

Inter-American Court of Human Rights

Case of *Escué-Zapata v. Colombia*

Judgment of May 5, 2008

(Interpretation of the Judgment on the Merits, Reparations and Costs)

In the case of *Escué-Zapata*,

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

Sergio García-Ramírez, President;
Cecilia Medina-Quiroga, Vice-President;
Manuel E. Ventura-Robles, Judge;
Diego García-Sayán, Judge;
Leonardo A. Franco, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu-Blondet, Judge; and
Diego Eduardo López-Medina, Judge *ad hoc*;

also present,

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

pursuant to Article 67 of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and Article 59 of the Rules of Procedure of the Court (hereinafter, "the Rules of Procedure"), decides on the request for interpretation of the Judgment on the merits, reparations, and costs delivered by the Court on July 4, 2007, in the case of *Escué-Zapata v. Colombia* (hereinafter, "the request for interpretation"), filed by the State of Colombia (hereinafter, "the State" or "Colombia").

I

FILING OF THE REQUEST FOR INTERPRETATION

AND PROCEEDING BEFORE THE COURT

1. On November 1, 2007, the State filed a request for interpretation of the Judgment on the merits, reparations, and costs¹ delivered on July 4, 2007, (hereinafter, "the Judgment"), based on Articles 67 of the Convention and 59 of the Rules of Procedure. In its request for interpretation, the State requested "the

¹ Cf. *Case of Escué-Zapata. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 165.

clarification of some of the reparation measures ordered by the Inter-American [C]ourt in its judgment, on the grounds of lack of clarity regarding execution thereof." The reparation measures at issue are those related to the publication of the findings reached in the criminal proceedings, the creation of a fund for the development of the community, the measures ordered to ensure the higher education of Myriam Zapata-Escué, and payment of legal costs and expenses.

2. On November 5, 2007, pursuant to the provisions of Article 59(2) of the Rules of Procedure and on instructions from the President of the Court, the Secretariat of the Court (hereinafter, "the Secretariat") forwarded a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") and to the victim's representatives (hereinafter, "the representatives") and his next of kin, informing them that they would have a non-postponable term up to December 10, 2007, to file the written arguments they deemed appropriate. Likewise, it reminded the State that, as provided for by Article 59(4) of the Rules of Procedure, "[a] request for interpretation does not suspend the effects of the Judgment."

3. On December 10, 2007, the representatives and the Commission filed, respectively, the written arguments referred to above.

II

JURISDICTION AND COMPOSITION OF THE COURT

4. Article 67 of the Convention provides that

[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

5. Under the above-mentioned article, the Court has jurisdiction to interpret its own judgments. In examining a request for interpretation, the Court must have, whenever possible, the same composition it had when delivering the Judgment of which interpretation is being sought (Article 59(3) of the Rules of Procedure). On this occasion, the Court is composed of the same judges who delivered the Judgment of which interpretation has been requested.

III

ADMISSIBILITY

6. It is incumbent upon the Court to verify whether the terms of the request for interpretation comply with the requirements set forth in the applicable provisions, to wit, Articles 67 of the Convention and 29(3) and 59 of the Rules of Procedure.

7. Article 29(3) of the Rules of Procedure provides that "judgments and orders of the Court may not be contested in any way."

8. Article 59 of the Rules of Procedure provides that:

1. 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.

[...]

4. A request for interpretation shall not suspend the effect of the judgment.
5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

9. The Court has verified that the State filed the request for interpretation within the term established in Article 67 of the Convention, as the Judgment was notified to the State, to the Inter-American Commission, and to the representatives on August 3, 2007.

10. Furthermore, as stated by the Court in prior cases,² a request for interpretation of a judgment may not be used as a means for contesting it, but must be made for the sole purpose of working out its meaning, where one of the parties claims that the text of its operative paragraphs or considerations is not clear or is imprecise, provided that these considerations have a bearing on said operative paragraphs. Hence, a request for interpretation may not be used to seek the amendment or annulment of the judgment in question.

IV

REGARDING THE PUBLICATION OF THE FINDINGS REACHED IN THE CRIMINAL PROCEEDINGS

11. The State pointed out that the Judgment ordered that the findings reached in the criminal proceedings be published. In this regard, the State raised several questions: “[I]s a special publication necessary? What does the Court mean by ‘the findings reached in the criminal proceedings?’ Should the entire text of condemnatory judgments be published or only their operative paragraphs? Should decisions acquitting the defendant or any other type of decisions reached in the criminal proceedings be also published?”

12. The Commission noted that if the Court were to decide on this matter, “it would have to issue an opinion in the abstract, without having considered all the relevant facts, for -as a matter of fact- judgment has not even been delivered in the domestic criminal proceedings;” therefore, “regarding issues which are related to the method of compliance with the reparation measures ordered in the judgment, as is this specific issue, it is in relation to the follow-up and monitoring of compliance with the reparation measures ordered that such questions may be raised. Thus, the Court finds the questions raised by the State in the request for interpretation of judgment to be inadmissible.”

13. The representatives deemed it relevant that the State publicize “the facts proven in the judgments rendered in the domestic proceedings, and not only the penalties imposed thereby or their operative paragraphs.” They added that “the method of compliance must be similar to the one used by the Court to publicize the facts proven and the penalties imposed by its judgments.” They suggested that “the Court should order the State to publish periodically (every 6 or 12 months), both in a newspaper of national circulation and in a regional one, a summary of the procedural steps taken and the judgments delivered (both condemnatory judgments or acquittals), in compliance with the obligation to identify, prosecute, and punish those responsible for the death of Germán Escué-Zapata. Such summary should be agreed to

² Cf. *Case of Loayza-Tamayo. Interpretation of Judgment on the Merits*. Order of the Court of March 8, 1998. Series C No. 47, para. 16; *Case of La Rochela Massacre v. Colombia. Interpretation of Judgment on the Merits, Reparations and Costs*. Judgment of January 28, 2008. Series C No. 175, para. 9, and *Case of Cantoral-Huamani and García-Cruz v. Peru. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2008. Series C No. 176, para. 10.

by the victims' representatives prior to its publication."

14. Among the measures of satisfaction and guarantees of non-repetition adopted by the Court in its judgment was the obligation to conduct an investigation into the facts which gave rise to the violations described in the instant case and to identify, prosecute and, if appropriate, punish those responsible for the facts of the case. After making some considerations regarding the scope of this obligation, the Court pointed out as follows:

166. Based on the foregoing, as well as on its case law, the Court orders the State to effectively carry out the criminal proceedings which have been brought and any proceedings which may be brought in the future in order to determine the responsibilities for the facts described in the instant case and apply the corresponding penalties. Furthermore, Colombia, through its competent institutions, must exhaust all investigation lines with respect to the execution of Mr. Escué-Zapata (*supra* paras. 63 and 109), in order to establish the truth of the facts. The State must ensure that the victim's next of kin have full access to and capacity to act in all stages and instances of said investigations and proceedings, in accordance with the domestic legislation and the rules of the American Convention. The decisions adopted in said proceedings must be disclosed to the public by the State so that the Colombian society and the Paez Indigenous Community, in particular, may learn the truth about what happened in the instant case.

15. In the instant case, the Court states that, regarding the reparation measures ordered, the expression "the findings reached in [the] proceedings" refers to the final judicial decisions adopted in the criminal proceedings whereby these are concluded and the main controversy decided, whether convicting or acquitting the defendant. These decisions must be made public so that the Colombian society and the Paez Community may learn the truth about the facts under investigation and, if appropriate, the identity of those accountable for such facts. Likewise, the victim's next of kin and the above Community must be properly informed about the progress of the proceedings, particularly by the prosecutors.

V

REGARDING THE CREATION OF A FUND FOR THE DEVELOPMENT OF THE COMMUNITY

16. The State pointed out that the Judgment ordered the allocation of US\$ 40,000.00 (forty thousand United States dollars) to the creation of a fund for community development bearing the name of Germán Escué-Zapata, to be invested in works or services of collective interest. In this regard, the State requested the Court to clarify what is meant by fund, and whether such fund might be created, for example, by means of a trust agreement or an inter-administrative agreement entered by a national entity and the *Resguardo de Jambaló*.

17. In this respect, the Commission pointed out that this question refers "to the method of compliance, which must be determined in relation to compliance with judgment and that, therefore, is not admissible as part of a request for interpretation." It further stated that the meaning of the term fund as used by the Court is to be understood as a "number of resources allocated for a particular purpose." It also established that "[the] *effet futile* sought by the Court through this order is therefore related not only to redressing the victim's memory, but also to achieving better living conditions and services for the Community," which is why the aim of this measure implies that no methods may be applied which entail the lack of "the Community's effective control and full decision power over the funds which must be delivered as ordered by the Court."

18. The representatives pointed out that "the creation of a trust agreement implies

that the State become a mediator, as this is an agreement entered by the State and a contracting party," which "would distort the measure ordering that the [C]ommunity be responsible for investing the funds." In this regard, they stated that they "[a]greed" to "an inter-administrative agreement being entered by a national entity and the *Resguardo de Jambaló* for the creation of the fund and its delivery to the [C]ommunity, the latter being responsible for administering and executing it."

19. Regarding paragraph 168 of the Judgment, it pointed out that:

The Court values the willingness showed by the State to place a plaque in memory of the victim and the events occurred; that notwithstanding, it takes into consideration that the memory of Mr. Escué-Zapata is to be redressed through works and services for the benefit of the Community of which he was a leader. For that purpose, the Court deems that the State must deliver, within the term of one year following notice of this Judgment, the amount of US\$ 40,000.00 (forty thousand United States dollars) in order to create a fund bearing the name of Germán Escué-Zapata, so that the Community may invest it in works or services of collective interest and for its benefit, in accordance with their own methods of consultation, decision, traditions, and usage and custom, regardless of the funds which may be allocated in the national budget for public works in that region.

20. In determining reparations, the Court deemed it relevant to redress the memory of Mr. Escué-Zapata through the execution of works for the benefit of the Community of which he was a leader. For that purpose, which was clearly established in the Judgment, the State must allocate the amount of US\$ 40,000.00 (forty thousand United States dollars) to the creation of a fund.

21. The manner in which the State will make the foregoing reparation is to be decided by the State itself, as long as the spirit of the reparation meant to redress the victim's name be observed and the Community to which he belonged may benefit from works or services thereby chosen, without the State interfering with the purposes for which the Community may want to use such funds.

VI

REGARDING THE MEASURES TO ENSURE HIGHER EDUCATION FOR MYRIAM ZAPATA-ESCUÉ

22. The State pointed out that the Judgment ordered it to grant the victim's daughter, Myriam Zapata-Escué, "a scholarship to study at a public university to be jointly chosen by the beneficiary and the State," and that said scholarship should cover all expenses related thereto. It further ordered that "traveling expenses from the city where the beneficiary chooses to study to her Community shall be borne by the State." In this regard, the State pointed out that as "it cannot guarantee admission to any university," since this depends on each academic institution, "[w]hat is the State expected to do if Myriam Zapata-Escué is not admitted into any public university?" By the same token, "[c]onsidering that in Colombia the average period of time it takes a student to complete his pre-graduate studies is about five years," the State raised the following question: "Should Myriam Zapata-Escué fail to complete her studies within such period, what is the State expected to do?" Lastly, the State asked whether "[i]t was possible to set an amount of money equivalent to the sum needed to bear living expenses, academic material, housing, and traveling expenses, which sum would be granted to Myriam Zapata-Escué in a single payment so that she may administer it."

23. The Commission pointed out that "these issues should not be raised in a request for interpretation of a judgment [...], as they are related to the method of compliance with this reparation measure and, therefore, should be raised within the context of compliance with the judgment." Furthermore, the Commission considered that "the purpose of this reparation measure and the method of compliance therewith" were clearly established in paragraph 170, as it provides that all university expenses should

be covered by the scholarship." It further stated that "this aspect of the obligation is subject to a condition (completion of her university studies) rather than to a term, whereby the questions raised by the State are not admissible." As regards the method of delivery of the scholarship amount, it stated that such question "should not be raised to the Court, but to the beneficiary of such reparation measure so that she can choose the method that is most convenient to her interests."

24. The representatives claimed that "the Court clearly pointed out that it was the State's obligation to award a scholarship," which is a "non-conditioned duty." Therefore, "the State cannot possibly restrict this order by filing a request for interpretation of a judgment." As to the second question, they pointed out that not all university courses of study in Colombia take five years to be completed; besides, "[t]he Court did not set time limits regarding the scholarship to be awarded." Finally, the representatives considered that "the Colombian State must provide for the necessary mechanisms to periodically disburse the amount awarded to Myriam Zapata;" otherwise, the objective of the scholarship would be distorted.

25. Paragraph 170 of the Judgment states that:

The Court acknowledges the suffering and difficulties that the victim's daughter has had to overcome along her life in order to complete her primary and secondary studies and which she still endures at present, when she shows her will and desire to start university studies. Therefore, and taking into consideration the parties' petitions, the State must award Myriam Zapata-Escué a scholarship to study at a Colombian public university to be jointly chosen by the beneficiary and the State. The scholarship shall cover all expenses until university studies are completed, including academic material as well as living expenses. It shall further cover all traveling expenses from the city where the beneficiary will study to her Community, so that she may keep in contact with her Community, traditions, usage and custom, as well as with her next of kin without further difficulties. Said scholarship shall be effective immediately after notice hereof, so that the beneficiary may start her university studies next year, if she so wishes.

26. The Court considers that the aim of this measure is at redressing the suffering and difficulties Myriam Zapata-Escué has endured. It is in the beneficiary's particular context that the suitability and efficacy of the measures needed to make the reparation effective are to be assessed.

27. In this respect, the Court highlights that the admission of Myriam Zapata-Escué into public university must be in accordance with its regular selection processes. Notwithstanding, the State must guarantee that she may fully avail herself of the special protection measures regarding cultural, ethnical, social, and economic diversity that the Colombian university system may establish in relation to its selection processes. In this regard, if appropriate, the beneficiary shall receive support through courses or other training activities, which may be previous to her university studies or simultaneous with them, in order to facilitate her university studies and prevent her from dropping out of university. Likewise, if the beneficiary is not admitted into university or decides not to undertake university studies, the State must offer her the option to receive technical or technological training in a public institution of higher education, to be jointly chosen by the beneficiary and the State.

28. As to the duration of the State's obligation to cover the expenses of the higher studies undertaken by Myriam Zapata-Escué, it shall depend on the regulations in force at the institution of higher education chosen and on the institutional criteria applicable to students in a similar situation. Should the institution requirements set a maximum period of time to obtain a degree or a minimum academic average or any similar provisions, the beneficiary shall comply with them, under conditions which consider her cultural diversity, as stated in the foregoing paragraph. Likewise, the application of these criteria shall be subject to the special and preferential academic support

measures which are necessary for proper integration of persons belonging to minority ethnic groups into the national education system.

29. Regarding the method of payment of the scholarship, the Court points out that it may vary according to the nature of the activities supported by such grant, which shall cover all expenses related to the beneficiary's higher studies and shall be disbursed periodically, as these studies may only be completed over time. Disbursement of the scholarship amount shall therefore be made according to the method established and shall be divided into partial payments. Hence, in principle, it is not to be made in a single payment. That notwithstanding, a different method may be agreed upon by the State and the beneficiary, once the latter has come of age.

VII

REGARDING PAYMENT OF COSTS AND EXPENSES

30. The State pointed out that the Judgment ordered payment of US\$ 12,000.00 (twelve thousand United States dollars) as costs and expenses, which must be delivered to Etelvina Zapata, the victim's mother, so that they are distributed among her next of kin and the representatives. The State pointed out that "in Colombia, compensation amounts are normally collected by the non-government organization that represented the victims' next of kin in the proceeding brought before the Inter-American Court." Thus, the State requested the Court to clarify "whether the amount awarded as costs and expenses is to be directly and solely delivered to Etelvina Zapata or may be delivered to her representatives, as authorized by a power-of-attorney granted thereto for that purpose."

31. The Commission considered that "as these issues are related to the method of compliance with the reparation measures ordered in the [J]udgment, it is precisely within the scope of the follow-up and monitoring of compliance with such reparation measures that they may be raised. Therefore, it finds the question raised by the State to be inadmissible."

32. The representatives pointed out that the terms used by the Court in paragraph 188 are "accurate and succinct and do not give rise to misunderstandings." Thus, they understand that "payment is to be made directly to Etelvina Zapata, the victim's mother, and not to her legal representatives."

33. In this regard, paragraph 188 of the Judgment states that:

To such end, the Court, taking into account the evidence produced and in accordance with its case law, deems it fair to set in equity the amount of US\$ 12,000 (twelve thousand United States dollars), to be reimbursed to Etelvina Zapata for the expenses incurred in order to start proceedings before the domestic authorities, as well as for those arising from the proceedings brought before the Inter-American system for the protection of human rights. Mrs. Zapata shall distribute the amount disbursed among her next of kin and the representatives, in accordance with the aid they may have provided her with along the proceedings.

34. The Court has noted that according to the above paragraph it is clear that it is Etelvina Zapata who must receive payment of the amount set as costs and expenses. Such payment may be personally collected by her or a person appointed by her for that purpose, pursuant to the provisions of applicable domestic legislation.

**VIII
OPERATIVE PARAGRAPHS**

35. **NOW THEREFORE,**

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of the authority conferred upon it under Article 67 of the American Convention and Articles 29(3) and 59 of its Rules of Procedure,

DECIDES:

Unanimously,

1. To declare admissible the request for interpretation of the Judgment on the merits, reparations, and costs delivered on July 4, 2007.
2. To determine the scope of the provisions of paragraph No. 166 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraph No. 15 hereof.
3. To determine the scope of the provisions of paragraph No. 168 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraphs No. 20 and 21 hereof.
4. To determine the scope of the provisions of paragraph No. 170 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraphs No. 26 to 29 hereof.
5. To determine the scope of the provisions of paragraph No. 188 of the Judgment on the merits, reparations, and costs delivered on July 4, 2007, under the terms of paragraph No. 34 hereof.
6. To request the Secretariat of the Court to serve notice of this Order to the victim's representatives and his next of kin, to the State of Colombia, and to the Inter-American Commission on Human Rights.

Judge *ad hoc* Diego Eduardo López-Medina informed the Court of his Concurring Opinion, which is attached hereto.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on May 5, 2008.

Sergio García-Ramírez
President

Diego García-Sayán

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Diego E. López-Medina
Judge *ad hoc*

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

**CONCURRING OPINION OF
JUDGE *Ad Hoc* EDUARDO LÓPEZ-MEDINA
IN THE JUDGMENT RENDERED IN
THE CASE OF ESCUÉ-ZAPATA V. COLOMBIA
ON MAY 5, 2008**

1. I have concurred with my vote in the unanimous decision rendered by the Court in the Request for Interpretation in the case of *Escué-Zapata v. Colombia*. Though I have no reservations as to the decision adopted, I deem it appropriate to consider some issues that may help clarify my opinion regarding two matters discussed therein.

I. Publication of the findings reached in the criminal proceedings

2. In the relevant paragraph of the Judgment on the Interpretation, the Court notes that:

15. In the instant case, the Court states that, regarding the reparation measures ordered, the expression “the findings reached in [the] proceedings” refers to the final judicial decisions adopted in the criminal proceedings whereby these are concluded and the main controversy decided, whether convicting or acquitting the defendant. These decisions must be made public so that the Colombian society and the Paez Community may learn the truth about the facts under investigation and, if appropriate, the identity of those accountable for such facts. *Likewise, the victim’s next of kin and the above Community must be properly informed of the progress of the proceedings, particularly by the prosecutors.*

3. The duty to publicize the findings reached in the criminal proceedings was imposed by the Court as part of the reparation measures ordered as a result of the violation of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, as accepted by the Colombian State. The determination of the international responsibility of the State in the instant case has no immediate legal effects with regard to the identity and responsibility of the perpetrators of the crimes defined by the domestic legislation and, at the same time, constituting a violation of the international obligations enshrined by the Pact of San Jose. The Court only orders “the State to effectively carry out the criminal proceedings which have been brought and the proceedings which may be brought in the future” (para. 166 of the Judgment on the Merits, Reparations and Costs). According to classical legal categories,¹ it may be said that this is an obligation of means (or activity, also known as *due diligence*) rather than an obligation of result (or work), as imposing effective penalties depends on a number of substantive, evidentiary, and procedural variables that no State can guarantee, -not even those which investigate criminal acts in violation of human rights in good faith and with due diligence. Even the most efficient judicial systems cannot -and should not- guarantee that *in all cases of*

¹ This distinction was originally found in civil law, but has been broadly adopted in international law: see Pierre-Marie Dupuy, *Reviewing the Difficulties of Codification: On Ago’s Classification of Obligations of Means and Obligations of Result in Relation to State Responsibility*. *European Journal of International Law*, Vol. 10, pages. 371-385 (1999). *Cf. also Case of Velásquez-Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 175.

violations of domestic criminal legislation the perpetrators shall be identified and punished. Such *absolute reduction* of impunity is both impossible and undesirable as, within the ordinary framework of human institutions, it would point not to a new and maybe unimaginable degree of perfection in the techniques used to investigate a crime, but rather to massive violations of procedural guarantees and other fundamental rights. This aspiration to the absolute elimination of impunity, which magically shortens the distance between the “what is” and “what ought to be” normative dimensions of social acts, has been fertile ground for the various forms of criminal authoritarianism which, in accordance with Articles 8 and 25 of the Convention, the Inter-American system does not support.

4. Article 25 protects the right of access to justice in the international law system, regardless of the specific type of rights which complainants may wish to protect. Though case law, in keeping with the foregoing, comprises cases concerning the protection of the rights enshrined in Article 25 alone, in most judgments this article has been examined in cases where there is a factual relation between such article and other serious violations of rights (for example, Articles 4(1) and 5), mostly due to lack of a proper investigation into said acts. In such cases, the Court has found that the victim’s search for justice is frequently impeded by investigations which extend beyond a “reasonable time” or which are started before courts of special jurisdiction (such as military courts), the impartiality of which (towards the victims) is reasonably suspected or even by lack of the minimum effectiveness required by international law from the judicial system of Member States.² The case of *Escué-Zapata* falls directly into this pattern, as stated in the Judgment of July 4, 2007, wherein I had the honor to participate.

5. In prior cases the Inter-American Court has ordered that effective criminal proceedings be started or continued in order to identify and punish the perpetrators of such crimes.³ The Court has determined the responsibility of the States which have not effectively fulfilled their obligations of means or due diligence.

6. In most of these cases, the Court has ordered that the State publicize the findings reached in the proceedings.⁴ So has also been ordered in the case of *Escué-Zapata*. That notwithstanding, in these judgments excessive emphasis is sometimes put on the publication of the *findings* reached in the proceedings. In the questions raised by the Colombian State before the Court regarding the interpretation of the judgment rendered on July 4, 2007, perplexity seems to percolate: since the obligation to investigate the commission of crimes is not an obligation of result, must the State also publish an eventual acquittal? The Court has replied that it must, but in the same

² Cf. *Case of the 19 Tradesmen v. Colombia. Merits, Reparations and Costs*. Judgment of July 5, 2004. Series C No. 109, para. 188; *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, para. 52 and IACHR, *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 344.

³ Cf. *Case of Las Palmeras v. Colombia. Reparations and Costs*. Judgment of November 26, 2002. Series C No. 96, para. 67; *Case of Gutiérrez-Soler v. Colombia. Merits, Reparations and Costs*. Judgment of September 12, 2005. Series C No. 132, para. 96 and *Case of La Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163, para. 295.

⁴ Cf. *Case of the 19 Tradesmen*, *supra* note 2, para. 263; *Case of the “Mapiripán Massacre” v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134, para. 298 and *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, para. 267.

Judgment of Interpretation it has added that, besides the publication of the final decisions (whether they are condemnatory judgments or acquittals), the Community and the victim's next of kin must also be "adequately informed about the progress of the proceedings" (para. 15 of the Judgment of Interpretation). In stating the foregoing, I understand that the Court acknowledges, in the first place, that crimes (and especially those which at the same time constitute a violation of human rights) cause alarm in their victims who, from that moment, resort to the State institutions to be afforded the protection they seek (mostly through the rights to truth, justice, and reparation). Likewise, I believe that the Court acknowledges that criminal proceedings may turn out to be a kind of "black box" where indecisiveness regarding their outcome is high and which, consequently, may cause the victims to experience lack of understanding, alienation, and great uncertainty regarding the results of criminal proceedings.

7. Likewise, it may be also said that criminal proceedings are socially seen at present as a type of process which offers final results on the "guilt" or "innocence" only at the end. Practice and experience have shown that there are good reasons (which I do not intend to contest now) to keep the initial stages of the criminal investigation confidential for the purpose of safeguarding both its effectiveness and the rights of those potentially responsible and at these stages only preliminarily or tangentially identified or related to the facts. However, the excessive confidentiality of the State's actions in relation to the victims has helped generate the "black box" perception that institutions do not give an adequate response to the need of protection. On the other hand, it is true that domestic Procedural Codes generally set the stages and times when decisions must be formally communicated to the parties, but, as a general rule, such times do not constitute adequate or significant orientation to inform the victims on the efforts and steps taken to comply with the State's obligation of means. It is of the utmost importance to stress this obligation within the framework of the strengthening of the victims' rights.

8. The lack of transparency, particularly over long periods of lack of activity by prosecutors, has been the cause of many violations of Articles 8 and 25. An incomplete understanding of the legal duty to notify the victims may serve to hide the violation of the obligation to investigate which is incumbent upon the State. Apathy or even concealment may be justified on the grounds of criminal proceedings wherein arguments based on confidentiality reasons tend to prevail over the right to appropriate and full information claimed by the victims.

9. Therefore, the State has a positive obligation of means, particularly where violations of human rights have been committed, to prevent impunity which, in my opinion, involves a conscientious activity to inform (which may go beyond merely formal requirements) about the efforts made in order to identify those responsible and determine their responsibility. Likewise, this obligation includes the possibility of informing the victims about the difficulties encountered in the investigation so that they may understand the strict requirements imposed by criminal procedural law before criminal responsibility may be determined. Thus, acquittals may also be vindictive for the victims where they are not merely the result of unawareness or misinformation. The judgment rendered by the Inter-American Court did not impose criminal penalties (as it is not possible) in the case of *Escué-Zapata*; however, it seeks to prevent criminal investigations from becoming close black boxes in which investigations do not progress as they should and that acquittals may not become an additional form of victimization as a result of lack of adequate information. These procedural mechanisms of information have been set forth by the States in their

domestic legislation, which allows them a broad assessment margin, but in this Judgment of Interpretation, the Court has examined this element as provided for in Articles 8 and 25, with the purpose of preventing failure to comply with the duty to inform the victims by merely notifying them of the decisions adopted with no context, prospects, or expectations. Though the order issued by the Court is only applicable to the instant case, the concern herein expressed allows deeply reflecting on the general guidelines set for supporting and informing the victims (beyond those ordered in the criminal proceedings) which are currently applied by the authorities in charge of investigating and punishing crimes in the States aspiring to fully comply with the duties set forth in Articles 8 and 25 of the American Convention.

II. Measures to ensure higher education for Myriam Zapata-Escué

10. The Inter-American Court has ruled on the Request for Interpretation in paragraphs 26 to 29, with which I fully concurred. The balance struck in said paragraphs seeks a special purpose which I would like to discuss in my concurring vote. In the instant case, the decision delivered by the Inter-American Court in ordering the admission of Myriam Zapata-Escué into public university may come into conflict with the domestic provisions sustaining admission into university based on the candidates' academic merits. So was contended by the State in its request for interpretation. These selection systems are based on egalitarian conceptions which are of value both in the light of domestic legislation and international law. Higher studies are part of an educational process which combines the paternalistic ethics of care and protection and the liberal ethics of individual effort and responsibility. In the case in point, the obligation of the State amounts to bearing the expenses of the university studies undertaken by Myriam Zapata-Escué at public university, if in due time she decides to study at university. Likewise, public funding is to be granted *under the reinforced equality conditions* enshrined by present-day international law: Myriam Zapata-Escué must have access to public university in accordance with the existing selection processes, but the State must guarantee that she may fully avail herself of the special protection measures of ethnical, social, and economic diversity that university systems (and particularly the Colombian one) must contemplate in their selection processes. In stating this, the Court seeks to strike a balance between the special support given to the life project of Myriam Zapata-Escué through the reparation measures originally ordered in the Judgment and the necessary ethics sustaining individual effort and responsibility which are to be expected from youngsters aspiring to become social leaders, as is the case of Myriam Zapata-Escué.

Diego Eduardo López-Medina
Judge *ad hoc*

Pablo Saavedra-Alessandri
Secretary