. This Court has also indicated that an appeal for review is admissible in exceptional cases, when a fact that has come to light after the judgment has been delivered affects the contents of the decision, or reveals a substantial defect in it.<sup>9</sup> In the case *sub judice*, there is no reference to a relevant subsequent fact that substantially modifies the ruling of the Court; to the contrary, the request for review is based on invoking various pieces of evidence that, as stated in the judgment,<sup>10</sup> the State did not submit to the consideration of the Court until the public hearing of March 6 and 7, 2003, even though the State had known about these facts since July 1992. The State had the procedural opportunity to refer to this issue during the written stage, on January 11, 2002, in its answer to the application,<sup>11</sup> but did not do so.

16. The Court also observes that the State requests information on the requirements that must be met when submitting a petition to the Commission under Article 46(1)d) of the Convention. In this regard, it is worth noting that the State did not invoke that point before the Court for its consideration at the proper moment, which would have been at the preliminary objections stage; consequently, it cannot expect the Court to examine a matter that was not invoked at the proper time, using a request for interpretation. In view of the above, and as indicated in the previous paragraph, the Court rejects, as inadmissible, the request for interpretation submitted by the State concerning the admissibility of the petition submitted to the Commission.

17. Even though the terms of the request for interpretation are not adjusted to the provisions of Article 67 of the Convention and Article 58 of the Rules of Procedure, the Court decides to examine the following elements indicated by the State in order to clarify their meaning and scope: composition of the Court, assessment of the evidence and proven facts, and reparations.

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18. Before examining the arguments of the parties, the Court rejects the terms used by the State's agent, Sergio Zavala Leiva, in his request for interpretation, which were inappropriate, unnecessary and contrary to the language that should be used in an international litigation and, consequently, before an organ of the inter-American system for the protection of human rights, whether it be the Commission or the Court. Accordingly, as it has on previous occasions in other cases,<sup>12</sup> the Court

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<sup>9</sup> Cf., *Genie Lacayo case. Request for review of the judgment of January 29, 1997*. Order of the Court of September 13, 1997. Series C No. 45, paras. 10-12.

<sup>10</sup> Cf., *Juan Humberto Sánchez case*. Judgment of June 7, 2003. Series C No. 99, paras. 37, 39, 45, 46, 50 and 56.

<sup>11</sup> Cf., *Juan Humberto Sánchez case*, *supra* note 10, para. 16.

<sup>12</sup> Cf., *inter alia*, *Blake case*. Order of the President of the Court of January 30, 1996, *Sistematización de las Resoluciones Procesales de la Corte Interamericana de Derechos Humanos-Compendio: agosto 1986-Junio 2001*. Series F, No. 1, Tome II, pp. 607 and 608; and *Loayza Tamayo case*. Letter of the President, Ref.: CDH-11(1)54/352 of April 16, 1997, *Sistematización de las Resoluciones Procesales de la Corte Interamericana de Derechos Humanos-Compendio: agosto 1986-Junio 2001*. Series F, No. 1, Tome II, p. 609.

requests the agent appointed by the State to abstain from using this type of language in future.

## V THE COMPOSITION OF THE COURT

### *Arguments of the State*

19. With regard to the judgment in this case and the composition of the Court when delivering it, the State indicated that:

- a) The judgment was not reasoned. In this respect, it alleges that “the [j]udgments that [the] Court should deliver must be reasoned; in other words[,] it is imperative that the facts and their legal consequences should be stated with the corresponding reasoning, and they should reflect the unanimous opinion of the judges, which did not occur in the instant case”;
- b) Moreover, Judge Pacheco Gómez signed the judgment, and “he was not present, did not attend, and did not participate in any of the hearings of the corresponding oral proceeding, [in other words] he did not hear the arguments or participate when evidence was adduced,” a procedure that violates the principle of immediacy; and
- c) Lastly, it asserted that, according to the Rules of Procedure and the Statute of the Court, “five members of the Court make quorum; therefore, it d[id] not understand this outrage (*sic*)” with regard to what occurred in the case of Judge Pacheco Gómez.

### *Arguments of the Commission*

20. The Commission requested the Court “to reject the request for interpretation presented by the Honduran State” and to call upon the State to comply immediately with all the elements of the judgment of June 7, 2003, in accordance with Article 68(1) of the American Convention. In its observations, the Commission referred to the “State’s questioning of the principle of procedural immediacy” and indicated that:

- a) Article 57(3) of the Rules of Procedure of the Court establishes that judgments shall be signed by all the judges who participated in the voting, and that a judgment signed by the majority of the judges and the Secretary shall be valid; in the case *sub judice*, from examining the first page of the judgment of June 7, 2003, it can be verified that Judge Pacheco Gómez was part of the composition of the Inter-American Court “and[,] therefore, participated in its deliberation, decision and signature”;
- b) The absence of Judge Pacheco Gómez from the one hearing on the case does not imply that he was impeded from participating in the

deliberation and signature of the judgment in the instant case, in accordance with the two procedural stages established in Article 14 of the Rules of Procedure: the public hearing and the deliberation and subsequent decision in a case. In this respect, “[i]t is evident that the right to participate in the deliberations corresponds to all the judges and that this right is not limited, as the State claims, to those judges who were present at the hearings.” In other words, in the norms that regulate proceedings before the Court, there is no prohibition regarding the impossibility of a judge who has not participated in the public hearing participating in the deliberation, decision and voting of a case; and

- c) Concerning the fact that not all the judges signed the judgment, so that, according to the State, the facts and their legal consequences do not reflect the unanimous opinion of the judges, Article 23 of the Statute and Article 13 of the Rules of Procedure, establish the quorum necessary for the Court’s deliberations, which, in its request for interpretation, the State acknowledges was respected in the judgment. Moreover, according to Article 15 of the Rules of Procedure, it is not necessary for the judgment to be adopted unanimously, but only by the majority of the judges present for the voting of a case.

*Arguments of the representatives of the victims*

21. The representatives of the victims requested the Court “to reject the request for interpretation of the judgment on preliminary objections, merits and reparations delivered by [the Court] in this case on June 7, 2003, filed by the State of Honduras”; however, it made the following observations with regard to the State’s arguments on the composition of the Court:

- a) Regarding “the absence of the signature of all the judges of the Court,” they indicated that Article 24 of the Statute established the quorum for any decisions taken by the Court, and in the instant case this was respected at all times; and
- b) In the press communiqués relating to the public hearing and the judgment, the Court described the participation by Judge Pacheco Gómez. In the latter procedural opportunity, Article 57 of the Rules of Procedure indicates that judgments shall be signed by all the judges who participated in the voting or, even, only by the majority of the judges present. In this case, the judgment is in keeping with the provisions of the Convention, the Statute and the Rules of Procedure, and is also consistent with the constant practice of the Court in its judgments; accordingly, it cannot be understood that there has been an “outrage, by claiming that Judge Pacheco Gómez has been present in the hearings when he was not.”

*Considerations of the Court*

22. Article 19(3) of the Rules of Procedure indicates that:

When, for any reason whatsoever, a judge is not present at one of the hearings or at other stages of the proceedings, the Court may decide to disqualify him from continuing to hear the case, taking all the circumstances it deems relevant into account.

23. Subparagraphs 2 and 3 of Article 6 of the Rules of Procedure of the Court stipulate that:

[...]

2. The Court may appoint other commissions for specific matters. In urgent cases, they may be appointed by the President if the Court is not in session.

3. The commissions shall be governed by the provisions of these Rules, as applicable.

24. While Article 13 of this instrument indicates that:

The quorum for the deliberations of the Court shall consist of five judges.

25. Article 14(1) of the Rules of Procedure of the Court establishes that:

Hearings shall be public and shall be held at the seat of the Court. When exceptional circumstances so warrant, the Court may decide to hold a hearing in private or at a different location. The Court shall decide who may attend such hearings. Even in these cases, however, minutes shall be kept in the manner prescribed in Article 42 of these Rules.

26. In this respect, Article 42 of these Rules of Procedure indicates that:

1. Minutes shall be taken at each hearing and shall contain the following:

a. the names of the judges present;

b. the names of those persons referred to in Articles 21, 22 and 23 of these Rules, who are present at the hearing;

c. the names and personal information of the witnesses, expert witnesses and other persons appearing at the hearing;

d. statements made expressly for the record by the States Parties, by the Commission, by the victims or alleged victims, by their next of kin or their duly accredited representatives;

e. the statements of the witnesses, expert witnesses and other persons appearing at the hearing, as well as the questions posed to them and the replies thereto;

f. the text of the questions posed by the judges and the replies thereto;

g. the text of any decisions rendered by the Court during the hearing.

2. The Agents, Delegates, victims or alleged victims, their next of kin or their duly accredited representatives, and also the witnesses, expert witnesses and other persons appearing at the hearing, shall receive a copy of the relevant parts of the transcript of the hearing to enable them, subject to the control of the Secretary, to correct any errors in transcription. The Secretary shall set the time limits for this purpose, in accordance with the instructions of the President.

3. The minutes shall be signed by the President and the Secretary, and the latter shall attest to their accuracy.

4. Copies of the minutes shall be transmitted to the Agents, the Delegates, the victims and the alleged victims, their next of kin or their duly accredited representatives.

27. In accordance with the above-mentioned provisions, the Court considers that there are three procedural moments or stages, duly defined in the norms, of proceedings before the Court: a) the written stage, which is composed of the brief with the application and its attachments submitted by the Commission; the brief with the answer to the application and its attachments presented by the State, and the brief with requests, arguments and evidence presented by the representatives of the victims. Also, any briefs that are added at the initiative of the Court or of the parties, when sworn statements from witnesses and expert witnesses have been requested, to be assessed as documentary evidence;<sup>13</sup> b) the oral stage includes the public hearing, during which the judges, who attend it, hear the witnesses and expert witnesses offered by the parties, and also the final arguments of the latter; and c) the deliberation and delivery of judgment stage, when the Court meets to examine the arguments of the parties and the probative material contributed by them at the different stages of the proceedings (oral and written stages) in order to deliver a judgment.

28. According to the provisions of Article 25 of the Statute and Articles 6 and 14(1) of the Rules of Procedure, the Court is sovereign to decide the best way of gathering evidence, according to the characteristics of each case and to the principles of procedural economy and legal certainty, and also to determine its composition<sup>14</sup> among the members who attend the public hearing and compose the Court when the deliberations take place.<sup>15</sup> At times, and in exercise of its authority,

<sup>13</sup> Cf., *inter alia*, *Bulacio case*. Judgment of September 18, 2003. Series C No. 100, para. 62; *Juan Humberto Sánchez case*, *supra* note 10, para. 55; *Las Palmeras case. Reparations* (Art. 63(1) Of the American Convention on Human Rights). Judgment of 26 de noviembre de 2002. Series C No. 96, para. 30; *El Caracazo case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of August 29 2002. Series C No. 95, para. 60; *the "Street Children" case (Villagrán Morales et al.)*. *Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 48; *Castillo Páez case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, paras. 40 and 41; and *Loayza Tamayo case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, paras. 54 a) and 57.

<sup>14</sup> In relation to composition, there are specific norms in this regard in Article 54(3) of the American Convention, Article 5 of the Court's Statute and Article 16(1) of the Rules of Procedure. In this respect, the Court has issued its respective interpretations, *Genie Lacayo case*. Order of the Court of May 18, 1995, (Art. 54(3) of the American Convention on Human Rights), *Sistematización de las Resoluciones Procesales de la Corte Interamericana de Derechos Humanos-Compendio: agosto 1986-Junio 2001*. Series F, No. 1, Tome II, fourth and sixth considering paragraphs, pp. 555-568; and *Neira Alegría et al. case*. Order of the Court of June 29, 1992, (Art. 54(3) of the American Convention on Human Rights), *Sistematización de las Resoluciones Procesales de la Corte Interamericana de Derechos Humanos-Compendio: agosto 1986-Junio 2001*. Series F, No. 1, Tome II, paras. 9, 10, 11 and 18, pp. 569-590.

<sup>15</sup> Cf., *inter alia*, *Cantos case*. Judgment of November 28, 2002. Series C No. 97; *Las Palmeras case. Reparacione*, *supra* note 13; *Bámaca Velásquez case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91; *Las Palmeras case*. Judgment of December 6, 2001. Series C No. 90; *Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 89; *Cantoral Benavides case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88; *Cesti Hurtado case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78; *the "Street Children" case (Villagrán Morales et al.)*, *Reparations*, *supra* note 13; *The White Van" case (Paniagua Morales et al.)*. *Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76; *the Constitutional Court case*. Judgment of January 31, 2001. Series C No. 71; *Bámaca Velásquez case*. Judgment of November 25, 2000. Series C No. 70; *Durand and Ugarte case*. Judgment of August 16, 2000. Series C No. 68; *Trujillo Oroza case*. Judgment of January 26, 2000. Series C No. 64; *Cesti Hurtado case*. Judgment of September 29, 1999. Series C No. 56; *the White Van" case (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37; and *Genie Lacayo case*. Judgment of January 29, 1997. Series C No. 30.

the Court has decided in other cases: a) to delegate to some of its members the assessment of part of the evidence;<sup>16</sup> b) to assign some of the judges to collect some probative elements needed for the deliberations of the Court,<sup>17</sup> and even c) by a decision of the Court, to authorize Secretariat personnel to assess determined probative elements that the Court requires in order to decide a specific case,<sup>18</sup> or d) to determine that some testimony and expert reports offered for the purposes of the public hearing by the parties should be rendered by means of a sworn statement or "affidavit."<sup>19</sup>

29. The authority described above arises from the juridical nature of an international human rights court, according to which the same formalities cannot be required as in domestic law;<sup>20</sup> nevertheless, the adversarial principle may not be violated.<sup>21</sup> However, ultimately, it is for the Court to decide the elements of evidence on which it will base its decision.

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<sup>16</sup> In the *Bámaca Velásquez case*, on September 1, 1998, *supra* note 6, the Court decided to authorize the then President of the Court, Judge Hernán Salgado Pesantes, the then Vice President, Judge Antônio Augusto Cançado Trindade and Judge Alirio Abreu Burelli to attend the public hearing convened in Washington, D.C., to hear the testimony of the witnesses, Otoniel de la Roca Mendoza and Nery Angel Urizar García, offered by the Commission.

<sup>17</sup> *Aloeboetoe et al. case*. OEA/Ser.L/V/III.29, doc. 4, January 10, 1994, *Informe Anual de la Corte Interamericana de Derechos Humanos*, 1993, p. 12.

<sup>18</sup> In the *Aloeboetoe et al. case*, the Court described how "its Deputy Secretary [...] will travel to Suriname to obtain additional information on the economic, financial and banking situation of the country, and also to visit the village of Gujaba, in order to obtain information designed to help the Court deliver a judgment adapted to existing conditions in Suriname." (*Aloeboetoe et al. case. Reparations* (Art. 63(1) of the American Convention on Human Rights), Judgment of September 10, 1993. Series C No. 15, para. 40).

<sup>19</sup> *Cf., inter alia, Bulacio case, supra* note 13, para. 62; *Juan Humberto Sánchez case, supra* note 10, para. 55; *Las Palmeras case, Reparations, supra* note 13, para. 30; *El Caracazo case, Reparations, supra* note 13, para. 60; *the "Street Children" case (Villagrán Morales et al.), Reparations, supra* note 13, para. 48; *Castillo Páez case, Reparations, supra* note 13, paras. 40; and 41; and *Loayza Tamayo case, Reparations, supra* note 13, paras. 54 a) and 57.

<sup>20</sup> *Cf., Bulacio case, supra* note 13, para. 67; *Juan Humberto Sánchez case, supra* note 10, para. 30; *the "Five Pensioners" case*. Judgment of February 28, 2003. Series C No. 98, para. 65; *Cantos case, supra* note 15, para. 27; *El Caracazo case, Reparations, supra* note 13, para. 38; *Hilaire, Constantine and Benjamin et al. case*. Judgment of June 21, 2002. Series C No. 94, para. 65; *Trujillo Oroza case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 37; *Bámaca Velásquez case, Reparations, supra* note 15, para. 15; *Cantoral Benavides case, Reparations, supra* note 15, para. 22; *the case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79, para. 89; *Cesti Hurtado case, Reparations, supra* note 15, para. 21; *the "Street Children" case (Villagrán Morales et al.), Reparations, supra* note 13, para. 40; *the "White Van" case (Paniagua Morales et al.), Reparations, supra* note 15, para. 51; *Ivcher Bronstein case*. Judgment of February 6, 2001. Series C No. 74, para. 65; *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, paras. 49 to 51; *Baena Ricardo et al. case*. Judgment of February 2, 2001. Series C No. 72, para. 71; *the Constitutional Court case, supra* note 15, para. 46; *Bámaca Velásquez case, supra* note 15, para. 97; *Cantoral Benavides case*. Judgment of August 18, 2000. Series C No. 69, para. 45; *Durand and Ugarte case*. Judgment of August 16, 2000. Series C No. 68, para. 45; *Paniagua Morales et al. case, supra* note 15, para. 70; *Castillo Páez case*, Judgment of November 3, 1997. Series C No. 34, para. 39; and *Loayza Tamayo case*. Judgment of September 17, 1997. Series C No. 33, para. 42.

<sup>21</sup> *Cf., Bulacio case, supra* note 13, para. 40; *Juan Humberto Sánchez case, supra* note 10, para. 28; *the "Five Pensioners" case, supra* note 20, para. 64; and *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 132 and 133. Similarly, *Cour Eur. D.H., Affaire Gaucher c. France, Arrêt du 9 octobre 2003*, para. 15; *Cour Eur. D.H., Affaire Duriez-*

30. Furthermore, it is worth underscoring that, according to Articles 14 and 42 of the Rules of Procedure, minutes will be taken of all hearings that are held at the seat of the Court or away from it, and they will be accompanied by a transcription of all the statements made during the hearing. This transcription is made available to the members of the Court before it deliberates, and also to the parties so that they may correct any possible factual errors. This transcription and a recording of the entire public hearing allows the judges who so wish to review everything that occurred during the hearing. Consequently, although Judge Pacheco Gómez did not participate in the public hearing, he had detailed information about everything that happened during the hearing, through the corresponding transcriptions and recordings.

31. The State's agent knows that the transcription of the public hearing was received by the parties so that they could correct any factual errors on April 7, 2003.

32. In the instant case, it should be pointed out that the composition specified in the first part of the judgment corresponds to the members of the Court who deliberated and decided the *Juan Humberto Sánchez case* on June 7, 2003, and who have also been members of this Court since the case was first submitted to it on September 8, 2001.

33. In view of the above, the Inter-American Court decides to reject, as inadmissible, the request for interpretation concerning the composition of the Court, during the public hearing and when delivering the judgment in this case.

## VI EVIDENCE ASSESSMENT AND THE PROVEN FACTS

### *Arguments of the State*

34. With regard to the assessment of the evidence and the proven facts, the State alleged that:

- a) There is little regulation concerning the assessment of the evidence in either the Rules of Procedure or the Convention, it therefore asserted that "the freedom to accept the items of evidence must be moderated by the need to weigh the probative value of each item prudently";
- b) Some facts supplied by the State that "should have been added to the body of evidence were bypassed [...] and were not even ruled on." For example, the State alleged that there had been a violation of due process of law and the State's right to defense because certain facts set out in the different briefs, including "the *post mortem* injuries of the victim that the petitioners believe to be torture, [...] and] the statements of the Sánchez sisters who affirmed vehemently [in the domestic proceeding] that he had been abducted by individuals from the 'other side' (of the border, and) that his captors were bearded, masked, (paramilitary) men and not members of the Honduras Army" were not taken into consideration by the Court;

- c) There was abundant evidence, during both the written and oral stages, which proved that the document entitled "*Informe Secreto*" was not valid and that, if had been genuine, "it was the only evidence on which the petition submitted to the Commission could have been based." Likewise, the Court "did not agree to issue an order for helpful evidence, requesting information or verifying by scientific means the authenticity of the 'document' that the State alleges is false, so that there would be no doubt about its authenticity; the Court should have been more thorough in order to establish that the armed men who captured Sánchez were not Honduran soldiers, but guerrillas of the *Frente Morazanista de Liberación Nacional de El Salvador (sic)*, who assumed that Sánchez had deserted their ranks." The judgment, "in a way that is not clear or precise or congruent with the established facts," on the one hand indicates that this document does not form part of the body of evidence of the case; but, on the other hand, "unjustly condemns the State to pay an exorbitant sum of money and to assume another series of responsibilities." Consequently, the judgment should be revised, "in order to establish whether the document 'is true or false', using the technical and scientific methods available to the Court"; and
- d) Lastly, the facts that the judgment considers proven are based "on a mere appreciation or presumption," because the judgment considers the existence of a pattern of forced disappearances and executions in the 1980s in the State in the abstract and, "based only on this subjective assessment condemns the State unjustly for the crime against Sánchez, without having taken into consideration all the probative elements established by the State." The judgment bases its conclusions on the *Velásquez Rodríguez* and *Godínez Cruz* cases and grants the book "*Los hechos hablan por sí mismos*" [The facts speak for themselves] the status of conclusive evidence; but this "is not scientific." In other words, the Court did not take into account that "the captors of Sánchez were not members of the National Army, but [...] leftist guerrillas [*Frente Farabundo Martí para la Liberación Nacional* (hereinafter "FMLN") ...]; and the arguments of the State were not taken into consideration, because the Court was always evidently prejudiced against the State. The Secretary of the Court was duly informed of this when the State answered a request made by the Secretariat that it forward some information on the life expectancy of a Honduran and the minimum wage in the 1990s."

#### *Arguments of the Commission*

35. With regard to these allegations, the Commission made the following observations:

- a) The State had the procedural opportunity to offer arguments concerning the facts that the Court considered proven and, indeed, it did offer them and, "what it is now trying to do, is submit to the Court issues on which [the] Court has already delivered judgment"; consequently, "the State is not asking the Court to clarify its doubts concerning the meaning and scope of the ruling – the only purpose of a request for interpretation – but expects [the] Court to review the

judgment, whose interpretation it is requesting," by asserting that it is based on mere appreciations or presumptions. Therefore, "this request is itself inadmissible";

- b) The "relevant fact" referred to by the State, namely, the non-participation of members of the Army in what happened to Juan Humberto Sánchez, which the State alleges would justify the appeal for review procedure, because it emerged after the application and its answer, which it therefore qualifies as fraudulent (*supra* 34.c, "does not constitute a new and decisive juridical fact, of which the Inter-American Court was unaware when it delivered judgment." Similarly, the evidence to which the State refers and which it contested during the public hearing and in its final written arguments, was examined by the Court at the proper time, and the Court determined that it did not have sufficient elements to verify whether or not the item of evidence was authentic. Therefore, the Court did not take it into consideration within the body of evidence of the case; because there were "numerous items of evidence that proved that [the State] had violated the human rights";
- c) Regarding the State's observation that "the Court did not agree to issue an order for helpful evidence, requesting information or verifying by scientific means the veracity of the 'document' [attachment 1 of the application] which the State had contested as false," the Commission observes that the Court did not take this document into account within the body of evidence of the case and that this type of legal decision is optional and not obligatory for the Court. Therefore, this document, to which the Court did not assign any probative value, cannot justify the review of a ruling that has already acquired the status of an international *res judicata*;
- d) In relation to the State's rejection of the argument concerning the existence of a pattern of disappearances at the time of the facts of the case, the Commission indicated that the State had the procedural opportunity to assert its objection or disagreement. In this respect, the Commission alleged that the Court has established that the interpretation of a judgment is designed to clarify or explain a judicial decision and not to review or modify issues that have already been decided. In particular, the Commission indicated that the Court gave probative value to the book "*Los hechos hablan por sí mismos*," prepared by the Honduran National Human Rights Commission, in its official character and in the exercise of its constitutional functions, with regard to the pattern of forced disappearance. The case of Juan Humberto Sánchez was included in this document "because it was considered symbolic and [because] it showed that, even in July 1992, when the facts of the case occurred, there were still remnants of State disappearances, which had been State practice in the 1980s in Honduras"; and
- e) Lastly, the Commission indicated that it was for the Court to determine the applicable criteria for assessing evidence in each case and, for an international court, the criteria for assessing evidence were less formal

than under domestic legal systems, as inter-American case law had established.

*Arguments of the representatives of the victims*

36. With regard to the request for interpretation presented by the State concerning the assessment of the evidence and the proven facts, the representatives of the victims indicated that:

- a) Article 67 of the American Convention establishes that the judgment of the Court shall be final and not subject to appeal and 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. Likewise, Article 29 of the Rules of Procedure establishes that the judgments and orders of the Court may not be contested in any way;
- b) In this respect, they did not refer to the arguments on the merits of the case, given that "such arguments are not among the premises established for the only recourse stipulated in the Convention[,] relating to interpretation of judgment";
- c) Concerning the interpretation of its decisions, as of its first judgments, the Court has indicated that "the interpretation of a judgment implies clarifying not only the text of the operative paragraphs of the judgment, but also the determination of the scope, meaning and purpose of the decision, in accordance with the considerations set forth in the judgment" and,
- d) In the request for interpretation filed in this case, "there is no mention of aspects of the judgment whose *meaning* or *scope* are in doubt or controversial"; to the contrary, "a review of the judgment is requested by examining the arguments on merits and the way in which the evidence was assessed, facts that were duly considered and justified by [the Inter-American Court]" in the judgment.

*Considerations of the Court*

37. Article 43 of the Rules of Procedure of the Court stipulates:

1. Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, when appropriate, in the document setting out the preliminary objections and in the answer thereto.
2. Evidence tendered to the Commission shall form part of the file, provided that it has been received in a procedure with the presence of both parties, unless the Court considers it essential that such evidence should be repeated.
3. Should any of the parties allege *force majeure*, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.
4. In the case of the alleged victim, his next of kin or his duly accredited representatives, the admission of evidence shall also be governed by the provisions of Articles 23, 35(4) and 36(5) of the Rules of Procedure.

38. Article 44 of these Rules of Procedure indicates that:

The Court may, at any stage of the proceedings:

1. Obtain, on its own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant.
2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful.
3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court.
4. Commission one or more of its members to conduct measures in order to gather evidence.

39. Article 48 of the Rules of Procedure establishes that:

1. Any party may object to a witness before he testifies.
2. If the Court considers it necessary, it may nevertheless hear, for purposes of information, a person who is not qualified to be heard as a witness.
3. The Court shall assess the value of the testimony and of the objections made by the parties.

40. When examining the arguments of the State that are summarized above (*supra* 34), the Court observes that, improperly and on the grounds of a request for interpretation, the State is attempting to modify the facts that the Court declared proven (*supra* 15 and 16), based on the same arguments that the Court heard at the corresponding procedural moments,<sup>22</sup> and that were examined in its deliberations when delivering judgment.

41. Since the State alleges that the judgment suffers from the omission of some aspects and failure to justify others, the Court will now make some pertinent considerations.

42. In its judgment in this case, the Court indicated the criteria that it used in order to assess the evidence.<sup>23</sup> In this respect, the guiding principle is that justice "cannot be sacrificed for mere formalities" and, therefore, international human rights courts have greater flexibility and latitude when assessing evidence, based on the principles of logic and experience.<sup>24</sup> When interpreting Articles 43 and 44 of the Rules of Procedure, the Court has established that documentary evidence shall be admitted if it is presented by the party at the procedural opportunity or, subsequently, when it is supervening or when the Court requests it as helpful evidence.<sup>25</sup>

<sup>22</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 22, 23, 24, 26, 34, 37, 41, 46, 47, 51, 52, 54 and 55.

<sup>23</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 27 to 31, 45 to 60.

<sup>24</sup> *Cf.*, *Bulacio case*, *supra* note 13, para. 42; *Juan Humberto Sánchez case*, *supra* note 10, para. 30; and *the "Five Pensioners" case*, *supra* note 20, para. 65.

<sup>25</sup> *Cf.*, *Bulacio case*, *supra* note 13, paras. 18, 27, 30 and 57; *Juan Humberto Sánchez case*, *supra* note 10, paras. 25 and 45; *the "Five Pensioners" case*, *supra* note 20, paras. 39, 30 and 84; *El Caracazo case, Reparations*, *supra* note 13, para. 29; *Hilaire, Constantine and Benjamin et al. case*, *supra* note 20, para. 42; *Trujillo Oroza case*, *supra* note 20, paras. 21 and 22; *Bámaca Velásquez case, Reparations*, *supra* note 15, paras. 10 and 23; *the case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 20, paras. 68, 69 and 96; *the "Street Children" case (Villagrán Morales et al.)*, *Reparations*, *supra* note 13, para. 34; *the "White Van" case (Paniagua Morales et al.)*, *Reparations*, *supra* note 15, para. 42; *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, *supra* note 20, paras. 30 and 37; *Cantoral Benavides case*, *supra* note 20, para. 22; *Durand and Ugarte case*, *supra* note 15, para. 31; *Loayza Tamayo case, Reparations*, *supra* note 13, para. 26; *Castillo Petruzzi et al. case*. Judgment of May 30, 1999. Series C No. 52; para. 76; *Blake case. Reparations* (Art. 63(1) of the American Convention on Human Rights).

43. In relation to the State's argument that the Court had formed an opinion prematurely because it had requested helpful evidence (*supra* 34.d, this Court considers that this point was opportunely clarified by note Ref. CDH-11,073/131, in which the President of the Court responded to the State that:

The request for information as helpful evidence is one of the attributes of the Court, in accordance with Article 44 of its Rules of Procedure, and its purpose is to ensure that the Court has all the probative evidence necessary so that it may rule in one judgment on preliminary objections, merits and reparations, by virtue of the principle of procedural economy (Articles 36(6) and 56(1) of the Rules of Procedure).

This principle was supported by the Court when assessing the evidence in this case,<sup>26</sup> in keeping with the Court's general practice in this matter.<sup>27</sup>

44. With regard to some of the documents relating to the State's responsibility for the extrajudicial execution of Juan Humberto Sánchez,<sup>28</sup> to which the State referred in its brief with the request for interpretation, it should be pointed out that they were presented during the public hearing and not when answering the application, which means that some of these documents were extemporaneous, according to the established procedural rules.<sup>29</sup> Moreover, regarding the State's allegation that its arguments on torture and the responsibility of those who assassinated Juan Humberto Sánchez were not taken into consideration, this Court has indicated repeatedly that, as a judicial organ for the protection of human rights, in the proceedings that it hears, the parties do not appear as "defendants in a criminal action, because the Court does not punish those individuals who are guilty of violating human rights [... but, to the contrary, its] function [...] is to protect the victims and to provide for the reparation of damages resulting from the acts of the responsible States."<sup>30</sup> It is for the State, through its domestic judicial organs, to determine the identity of the intellectual authors and the perpetrators of the offenses or crimes, and for the Court to establish whether public authorities have participated

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Judgment of January 22, 1999. Series C No. 48, para. 16; *Suárez Rosero case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 33; *Durand and Ugarte case. Preliminary objections*. Judgment of May 28, 1999. Series C No. 50, paras. 21, 25, 27; and *Castillo Páez case, Reparations, supra* note 13, para. 19.

<sup>26</sup> *Juan Humberto Sánchez case, supra* note 10, paras. 25, 27 to 31 and 45 to 56.

<sup>27</sup> *Cf., Bulacio case, supra* note 13, para. 41; *Juan Humberto Sánchez case, supra* note 10, para. 29; *Las Palmeras case, Reparations, supra* note 13, para. 17; *El Caracazo case, Reparations, supra* note 13, para. 37; *Hilaire, Constantine and Benjamin et al. case, supra* note 20, para. 64; *Trujillo Oroza case, Reparations, supra* note 20, para. 36; *Bámaca Velásquez case. Reparations, supra* note 15, para. 14; *Cantoral Benavides case, Reparations, supra* note 15, para. 21; *Cantoral Benavides case, Reparations, supra* note 15, para. 21; *Cesti Hurtado case, Reparations, supra* note 15, para. 20; *the "Street Children" case (Villagrán Morales et al.), Reparations, supra* note 13, para. 39; *the "White Van" case (Paniagua Morales et al.), Reparations, supra* note 15, para. 50; and *Castillo Páez case. Reparations, supra* note 13, para. 37.

<sup>28</sup> *Juan Humberto Sánchez case, supra* note 10, paras. 37, 39, 45, 46 and 56.

<sup>29</sup> *Juan Humberto Sánchez case, supra* note 10, paras. 23, 37 and 46.

<sup>30</sup> *The "Street Children" case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 75; and *the "White Van" case (Paniagua Morales et al.)*, *supra* note 15, para. 91; similarly, *Suárez Rosero case*. Judgment of November 12, 1997. Series C No. 35, para. 37; *Godínez Cruz case*. Judgment of January 20, 1989. Series C No. 5, para. 140; and *Velásquez Rodríguez case*, Judgment of July 29, 1988. Series C No. 4, para. 134.

in, supported or tolerated the human rights violations that involve the international responsibility of the State for violation of the Convention.<sup>31</sup>

45. As this Court has indicated in the specific case:<sup>32</sup>

185. At the time of the [...] judgment, after more than ten years, those responsible for the detention, torture, and extrajudicial execution of Juan Humberto Sánchez have not yet been identified and punished, for which reason there is a situation of grave impunity regarding the respective facts. This situation constitutes a violation of the aforementioned duty of the State, it is injurious to the victim, to his next of kin and to society as a whole, and it fosters chronic recidivism of those human rights violations.<sup>33</sup>

186. It is therefore necessary, as the Court has set forth both in [the] judgment [...] and in previous cases,<sup>34</sup> for the State to conduct an effective investigation of the facts of this case, to identify those responsible for them, both the direct perpetrators and those who instigated them, as well as possible accessories after the fact, and to punish them administratively and criminally as appropriate. The domestic proceedings involved must address the violations of the right to life and of the right to humane treatment to which this judgment refers. The next of kin of the victim must have full access and the capacity to act, at all stages and levels of the said investigations, in accordance with domestic laws and the provisions of the American Convention. The results of those investigations must be made known to the public, for Honduran society to know the truth.

46. In relation to the arguments concerning attachment 1 to the application, entitled "*Informe Secreto*", in its judgment of June 7, 2003, and after the necessary considerations,<sup>35</sup> this Court decided to omit this document from the body of evidence and, therefore, the measures proposed by the State to verify the authenticity of this document are unnecessary. The Court also considered that there was sufficient other evidence to confirm the facts, and this position is consistent with the broad attributes with regard to probative material that Article 44 of its Rules of Procedure grants the Court.

47. The Court also considers, as it has in previous cases, that in proceedings to determine human rights violations, the State's defense cannot be based on the impossibility of the petitioner to allege evidence when such evidence cannot be obtained without the State's cooperation, so that the parties and, in particular the State, must provide the Court with all the necessary probative elements.<sup>36</sup>

<sup>31</sup> Cf. *The "Street Children" case (Villagrán Morales et al.)*, supra note 30, para. 75; *the "White Van" case (Paniagua Morales et al.)*, supra note 15, para. 91; and *Blake case*. Judgment of January 24, 1998. Series C No. 36, paras. 76 to 78.

<sup>32</sup> *Juan Humberto Sánchez case*, supra note 10, paras. 185 and 186.

<sup>33</sup> Cf. *Las Palmeras case, Reparations*, supra note 13, para. 53.a); *El Caracazo case, Reparations*, supra note 13, para. 117; and *Trujillo Oroza case, Reparations*, supra note 20, paras. 97, 101 and 112.

<sup>34</sup> Cf. *Las Palmeras case, Reparations*, supra note 13, para. 66; *El Caracazo case, Reparations*, supra note 13, para. 118; and *Trujillo Oroza case, Reparations*, supra note 20, para. 99.

<sup>35</sup> *Juan Humberto Sánchez case*, supra note 10, paras. 47 to 50.

<sup>36</sup> Cf. *The case of the Mayagna (Sumo) Awas Tingni Community*, supra note 20, para. 99; *Baena Ricardo et al. case*, supra note 20, para. 81; *Bámaca Velásquez case*, supra note 15, para. 152; *Cantoral Benavides case*, supra note 20, para. 55; *Durand and Ugarte case*, supra note 15, para. 51; *the "Street Children" case (Villagrán Morales et al.)*, supra note 30, para. 251; *Neira Alegria et al. case*. Judgment of January 19, 1995. Series C No. 20, para. 65; *Gangaram Panday case*. Judgment of January 21, 1994. Series C No. 16, para. 49; *Godínez Cruz case*, supra note 30, para. 141; and *Velásquez Rodríguez case*, supra note 30, para. 135.

48. With regard to the State's objection to the report of the former Ombudsman and expert witness at the public hearing, Leo Valladares Lanza, the Court observes that this objection was rejected by the Court, because it considered that it was not sufficient to invalidate the expertise.<sup>37</sup> Moreover, the State did not object to the book provided by this expert witness, when the Court forwarded it to the State on March 3, 2003.<sup>38</sup> Also, owing to the special nature of this international organ, the Court has established that those document which are not contested are presumed to be valid<sup>39</sup> and has always avoided making a rigid determination of the amount of evidence needed to support a judgment.<sup>40</sup> This occurred in the case *sub judice*, in which the existence and evidence of a pattern of extrajudicial executions was not based, as the State asserts, merely on the book of the former Ombudsman but also, among other matters, because this Court was aware of the facts owing to the statements of witnesses offered by parties in previous cases against the same State concerning facts that occurred at the same time<sup>41</sup> as the facts of this case.

49. In view of the foregoing, the Inter-American Court decides to reject the requested interpretation relating to the proven facts and evidence used for the ruling in this case.

## VII REPARATIONS

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<sup>37</sup> *Juan Humberto Sánchez case, supra* note 10, para. 59.

<sup>38</sup> *Cf.* Note of the Secretariat: Ref CDH 11,073/101; and *Juan Humberto Sánchez case, supra* note 10, para. 53.

<sup>39</sup> *Cf., inter alia, Bulacio case, supra* note 13, para. 57; *Juan Humberto Sánchez case, supra* note 10, para. 45; *the "Five Pensioners" case, supra* note 20, para. 84; and *Cantos case, supra* note 15, para. 41.

<sup>40</sup> *Cf., Bulacio case, supra* note 13, para. 42; *Juan Humberto Sánchez case, supra* note 10, para. 30; *the "Five Pensioners" case, supra* note 20, para. 65 and *Cantos case, supra* note 15, para. 27; similarly, *Corfu Channel, Merits, Judgment I.C.J. Reports 1949: Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, paras. 29-30 and 59-60.

<sup>41</sup> *Cf., Godínez Cruz case, supra* note 30, paras. 153 b), 165, 167 and 198; *Velásquez Rodríguez case, supra* note 30, paras. 147.b), 157 and 188; *Statement made by Leonel Casco Gutiérrez before the Inter-American Court on March 3, 2003; Report submitted by Leo Valladares Lanza before the Inter-American Court on March 3, 2003; Report submitted by Héctor Fortín Pavón before the Inter-American Court on March 4, 2003; article in the daily newspaper Tiempo, "Tres asesinatos en quince días y la inseguridad verdadera"* [Three assassinations in a fortnight and a real lack of security] *dated July 31, 1992; article in the daily newspaper Tribuna, "Asesinatos Ideológicos son los de Borjas y Cayo Eng Lee"* [Borjas and Cayo Eng Lee were assassinated for ideological reasons] *dated July 31, 1992; article in the daily newspaper Prensa "Piden interpelación de jefes militares"* [Request that senior members of the army should be questioned] *dated September 18, 1992*, in a file at the Court's Secretariat entitled "Anexos correspondientes al escrito de observaciones de los representantes de la presunta víctima y sus familiares ante la Corte Interamericana de Derechos Humanos" [Attachments corresponding to the brief with observations of the representatives of the alleged victim and his next of kin before the Inter-American Court of Human Rights], attachment 7, pp. 22 to 24; and *Sworn statement by Celso Sánchez Domínguez made on February 28, 2003*, p. 51-59 in a file at the Court's Secretariat entitled "Transcripción de audiencia pública. Excepciones/Fondo/ Reparations" [Transcription of public hearing. Objections/Merits/Reparations], pp. 51 to 59; and National Human Rights Commissioner "Los hechos hablan por sí mismos. Informe preliminar sobre los desaparecidos en Honduras 1980-1993" [The facts speak for themselves. Preliminary report on the disappeared in Honduras 1980-1993], second edition. Editorial Guaymurás, Tegucigalpa, 2002, in a file at the Court's Secretariat entitled "Transcripción de audiencia pública. Excepciones/Fondo/Reparations", pp. 255-260 and 383-386.

*Arguments of the State*

50. With regard to the Court's application of Article 63 of the American Convention, the State alleged that:

- a) When determining compensation, the Court should have left the proceeding open so that the parties could agree on the payment of compensation, and only if they could not reach agreement, could the Court establish the respective amounts; this procedure was used in previous cases against Honduras. The determination of the amount of the compensation can be negotiated by the parties and "they have exclusive competence to establish this; only if they cannot reach agreement, can the Court establish the amount." However, the State stressed that these observations were made "without detriment to [the Court] ruling in the [judgment] on the measures of another nature [non-pecuniary] (deriving from the obligation to respect and ensure contained in [Article] 1 of the Convention, such as the investigation of the facts relating to the disappearance of the victims, or to the punishment of those responsible, which is closer to the broader concept of 'reparation'[]). In this respect, the State indicated that "the [...] Court appears to have failed to distinguish the difference between 'reparation' and 'compensation[']', and the Court's function in the determination of reparations and compensation in accordance with the interpretation of Article 63(1) of the American Convention and "to have deviated [...] from its own case law." It also indicated that the Court should abide by criteria of "a very objective nature, and compensation should never be discretionary or arbitrary as it appears to be in the judgment" and the criteria must be based on damage revealed by the proven facts and not "mere disperse elements that are unconnected to the litigation or presumptions of responsibility induced by exogenous factors";
- b) The judgment is not clear as regard the procedure used to determine the amounts of the compensation for pecuniary and non-pecuniary damage, because "the formula used is not indicated";
- c) The "judgment goes to far and exceeds the faculties or attributes invested in the Court, because [...] the amount of the compensation for pecuniary and non-pecuniary damage is unjustifiably inflated or increased by granting this benefit, not only to the persons who are the legal successors of the victim, but to all his relatives." It added that the Court had deviated from its own practice on determining the successors, established in the *Aloeboetoe et al. case*;
- d) The judgment violated "legal writings on the law [of succession] and the case law of the Court," because "without any legal basis, it establishes capriciously," that the daughters and companions of Juan Humberto Sánchez should be considered the beneficiaries of compensation for his loss of earnings. The State added that Sánchez, as the operator of *Radio Venceremos*, did not have a regular employment and did not receive any salary, "therefore, it cannot be adduced that all the persons mentioned in the judgment, with the exception of his daughters and his mother, would have the right to

compensation, because, since the victim did not have a regular income, it cannot be adduced that all the other persons were financially dependent on him; as this was inferred in the judgment, it was merely an opinion of the Court without any legal basis”;

- e) The concept of “injured party” was not properly defined in the judgment, because not only was the status of beneficiaries of reparations established for the victim’s successors, but also “for relatives who cannot be considered thus.” In any case, “none of those who are considered to be relatives of the victim would be exempt from the need to prove their identity and their relationship with the victim[, since i[n] the instant case, the victim and the members of his family who have the right to succession live in a village with access to the Municipality of Colomoncag[u]a, where there is a Registry Office”;
- f) “Over and above the principles included in the general rule on succession, it may be established exceptionally that, in addition to the victim’s successors, compensation should also be extended to those who have had a dependent relationship with the victim.” Regarding the victim’s companions, “according to the law, this right would only correspond to the concubine with whom he was actually living, and not to the previous ones, who could be legally ineligible to succeed.” In the judgment, the benefit of compensation is granted to two companions of the victim, and the Court has not specified the rules governing this decision;
- g) Juan José Vijil, who, together with the victim’s mother, is the beneficiary of compensation of US\$8,200.00 (eight thousand two hundred United States dollars) for expenditures relating to the search, medical expenses and travel, “is not related in any way to [Juan Humberto] Sánchez; [a relationship] by affinity could be presumed, if he had been married to the latter’s mother, but this has not been proved [...], nor has it been proved that he was financial dependent” on Juan Humberto Sánchez;
- h) Likewise, the judgment established payment of compensation in favor of the sisters of Juan Humberto Sánchez, “when his only beneficiaries or successors are his minor children; according to the State’s domestic legislation and [to] the rules of succession, wives only have a right to the conjugal quarter part, and parents, only when they have no resources, [which] has not been [...] proved, to a quarter part”; and
- i) The Court ordered that the compensation for non-pecuniary damage corresponding to Juan Humberto Sánchez should be distributed not only among his daughters, “the sole successors,” but also among his companions and his parents, although “Juan José Vijil Hernández was not [a parent].” Likewise, payment of compensation for non-pecuniary damage caused directly to them was also ordered to Vijil Hernández, as well as “to other relatives [of the victim], who did not form part of his household.”

51. The Commission stated that “it consider[ed] the questioning [of reparations] inadmissible, because [this does not constitute the purpose] of a request for interpretation.” However, it made the following observations on this point:

- a) The State’s argument that the compensation imposed by the Court is “discretionary and arbitrary” is a direct questioning of the content of the judgment, which is contrary to the definition of the figure of interpretation of judgment established in the Convention. Regarding the amount of the compensation, the criteria used by the Court for pecuniary and non-pecuniary damages “are abundant and absolutely clear” and are included in paragraphs 158 to 178 of the judgment. In this respect, “it is plain that, in its request, the State did not assert a doubt to be clarified in the terms of Article 68(1) of the Convention, but an evident disagreement about the amounts established by the Court and, with regard to which, it is basically seeking a modification using a mechanism that is not contemplated by the American Convention, and which should be rejected summarily” by the Court;
- b) The State’s procedural objection based on the merging of the stages of the proceeding before the Court “disregards one of the central objectives of the [...] latest reform of the Rules of Procedure of [the Court], which consists in ensuring greater promptness and flexibility to the proceeding[, ...] and which establishes as a general principle that the Court shall rule [...] on the merits of the case and also on reparations and costs in the same judgment”;
- c) The Rules of Procedure of the Court, contrary to those of the Commission, do not include a special procedure for the negotiation of a friendly settlement between the parties, but recognize their capacity to agree on a friendly settlement and, should they reach an agreement, authorize the Court to strike the case from its list, in accordance with Article 53 of the Rules of Procedure;
- d) “The purpose of compensation is to achieve the reparation or *restitutio in integrum* of the damage effectively suffered owing to the fact that violated the human rights” and, in this respect, Article 63(1) of the American Convention establishes “ample discretion with regard to reparation, which is not subject to procedural analyses or to limitations as regards the relationship with the victim of those who have effectively been affected”;
- e) Consequently, the Court considered that the expression “next of kin of the victim” should be understood as a broad concept encompassing all those persons connected by a close relationship, who could have the right to receive compensation, without considering domestic law in this sphere. The interpretation of this norm has allowed the Court to include companions or any other person in this category, according to the circumstances of the case; and
- f) No interpretation is necessary as regards the persons against whom the violations were committed or the criteria for determining the beneficiaries of the reparations “in view of the manifest clarity” of paragraphs 155 and 156 of the Court’s judgment on this point.

*Arguments of the representatives of the victims*

52. With regard to the arguments of the State concerning reparations, the representatives of the victims indicated that:

- a) As a result of the recent regulatory reforms, "procedural economy has been privileged" in cases before the Court, since Article 36(6) of the Rules of Procedure of the Court, which entered into force on June 1, 2001, authorizes the Court to decide on the preliminary objections and the merits of the case in a single judgment, while Article 56(1) of the Rules of Procedure establishes a separate procedure for deciding reparations only "when no specific ruling on reparations has been made in the judgment on the merits";
- b) Although it is true that the Court had the practice of delivering three judgments in each case (preliminary objections, merits and reparations), as it did in the *Velásquez Rodríguez case*, "this practice has changed owing to the new Rules of Procedure";
- c) "The determination of compensation, and also its amount, is adapted to the criteria established by the case law of the Court and the principles of international law generally recognized in this matter";
- d) Regarding "the violation of legal writings on succession," according to Article 27 of the 1969 Vienna Convention on the Law of Treaties, a State may not invoke the provisions of internal law as justification for its failure to perform a treaty;
- e) Likewise, Article 68(1) of the American Convention establishes that the States undertake to comply with the judgment of the Court in any case to which they are parties;
- f) "The State has made no distinction between the victim's heirs and [...] the next of kin who are directly affected by a violation that makes them eligible for reparation, a situation that is determined clearly in sections XIII to XV of the judgment";
- g) The representatives had indicated clearly the family or affective relationship that linked each person to the victim in its written and oral arguments, "and they were not contested by the State," so that the State cannot request a review of this point once judgment has been delivered;
- h) The determination of the beneficiaries and of the amount corresponding to each of them for compensation established in the judgment coincides with the elements established by the Court in its case law. Specifically, the representatives considered that in the judgment on reparations in the *Villagrán Morales et al. case*, the Court had indicated "that the next of kin of a deceased person must be considered beneficiaries of reparations as successors and, also, as victims of a violation" and that the damage caused to other next of kin

of the victim or to third parties, owing to the victim's death, can be claimed in their own right; and

- i) During the case, violations of the rights of the closest family "members by blood and by marriage," for whom the facts that occurred "doubtless gave rise to such a degree of anguish, caused directly by the acts and omissions of the Honduran State, that the Court took this into consideration when delivering its judgment."

#### *Considerations of the Court*

53. Article 63(1) of the American Convention establishes that:

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.

54. According to Article 63(1) of the Convention, once the violations have been established, the Court shall rule on the corresponding reparations. This norm has been complemented by Article 31 of the Rules of Procedure of the Court, which establishes that Article 63(1) of the Convention "may be invoked at any stage of the proceedings," in other words, according to its Rules of Procedure, the Court is not required, as the State asserts, to rule separately on the reparations, or to submit to the consideration of the parties the possibility of reaching a friendly settlement. In this respect, the judgment of June 7, 2003, in keeping with the Court's consistent case law declared that:<sup>42</sup>

147. Pursuant to the foregoing explanation in previous chapters, the Court has found, in connection with the facts in this case, that Articles 7, 5, 4, 8 and 25 of the American Convention were breached, all of them in combination with Article 1(1) of that Convention, to the detriment of Juan Humberto Sánchez and, in some of these instances, with one or all of his next of kin [...]. This Court has reiterated, in its case law, that it is a principle of international law that all violations to an international obligation that have caused harm generate an obligation to adequately redress said harm.<sup>43</sup> To this end, the Court has based itself on Article 63(1) of the American Convention [...].

148. As the Court has pointed out, Article 63(1) of the American Convention reflects a common law rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. Thus, when an illegal act is attributable to a State, the latter incurs immediately the international responsibility for violation of an international rule, with the attendant duty to redress and to make the consequences of the violation cease.<sup>44</sup>

149. Redress of the harm caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not possible, as in the instant

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<sup>42</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 147 to 150.

<sup>43</sup> *"Five Pensioners" case*, *supra* note 20, para. 173; *Cantos case*, *supra* note 15, para. 66; *Las Palmeras case, Reparations*, *supra* note 13, para. 37; *El Caracazo case, Reparations*, *supra* note 13, para. 76; and *Trujillo Oroza case, Reparations*, *supra* note 20, para. 60.

<sup>44</sup> *Cf. "Five Pensioners" case*, *supra* note 20, para. 174; *Cantos case*, *supra* note 15, para. 67; *Las Palmeras case, Reparations*, *supra* note 13, para. 37; and *El Caracazo case, Reparations*, *supra* note 13, para. 76.

case, this international Court must order the adoption of a set of measures that, in addition to ensuring respect for the rights abridged, will provide reparation for the consequences caused by the infractions and payment of a compensation for the harm caused in the pertinent case.<sup>45</sup> The obligation to redress, which is regulated in all its aspects (scope, nature, modes, and determination of beneficiaries) by international law, cannot be modified by the State nor can it avoid compliance with it by invoking domestic legal provisions.<sup>46</sup>

150. As regards the violation of the right to life and certain other rights (personal liberty and the right to humane treatment, fair trial and judicial protection), if *restitutio in integrum* is not possible and given the nature of the right infringed, reparation is carried out, *inter alia*, according to the practice of international case law, by means of fair pecuniary compensation when this is appropriate, to which it is necessary to add the positive measures that the State must adopt to ensure that injurious acts such as those of the instant case do not recur.<sup>47</sup>

55. First, the Court emphasizes that Chapter V of its Rules of Procedure allows the early conclusion of a proceeding, due either to a stay in the proceeding or a friendly settlement.<sup>48</sup> This early conclusion of the proceeding before the Court arises from the initiative of the parties, not of the Court, and has occurred in numerous cases.<sup>49</sup> In the case *sub judice*, and as can be seen from the case files before the

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<sup>45</sup> Cf. *Las Palmeras case, Reparations*, supra note 13, para. 38; *El Caracazo case, Reparations*, supra note 13, para. 77; and *Hilaire, Constantine and Benjamin et al. case*, supra note 20, para. 203.

<sup>46</sup> Cf. *Las Palmeras case, Reparations*, supra note 13, para. 38; *El Caracazo case, Reparations*, supra note 13, para. 77; *Hilaire, Constantin and Benjamin et al. case*, supra note 20, para. 203. See also, *Bulacio case*, supra note 13, para. 72; *Juan Humberto Sánchez case*, supra note 10, para. 149; *Cantos case*, supra note 15, para. 68; *Las Palmeras case, Reparations*, supra note 13, para. 38; *El Caracazo case, Reparations*, supra note 13, para. 77; *Hilaire, Constantine and Benjamin et al. case*, supra note 20, para. 203; *Trujillo Oroza case, Reparations*, supra note 20, para. 61; *Bámaca Velásquez case, Reparations*, supra note 15, para. 39; *Cantoral Benavides case, Reparations*, supra note 15, para. 41; *Cesti Hurtado case, Reparations*, supra note 15, para. 34; the “Street Children” case (*Villagrán Morales et al.*), *Reparations*, supra note 13, para. 61; the “White Van” case (*Paniagua Morales et al.*), *Reparations*, supra note 15, para. 77; *Blake case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 32; *Suárez Rosero case, Reparations*, supra note 25, para. 42; *Castillo Páez case, Reparations*, supra note 13, para. 42; *Caballero Delgado and Santana case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of January 29, 1997. Series C No. 31, para. 16; *Neira Alegría et al. case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 37; *El Amparo case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 15; *Aloeboetoe et al. case, Reparations*, supra note 18, para. 44; *Godínez Cruz case. Compensatory damages* (Art. 63(1) of the American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 8, para. 28; and *Velásquez Rodríguez case. Compensatory damages* (Art. 63(1) of the American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 30.

<sup>47</sup> Cf. *Las Palmeras Case, Reparations*, supra note 4, para. 37; *El Caracazo Case, Reparations*, supra note 4, para. 77; and *Trujillo Oroza Case, Reparations*, supra note 22, para. 62.

<sup>48</sup> Cf., *Bulacio case*, supra note 13; *Barrios Altos case*. Judgment of March 14, 2001. Series C No. 75; *Trujillo Oroza case*, supra note 15; *El Caracazo case*. Judgment of November 11, 1999. Series C No. 58; *Benavides Cevallos case*. Judgment of June 19, 1998. Series C No. 38; *Garrido and Baigorria case*. Judgment of February 2, 1996. Series C No. 26; *El Amparo case*. Judgment of January 18, 1995. Series C No. 19; *Maqueda case*. Order of January 17, 1995. Series C No. 18; and *Aloeboetoe et al. case*. Judgment of December 4, 1991. Series C No. 11.

<sup>49</sup> Cf., *Bulacio case*, supra note 13, paras. 25, 27, 31 to 33; *El Caracazo case, Reparations*, supra note 13, para. 51; *Trujillo Oroza case, Reparations*, supra note 20, para. 5; *Barrios Altos case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 87, para. 3; *Barrios Altos case*, supra note 48, paras. 34 and 35; *Trujillo Oroza case*, supra note 15, paras. 36 and 37; *El Caracazo case*, supra note 48, paras. 37 and 39; *Garrido and Baigorria case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, paras. 16 and 17; *Benavides Cevallos case*, supra note 48, paras. 35 and 36; *Garrido and Baigorria case*,

Court, the parties did not submit for its consideration or decision any of the established grounds for the early conclusion of the proceeding.<sup>50</sup> Regarding the State's affirmation that it is the parties who must agree on the reparations and, then, the Court, it should be noted that, in general, once the Court has ruled on the merits, it passes immediately to the reparations stage or, in the same judgment, rules on preliminary objections, merits and reparations.<sup>51</sup> It is worth stressing that the possibility of reaching a friendly settlement between the parties, with the direct intervention of an organ of the inter-American system for the protection of human rights, was entrusted to the Inter-American Commission by Article 48(1)f) of the American Convention, so that it could take the necessary steps to ensure that the States would provide a solution to the possible human rights violations in the domestic sphere. However, as the Court has affirmed, "the Commission should attempt such friendly settlement only when the circumstances of a controversy make that option suitable or necessary at the Commission's sole discretion."<sup>52</sup>

56. Regarding the objections raised by the State concerning the compensation, it is worth indicating that, as in the case of other international courts, and as has been pointed out repeatedly in this judgment, the Court has flexible standards for assessing evidence (*supra* 42, 46 and 48) and applying sound criticism<sup>53</sup> when establishing the reparations in a case and, if applicable, the respective compensation. In order to determine of the amounts of the compensation, international courts usually use the principle of fairness according to the circumstances of the specific case, and thus order reasonable compensation for the damage caused; in general, they do not base this on invariable, rigid formulas as the State suggests.<sup>54</sup> To the contrary, and as this Court has indicated on repeated

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*supra* note 48, paras. 24, 25 and 27; *El Amparo case, Reparations*, *supra* note 46, paras. 4 and 5; *El Amparo case*, *supra* note 48, paras. 19 and 20; *Maqueda case*, *supra* note 48, paras. 26 and 27; and *Aloeboetoe et al. case*, *supra* note 48, para. 22.

<sup>50</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 9 to 26.

<sup>51</sup> *Cf., inter alia, Bulacio case*, *supra* note 13; *El Caracazo case, Reparations*, *supra* note 13; *Trujillo Oroza case, Reparations*, *supra* note 20; *Trujillo Oroza case*, *supra* note 15, paras. 36 and 37; *El Caracazo case*, *supra* note 48; *Baena Ricardo et al. case*, *supra* note 20; and *the Constitutional Court case*, *supra* note 15.

<sup>52</sup> *Genie Lacayo case*, *supra* note 9, para. 39; *Caballero Delgado and Santana case. Preliminary objections*. Judgment of January 21, 1994. Series C No. 17, para. 26; *Godínez Cruz case, Preliminary objections*, Judgment of June 26, 1987. Series C No. 3, para. 47; *Fairén Garbí and Solís Corrales case, Preliminary objections*, Judgment of June 26, 1987. Series C No. 2, para. 49; and *Velásquez Rodríguez case, Preliminary objections*, Judgment of June 26, 1987. Series C No. 1, para. 44.

<sup>53</sup> *Cf., Bulacio case*, *supra* note 13, para. 42; *Juan Humberto Sánchez case*, *supra* note 10, para. 30; *the "Five Pensioners" case*, *supra* note 20, para. 65; and *Cantos case*, *supra* note 15, para. 27.

<sup>54</sup> *Gloyal v. UNESCO*, 43 I.L.R. 396 (Administrative Tribunal of the International Labour Organization, 1969); Administrative Tribunal of the International Labour Organization (Advisory Opinion) 1956, I.J.C. 77. *Cf., inter alia, Bulacio case*, *supra* note 13, paras. 84, 88, 96, 100, 102, 150, 152 and 153; *Juan Humberto Sánchez case*, *supra* note 10, paras. 163, 166, 168, 172, 177, 193, 194 and 195; *the "Five Pensioners" case*, *supra* note 20, paras. 180, 181 and 182; *Cantos case*, *supra* note 15, para. 72; *Las Palmeras case, Reparations*, *supra* note 13, paras. 47 and 84; *El Caracazo case, Reparations*, *supra* note 13, paras. 85, 86, 87, 94, 99, 100, 101, 102, 103, 104, 106, 107, 109 and 133; *Hilaire, Constantine and Benjamin et al. case*, *supra* note 20, paras. 215, 216, 218 and 219; *Trujillo Oroza case, Reparations*, *supra* note 20, paras. 73, 74 a), 74 b), 77, 83, 89, 128 and 129; *Bámaca Velásquez case, Reparations*, *supra* note 15, paras. 51 b), 54 a), 54 c), 56, 60, 66 and 91; *Cantoral Benavides case, Reparations*, *supra* note 15, paras. 50, 51, 53, 57, 62 and 87; *the case of the Mayagna (Sumo) Awas Tingni Community*, *supra* note 20, paras. 167, 168 and 169; *Cesti Hurtado case, Reparations*, *supra* note 15, paras. 51, 53, 72 and 73; *the "Street Children" case (Villagrán Morales et al.)*, *Reparations*, *supra* note 13, paras. 80, 84, 88, 90 and 109; *the White Van" case (Paniagua Morales et al.)*, *Reparations*, *supra* note 15, paras. 99,

occasions, including in the instant case,<sup>55</sup> part of the transcendental function of an international court is to carry out a dynamic interpretation of the treaties within its competence. As this Court indicated in Advisory Opinion No. 16, *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*:

This guidance is particularly relevant in the case of international human rights law, which has made great headway thanks to an evolutive interpretation of international instruments of protection. That evolutive interpretation is consistent with the general rules of treaty interpretation established in the 1969 Vienna Convention. [...] this Court, in the Advisory Opinion on the Interpretation of the American Declaration of the Rights and Duties of Man (1989),<sup>56</sup> [...] among others, ha[s] held that human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions.<sup>57</sup>

57. With regard to determining the persons who have the right to compensation, it is worth emphasizing that the Court may grant these amounts to individuals, both in their own right by considering them victims of human rights violations, and as next-of kin/successors of a victim of the violations that have been established.<sup>58</sup> To

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105, 110, 111, 119, 126, 127, 138, 145, 187, 193 and 217; *Ivcher Bronstein case*, *supra* note 20, paras. 183, 184 and 189; *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, *supra* note 20, paras. 100 and 101; *Baena Ricardo et al. case*, *supra* note 20, paras. 206, 207, 208 and 209; *the Constitutional Court case*, *supra* note 15, paras. 125 and 126; *Blake case, Reparations*, *supra* note 46, paras. 49, 58 and 70; *Suárez Rosero case, Reparations*, *supra* note 25, paras. 60 c), 67, 92 and 93; *Castillo Páez case, Reparations*, *supra* note 13, paras. 75, 76, 77, 84, 90 and 112; *Loayza Tamayo case, Reparations*, *supra* note 13, paras. 139, 141, 142 and 143; *Garrido and Baigorria case, Reparations*, *supra* note 49, paras. 63, 64 and 82; *Caballero Delgado and Santana case, Reparations*, *supra* note 46, paras. 50 and 51; *Genie Lacayo case*, *supra* note 15, para. 95; *Neira Alegria et al. case, Reparations*, *supra* note 46, paras. 42, 50, 56 and 61; *El Amparo case, Reparations*, *supra* note 46, para. 37; *Aloeboetoe et al. case, Reparations*, *supra* note 18, paras. 86 and 87; *Godínez Cruz case. Compensatory damages*, *supra* note 46, para. 25; and *Velásquez Rodríguez case, Compensatory damages*, *supra* note 46, para. 27.

<sup>55</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 163, 166, 168, 172, 177, 194 and 195.

<sup>56</sup> Regarding the American Declaration, the Court has stated that:

"by means of an authoritative interpretation, the member states of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration." (*Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10; para. 43).

Thus, the Court has recognized that the Declaration is a source of international obligations for the States of our region, which can also be interpreted in the framework of the development of "American law" in this area.

<sup>57</sup> *The right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114; and similarly, *Cantoral Benavides case*, *supra* note 20, para. 99; and *Blake case. Interpretation of the judgment on Reparations* (Art. 67 of the American Convention on Human Rights). Judgment of October 1, 1999. Series C No. 57, para. 21.

<sup>58</sup> *Cf.*, *Bulacio case*, *supra* note 13, para. 78; *Juan Humberto Sánchez case*, *supra* note 10, para. 155; *Trujillo Oroza case, Reparations*, *supra* note 20, para. 54; *Bámaca Velásquez case, Reparations*, *supra* note 15, para. 30; *Cantoral Benavides case, Reparations*, *supra* note 15, para. 36; *the "Street Children" case (Villagrán Morales et al.)*, *Reparations*, *supra* note 13, para. 65; *the "White Van" case (Paniagua Morales et al.)*, *Reparations*, *supra* note 15, para. 82; *Blake case, Reparations*, *supra* note 46, para. 38; *Castillo Páez case, Reparations*, *supra* note 13, para. 54; and *Loayza Tamayo case, Reparations*, *supra* note 13, para. 89.

make this determination, in its decisions, the Court takes into consideration the specific situation of the families involved in the cases; and also the reality of the concept of family on this continent; namely, that “the expression next of kin means the immediate ascending and descendant next of kin [...] in a direct line, siblings, spouses or permanent companions, or those determined by the Court in each case[.]”<sup>59</sup> Accordingly, it decides who shall receive compensation owing to succession, or in their own right. In this respect, the next of kin of a deceased victim may, in turn, suffer pecuniary damage and it is for the Inter-American Court to establish the compensation that they may claim in their own right, which does not necessarily coincide with the criteria of domestic succession laws.

58. Based on the foregoing, the Court made its considerations and differentiations with regard to the beneficiaries in chapter XIV of the judgment of June 7, 2003<sup>60</sup>, and indicated that the violations of the rights established in the American Convention were committed:

[...] to the detriment of [...] Juan Humberto Sánchez, María Dominga Sánchez (mother); Juan José Vijil Hernández (stepfather); Reina Isabel Sánchez (sister), María Milagro Sánchez (sister), Rosa Delia Sánchez (sister), Domitila Vijil Sánchez (sister); María Florinda Vijil Sánchez (sister); Juan Carlos Vijil Sánchez (brother); Julio Sánchez (brother); Celio Vijil Sánchez (brother); Donatila Argueta Sánchez (companion); Breidy Maybeli Sánchez Argueta (daughter); Velvia Lastenia Argueta Pereira (companion) and Norma Iveth Sánchez Argueta (daughter), all of them – as victims – must be included in this category and are entitled to the reparations ordered by the Court, both regarding pecuniary damage, when appropriate, and regarding non-pecuniary damage. With respect to Juan Humberto Sánchez, it will also be necessary to establish which of the reparations ordered in his favor can be transmitted through inheritance to his next of kin, and to which of them.

59. As regards the succession rights relating to the compensation decided in favor of Juan Humberto Sánchez, in order to decide this, the Court has had recourse to the rules of logic and experience, as has been its consistent practice. As was cited and indicated in paragraph 164 of the judgment of June 7, 2003, the criteria on succession used by the Court has evolved in its recent judgment in *El Caracazo v. Venezuela*, when specific percentages of the compensation were granted by succession to the children, spouse or companion, parents or those who had had an affective relationship of a similar nature, either as stepfather, aunts, uncles or grandparents. Should none of these exist, the compensation will be delivered in equal percentages to the parents and siblings of the victim. Finally, “should there be no next of kin in any of the categories defined above, the amounts that would have corresponded to the next of kin in these categories, would increase the part corresponding to the others proportionally.”<sup>61</sup> This development has its precedents in the following cases: for example, in *El Amparo v. Venezuela*, when determining the beneficiaries, it was established that one of the victims had not only a wife but also a companion, so that part of the compensation for pecuniary and non-pecuniary

<sup>59</sup> Article 2(15) of the Rules of Procedure of the Court cited in *Cf., Bulacio case, supra* note 13, para. 78; *Juan Humberto Sánchez case, supra* note 10, para. 156; *Las Palmeras case, Reparations, supra* note 13, paras. 54 and 55; *El Caracazo case, Reparations, supra* note 13, paras. 72 and 73; *Trujillo Oroza case, Reparations, supra* note 20, para. 57; *Bámaca Velásquez case, Reparations, supra* note 15, para. 34; *the “Street Children” case (Villagrán Morales et al.), Reparations, supra* note 13, para. 68; *the “White Van” case (Paniagua Morales et al.), Reparations, supra* note 15, para. 86; *Loayza Tamayo case, Reparations, supra* note 13, para. 92; and *Garrido and Baigorria case, Reparations, supra* note 49, para. 52.

<sup>60</sup> *Juan Humberto Sánchez case, supra* note 10, paras. 155 and 156.

<sup>61</sup> *El Caracazo case, Reparations, supra* note 15, para. 91.

damage corresponding to the victim, was divided between them<sup>62</sup>; in *Garrido and Baigorria v. Argentina*, the condition of beneficiary by succession of the non-pecuniary damage was recognized to the two natural children of Raúl Baigorria, based on a statement made by the latter<sup>63</sup>; in *the Street Children (Villagrán Morales et al.) v. Guatemala*, the Court declared that Articles 5(2), 8(1) and 25 of the American Convention had been violated with regard to the mothers and one of the grandmothers of the five street children who had been tortured, and four of them killed at the hands of State agents.<sup>64</sup> Lastly, in *Bámaca Velásquez v. Guatemala*, although the Commission requested the Court to declare that several norms of the Convention had been violated to the detriment of Bámaca Velásquez, the Court recognized that other rights had been violated with regard to the victim's wife, sisters and father.

60. As indicated in the preceding paragraph, and in accordance with the basic principle of general international law embodied in Article 27 of the Vienna Convention, "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty", because the States must comply with their international treaty obligations in good faith (*pacta sunt servanda*). As the Court has recently decided in *Bulacio v. Argentina*:<sup>65</sup>

[...]  
provisions relating to the statute of limitations or any other obstacle of domestic law that seek to impede the investigation and punishment of those responsible for human rights violations are inadmissible.<sup>66</sup> The Court considers that the general obligations embodied in Articles 1(1) and 2 of the American Convention require the States Parties to adopt promptly all measures to ensure that no one is excluded from the right to judicial protection,<sup>67</sup> embodied in Article 25 of the American Convention.

In this respect, as this Court has already indicated, the provisions or obstacles of domestic law by means of which the State attempts to impede the application of a norm or custom of international law are inadmissible.<sup>68</sup>

<sup>62</sup> *El Amparo case, Reparations, supra* note 46, para. 40. Cf. similarly, *Juan Humberto Sánchez case, supra* note 10, para. 164 b).

<sup>63</sup> *Garrido and Baigorria case, Reparations, supra* note 49, paras. 55 and 56.

<sup>64</sup> *The "Street Children" case (Villagrán Morales et al.), supra* note 30, fourth and sixth operative paragraphs.

<sup>65</sup> Cf., *Bulacio case, supra* note 13, paras. 113 and ff.; *Neira Alegría et al. case. Compliance with judgment. Order of the Court of November 28, 2002, third considering paragraph; El Amparo case. Compliance with judgment. Order of the Court of November 28, 2002, third considering paragraph; Loayza Tamayo case. Compliance with judgment. Order of the Court of November 27, 2002, third considering paragraph; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, third considering paragraph; and inter alia, Trujillo Oroza case, Reparations, supra note 20, para. 106; Barrios Altos case. Reparations, supra note 49, para. 41; and Barrios Altos case. Interpretation of the judgment on merits. (Art. 67 of the American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para. 15.*

<sup>66</sup> Cf., *Trujillo Oroza case, Reparations, supra* note 30, para. 106; *Barrios Altos case, supra* note 3, para. 41; and *Barrios Altos case. Interpretation of the judgment on merits, supra* note 65, para. 15.

<sup>67</sup> Cf., *Barrios Altos case, supra* note 48, para. 43.

<sup>68</sup> *Bulacio case, supra* note 13, paras. 113 and ff.; *Neira Alegría et al. case. Compliance with judgment, supra* note 65, third considering paragraph; *El Amparo case. Compliance with judgment, supra* note 65, third considering paragraph; *Loayza Tamayo case. Compliance with judgment, supra* note 65,

61. The Court has already established on repeated occasions that pecuniary damage “involves the loss of or detriment to the income of the victims, the expenditure arising from the facts, and the consequences of a pecuniary nature that have a causal relationship with the facts of the case.”<sup>69</sup> Consequently, determination of the beneficiaries of the compensation for pecuniary damage is not based solely on the establishment of family ties with the victim, but also on the fact that harm has been suffered as a consequence of the facts that violated the Convention, which can be attributed to the State.

62. The Court observes that the State confuses domestic and international law on this matter. In the instant case, the Court determined various headings for pecuniary damage that had to be compensated by the State, taking into account “the claims of the parties, the body of evidence, the proven facts of the [...] case and [the criteria of the] case law’ of the Court.”<sup>70</sup> Consequently, the Court recognized:

a) The expenditure effectively incurred by the parents of Juan Humberto Sánchez and one of his companions “in order to find his whereabouts, in view of the concealment of what had happened and the failure to investigate the facts by the Honduran authorities”<sup>71</sup>;

b) The loss of income of the sisters of Juan Humberto Sánchez, who lost their employment “as a result of [one of them] traveling to the public hearing held at the Inter-American Court”<sup>72</sup> and in favor of one of the companions of Juan Humberto Sánchez, who also lost her employment, but as a result of the measures she took to discover the whereabouts of Sánchez<sup>73</sup>; and

c) Also, as on other occasions,<sup>74</sup> in this case the Court established compensation for past and future medical expenses and for the move that the next of kin of Juan Humberto Sánchez were forced to make. With regard to medical expenses, the Court found that both the parents and one of the companions of Juan Humberto Sánchez “suffered various health problems as a result of the detention and extrajudicial execution of [...] Juan Humberto

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third considering paragraph; *Garrido and Baigorria case*, *supra* note 65, third considering paragraph; and *inter alia*, *Trujillo Oroza case*, *Reparations*, *supra* note 20, para. 106; *Barrios Altos case*, *Reparations*, *supra* note 49, para. 41; *Barrios Altos case*, *Interpretation of the judgment on merits*, *supra* note 65, para. 15; and *Barrios Altos case*, *supra* note 48, para. 41.

<sup>69</sup> *Juan Humberto Sánchez case*, *supra* note 10, para. 162. Also, *cf.*, *Trujillo Oroza case*, *Reparations*, *supra* note 20, para. 65; *Bámaca Velásquez case*, *Reparations*, *supra* note 15, para. 43; and *Castillo Páez case*, *Reparations*, *supra* note 13, para. 76.

<sup>70</sup> *Juan Humberto Sánchez case*, *supra* note 10, para. 166.

<sup>71</sup> *Juan Humberto Sánchez case*, *supra* note 10, para. 166.a).

<sup>72</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 70.E.41.d) and 166.b).

<sup>73</sup> *Juan Humberto Sánchez case*, *supra* note 10, paras. 70.41.c) and 166.b).

<sup>74</sup> *Cf.* *El Caracazo case*, *Reparations*, *supra* note 13, para. 86; *Trujillo Oroza case*, *Reparations*, *supra* note 20, para. 74.b; *Bámaca Velásquez case*, *Reparations*, *supra* note 15, para. 54.b); *Cantoral Benavides case*, *Reparations*, *supra* note 15, para. 51.d); and *the White Van” case* (*Paniagua Morales et al.*), *Reparations*, *supra* note 15, para. 98.

Sánchez[,] in the context of the arbitrary detention of [Juan Humberto Sánchez], the uncertainty about his whereabouts, the suffering deriving from not knowing the circumstances of his death, the anguish owing to the injuries that were apparent on his corpse, the pain caused by the fact that he was interred in the place where he was found, and their frustration and defenselessness owing to the lack of results of the investigations into the facts by the Honduran public authorities.”<sup>75</sup> In other words, the compensation for this concept established in favor of María Dominga Sánchez, Juan José Vijil Hernández and Donatila Argueta Sánchez was not based, as the State alleges, on a “capricious” decision by the Court, but on the actions of the State, which the Court declared had violated the American Convention in its judgment of June 7, 2003. Likewise, the Court examined the second point, namely, compensation for the change of residence which the next of kin of Juan Humberto Sánchez were forced to make “as a consequence of the harassment they began to suffer after the facts of the instant case.”<sup>76</sup>

63. In summary, in the instant case, the Court granted compensation under several headings included in the broadest category of pecuniary damage, consistent with its own case law,<sup>77</sup> which must be complied with by the State. This compensation must be paid to Donatila Argueta Sánchez, Juan José Vijil Hernández, María Dominga Sánchez, Domitila Vijil Sánchez and Reina Isabel Sánchez, in their own right, as compensation for the damage they were caused directly by the State's actions, and as victims of those actions. Whether or not they are acknowledged to be successors of Juan Humberto Sánchez in the domestic law of the State is irrelevant, because their status of beneficiaries of the reparations for indirect damage and loss of earnings is determined directly by the damage that was caused to them.

64. In the same way, based on the inherent rights of the next of kin of Juan Humberto Sánchez, as victims with the right to a reparation, the Court determined a compensation for non-pecuniary damage, taking into account also that “the reigning impunity in this case has caused and continues to cause suffering for the next of kin, which makes them feel vulnerable and in a state of permanent defenselessness before the State, a situation that causes them profound anguish, as has been demonstrated.”<sup>78</sup>

65. Moreover, these next of kin also suffered owing to the violations of the rights of Juan Humberto Sánchez, because his sufferings as the victim of the violation of

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<sup>75</sup> *Juan Humberto Sánchez case, supra* note 10, para. 166.c).

<sup>76</sup> *Juan Humberto Sánchez case, supra* note 10, para. 166.d).

<sup>77</sup> *Cf., Bulacio case, supra* note 13, paras. 84-89; *Juan Humberto Sánchez case, supra* note 10, paras. 162-167; *El Caracazo case, Reparations, supra* note 13, paras. 84-93; *Trujillo Oroza case, Reparations, supra* note 20, paras. 65 and 71 to 76; *Bámaca Velásquez case, Reparations, supra* note 15, paras. 43 and 50 to 55; *Cantoral Benavides case, Reparations, supra* note 15, paras. 47-52; *the “Street Children” case (Villagrán Morales et al.), Reparations, supra* note 13, paras. 78 to 83; *the “White Van” case (Paniagua Morales et al.), Reparations, supra* note 15, paras. 91 to 100, 115 to 120, 131 to 138, 149 to 153 and 164 to 170; *Blake case, Reparations, supra* note 46, paras. 47 to 50; *Suárez Rosero case, Reparations, supra* note 25, paras. 58 to 60; *Castillo Páez case, Reparations, supra* note 13, paras. 74 to 77; and *Loayza Tamayo case, Reparations, supra* note 13, paras. 128-133.

<sup>78</sup> *Juan Humberto Sánchez case, supra* note 10, para. 176.

rights embodied in Articles 4 and 5 of the American Convention “also extended to the closest members of his family, particularly those who had a close affective contact with the victim,”<sup>79</sup> and, in this case, the Court considers that these included the stepfather and the half-brothers and sisters of the victim “who, as members of a close family, had a close relationship with [...] Juan Humberto Sánchez.”<sup>80</sup>

66. As in the case of indirect damage, the compensation established by the Court for the next of kin of Juan Humberto Sánchez is based on his suffering and not on their condition as his successors. The existence of a family connection, as developed by the Court in its case law,<sup>81</sup> allows the Court to establish whether suffering has been caused to other persons in addition to the victim; once the existence of this suffering has been established, the next of kin of the victim must be compensated, without considering whether they are successors under the rules of the State’s domestic law.

67. Owing to the foregoing, the Inter-American Court decides to reject the requested interpretation regarding the reparations in the instant case.

Therefore,

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

in accordance with Article 67 of the American Convention on Human Rights and Article 58 of the Rules of Procedure of the Inter-American Court of Human Rights

#### **DECIDES:**

unanimously,

1. To reject as inadmissible the appeal for review of the judgment of June 7, 2003, filed by the State in the Juan Humberto Sánchez case.
2. To reject *in toto* as without grounds the State’s call for interpretation of the judgment of June 7, 2003, in the Juan Humberto Sánchez case, contained in the request.
3. To continue monitoring compliance with the judgment of June 7, 2003, as established in paragraphs 196 to 200 of this judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on November 26, 2003.

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<sup>79</sup> *Juan Humberto Sánchez case*, *supra* note 10, para. 175.

<sup>80</sup> *Juan Humberto Sánchez case*, *supra* note 10, para. 175.

<sup>81</sup> *Cf.*, *Bulacio case*, *supra* note 13, para. 78; *Juan Humberto Sánchez case*, *supra* note 10, para. 156; *Las Palmeras case*, *Reparations*, *supra* note 13, paras. 54 to 55; and *Trujillo Oroza case*, *Reparations*, *supra* note 20, para. 57.

Antônio A. Caçado Trindade  
President

Sergio García-Ramírez  
Máximo Pacheco-Gómez

Hernán Salgado-Pesantes  
Oliver Jackman

Alirio Abreu-Burelli

Manuel E. Ventura-Robles  
Secretary

So ordered,

Antônio A. Caçado Trindade  
President

Manuel E. Ventura-Robles  
Secretary