

Inter-American Court of Human Rights
Case of Ticona Estrada *et al.* v. Bolivia
Judgment of July 1, 2009
(Interpretation of the Judgment on
Merits, Reparations and Costs)

In the case of *Ticona Estrada et al.*,

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

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

Also present:

Pablo Saavedra Alessandri, Secretary
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"),¹ resolves on the request for interpretation of the Judgment on Merits, Reparations and Costs issued by the Court on November 27, 2008 in the case of *Ticona Estrada et al.* (hereinafter "request for interpretation" or "request") filed by the Republic of Bolivia (hereinafter, "the State" or "Bolivia").

I
Filing of the request for interpretation
and procedure before the Court

1. On March 19, 2009, the State filed a request for interpretation of the Judgment on the merits, reparations and costs rendered in the instant case on November 27, 2008² (hereinafter, "the Judgment" or "the Judgment on the merits")

¹ The Rules of Procedure approved by the Court in its LXI Period of Ordinary Sessions held from November 20 to December 4, 2003, during sessions number 9 and 10 of November 25, 2003 shall apply.

² *Cf.* Case of *Ticona Estrada et al.* Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191.

based on Articles 67 of the Convention³ and 59 of the Rules of Procedure.⁴ In its request, the State required the Court to render a judgment of interpretation in relation to: a) the Court's competence and the determination of the responsibility regarding the classification of the crime of forced disappearance though the State has already remedied the non-compliance; b) the scope of the domestic procedure of compensation in relation to the obligation to repair determined by the Judgment of the Court; c) the deduction of the value of the property delivered to the victim's next-of-kin as part of the compensation for non-pecuniary damage and d) the scope of the agreements entered into by the State for the provision of medical care and psychological treatment for the victim's next-of-kin.

2. On March 24, 2008, in accordance with Article 59(2) of the Rules of Procedure and following the instructions of the President of the Tribunal, the Secretariat of the Court 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 victims' representatives (hereinafter, the "representatives"). It also informed the Commission and the representatives that they could submit any written arguments they deemed pertinent by April 27, 2009. Finally, it reminded the State that, as established in Article 59(4) of the Rules of Procedure, "[a]n application for interpretation shall not suspend the effect of the judgment."

3. On April 27, 2009, the Commission and the representatives submitted their written arguments, respectively.

II

Competence and Composition of the Court

4. Pursuant to Article 67 of the Convention, the Court has jurisdiction to interpret its own judgments. When performing the analysis of the request for interpretation, the Tribunal must have, if possible, the same composition it had at the time of rendering the respective Judgment (Article 59(3) of the Rules of Procedure).⁵ On this occasion, the Court judges are the same who rendered the Judgment of which the interpretation has been requested.

³ Article 67 of the Convention provides:
[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.

⁴ Article 59 of the Rules of Procedure –in its pertinent part- sets forth 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.

⁵ When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which the interpretation is being sought. However, in the event of death, resignation, impediment, excuse or disqualification, the judge in question shall be replaced pursuant to Article 16 of these Rules.

III

Admissibility

5. It is within the Court's functions to verify if the terms of the request for interpretation fulfill the requirements set forth in the applicable provisions, that is, Article 67 of the Convention and Articles 29(3)⁶ and 59 of the Rules of Procedure.

6. The Court verifies that the State filed the request for interpretation within the term set forth in Article 67 of the Convention, as notice of the Judgment was served upon the State, the Inter-American Commission and the representatives on December 23, 2008.

7. On the other hand, as previously decided by the Court,⁷ a request for interpretation of a judgment must not be used as a means of objection; its only purpose must be to disentangle the meaning of a decision when one of the parties claims that the text of the operative paragraphs or fundamentals lacks clarity or precision, provided those considerations have influence in the said operative part. Consequently, the amendment or annulment of the respective judgment cannot be claimed through a request for interpretation.

8. Based on the foregoing, this Tribunal considers that said request was timely filed, and therefore, it is, in principle, admissible. To this end, the Tribunal shall separately examine the four questions raised in the request filed by the State (*supra* para. 1) as well as the relevant observations made by the representatives and the Commission and, if applicable, clarify the meaning and scope of the Judgment.

IV

On the Court's competence and the determination of responsibility in relation to the classification of the crime of forced disappearance though the State has already remedied such non-compliance

9. In its request for interpretation of the Judgment, the State referred to the fact that when the case was brought to the attention of the Inter-American system for the protection of human rights, the crime of forced disappearance was not classified according to the obligations enshrined in the Inter-American Convention on Forced Disappearance of Persons. Nevertheless, the State remedied such non-compliance before the contentious proceeding was brought before this Tribunal. Moreover, the State referred to the judgment of the Court which established that the Court was competent to rule over this matter and decided that the State has failed to comply with the obligations established in Articles I(d) and III of the Inter-American

⁶ Article 29(3) of the Rules of Procedure sets forth that "judgments and orders of the Court may not be contested in any way".

⁷ *Cf.* Case of Loayza Tamayo. Interpretation of the Judgment on Merits. Order of the Court of March 8, 1998. Series C N. 47, para. 16, Case of Garcia Prieto *et al.* v. El Salvador. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations and Costs. Judgment of November 24, 2008. Series C No. 188, para. 7; and Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 189, para. 13.

Convention on Forced Disappearance of Persons, in relation to Article 2 of the American Convention on Human Rights considering that it did not classify such crime within a reasonable time. Therefore, the State requested this Court to establish the scopes of what the Court “understands to be a reasonable time in the instant case in order to define the crime of forced disappearance” and specifically, requested the Court to rule over: “(i) the scopes of the Court’s competence [...] to declare the international responsibility of the State, when at the moment the case was brought to this Court’s attention, Bolivia had already defined such crime of forced disappearance; [...] (ii) the scope of the determination of the international responsibility of the State though it was expressly mentioned that the State corrected its conventional obligation and defined the crime of forced disappearance before this contentious case was initiated”. Finally, the State pointed out that “it considers that there was no breach of the conventional obligations [...] pursuant to paragraphs 104 and 105 of the Judgment [...] in relation to paragraph 188 [8], of said judgment”.

10. The Commission indicated in this regard that the purpose of the State's request “is not [for the Court] to interpret the scope or meaning of the judgment [...] but to review and reconsider [...] the judgment [...] since the State does not agree with a decision contained therein, as clearly expressed by the State when putting forward the grounds of such request”. Consequently, the Commission considered that the State’s request regarding the merits is inadmissible.

11. The representatives indicated that, according to Article 59(1) of the Court’s Rules of Procedure of the Court and its case-law, “a request for interpretation of judgment must not be used as a means of objection; its only purpose must be to disentangle the meaning of a decision when it lacks clarity or precision”; in addition, it is not a remedy “by means of which the parties are able to express their disagreement with the decision”. Based on the foregoing, the representatives requested the Court to declare the request for interpretation regarding the merits of the case to be inadmissible, inasmuch as they considered that the State “questioned the Court’s competence [without seeking] clarification or precision of the meaning of the Judgment, but on the contrary, the State show[ed] disagreement with it”.

12. The Court noted in its Judgment on the Merits that:

104. In the instant case, even though there was no legal definition of forced disappearance in the Bolivian law at the moment the proceedings were initiated in the year 1983, the Court notes that there was specific obligation to legally define the crime of forced disappearance at that time, in accordance with the State obligations undertaken on the basis of having ratified the American Convention. In light of Article 2 of the Convention, this Tribunal considers that from the moment the proceedings were initiated, the Bolivian legislation provided criminal rules leading to the effective observance of the guarantees established in the Convention with respect to the individual rights to life, humane treatment and personal liberty, according to the provisions of the Criminal Code in force in the year 1983. Therefore, the Court considers that, in the instant case, it has not been proved that the lack of legal definition of the autonomous crime of forced disappearance has hindered the effective development of the criminal procedure.

105. Moreover, this Tribunal observes that the State ratified the Convention on Forced Disappearance of Persons on May 5, 1999, which entered into force on June 5, 1999, in Bolivia. It is as of this moment onwards that the State had the obligation to define the crime of forced disappearance of persons as an offense. Considering the nature of such obligation, the State should have implemented it within a reasonable time. In such respect, it was not until January 18, 2006, that Bolivia incorporated such crime into its legislation. It is worth mentioning that, at the time the case was brought before the Inter-American system, that is, on August 9, 2004, the non-compliance was still being observed,

therefore this Court asserts that it is competent to rule over such matter. Nevertheless, at the moment the case was brought to this Court's attention, the State had already corrected said non-compliance by establishing the crime of forced disappearance in its legislation. As a consequence, although the State failed to comply with Articles I.d) and III of the IACFDP, in relation to Article 2 of the American Convention, such non-compliance was corrected by the State.

13. This Tribunal notes that the questions raised by the State regarding the Court's competence and the scope of the establishment of international responsibility when the non-compliance has been remedied by the State, are not addressed to clarify the meaning and scope of the Judgment but, on the contrary, seek for the Tribunal to further the reasoning to what has been decided in paragraphs 104 and 105 of the Judgment. Apart from the foregoing, this Court finds that the argument of the State regarding the fact that it did not fail to comply with its conventional obligations, is addressed to object to the decision already issued by the Court and modify the meaning thereof. As a result, this Tribunal considers that the allegations put forward by the State are not in keeping with the criteria of interpretation required by the American Convention and the Rules of Procedure; therefore, the Court finds them to be inadmissible.

V

On the scope of the domestic procedure of compensation towards the obligation to repair determined by the Judgment of the Court

14. The State requested the Court to interpret paragraph 136 of the Judgment, in which it mentioned that once made effective the payment of the compensation, the State should inform it to the National Commission of Compensation to the Victims of Political Violence [CONREVIP], or the domestic court that is hearing said proceedings so it can take the appropriate decision. In that sense, the State considered that when the Court established that the "domestic court `takes the appropriate decisions', making reference to the CONREVIP [,] [...] the scope of such term could entail the impossibility to repair through domestic administrative courts [...], based on the fact that the Court has declared the international responsibility [and] the subsequent obligation to properly repair determined in the international judgment and that by virtue of the principle of *pact sunt servanda*, the State fulfils the treaty obligations, in light of Article 68 of the Convention."

15. In such regard, the Commission considered that "even when the scope and meaning of the provisions of the Judgment are clear, the emphasis laid on the fact that the instance of the CONREVIP shall, in no way, turn into an obstacle for the payment of the compensation and the time limit of one year granted to make the payments determined in operative paragraph 16, it is still useful [for the Court to specify] the content of such decision to clear up all doubts regarding the payment of the compensation ordered by this Tribunal."

16. The representatives referred to the Judgment by which the Court noted that the payment of the compensation by means of the domestic procedure "has not objectively proved to be a material possibility of compliance." Therefore, the representatives considered that, according to the provisions of the Judgment, the State should set aside the possible payment of the amount described in the Administrative Order once "it proves that it made the total payment of said compensatory amounts" ordered by the Tribunal.

17. In paragraph 136 of the Judgment the Tribunal established that “when the State pays the compensation that has been established [...], it should inform the CONREVIP or the courts that are hearing said proceedings so they can take the appropriate decisions. Said Administrative Order N° 01/2007 shall, in no way, turn into an obstacle for the payment of the non-pecuniary compensation determined by this Tribunal in this Judgment.” In this regard, the Court notes that, in relation to the terms of paragraph 136 of the Judgment, the State must pay the compensatory amounts ordered in the judgment. The reference made in the Judgment to the CONREVIP or other court was intended for said institution to be informed that a compensatory amount was ordered at the international level.

VI

On the deduction of the value of the property delivered to the victim’s next-of-kin as part of the compensation for the non-pecuniary damage

18. The State noted that the Court considered that the value of the parcel granted by the State as a measure of reparation shall be taken into account as part of the compensation for non-pecuniary damage in favor of César Ticona Estrada. Moreover, the State referred to the determination of the Tribunal by means of which it indicated that the construction of the house offered by the State shall be taken into account as part of the compensation for non-pecuniary damage in favor of the parents of Mr. Renato Ticona Estrada. In this regard, the State requested the Court to interpret whether the financial costs in question should be deducted from the corresponding compensations mentioned in paragraph 139 of the Judgment or, if applicable, the non-deduction.

19. The Commission indicated that “the scope and content of the provisions of the Judgment [are] clear in view of the fact that the judgment expressly established that the Court already took into account the value corresponding to the house offered by the State and the parcel granted to Mr. Ticona Olivares at the moment of equitably determining the compensatory amount. In conclusion, [the Commission considered] that it is not appropriate to make an additional deduction and that the request for clarification made by the State is unnecessary”.

20. The representatives indicated in this connection that “there is no obscure aspect” since they considered that when the Court expressed that the values of the parcel and the construction of the house shall be taken into account as part of the compensation for non-pecuniary damage, the Court refers to the fact that “in relation to the property, it must be deducted from the compensation for non-pecuniary damage in favor of César Ticona Olivares and, in relation to the construction, it must be deducted from the total amount of compensation for non-pecuniary damage of Cesar Ticona Olivares as well as Honoria Estrada de Ticona”.

21. The Court notes that in paragraphs 131 and 132 of the Judgment, this Tribunal considered that “the value of [...] parcel sh[ould] be taken into account as part of the compensation for non-pecuniary damage in favor of César Ticona Olivares”. Furthermore, it also indicated that “value of [...] property sh [ould] be taken into account as part of the compensation for non-pecuniary damage in favor of Honoria Estrada de Ticona and César Ticona Olivares”. Then, in paragraph 139 of the Judgment, the Court determined the compensatory amount for non-pecuniary damage and the method it should be paid to both parents of the victim.

22. Based on the foregoing, the Tribunal deems it pertinent to clarify that the compensatory amount for non-pecuniary damage set in the Judgment must be fully paid by the State in the form established in paragraph 139 of the Judgment, without making any deduction from the value of the parcel and the value of the construction of the house. The foregoing seeks to clarify that when this Tribunal referred to the fact that said values were "taken into account", it meant that they were considered by the Court when equitably determining said compensations.

VII

On the scope of the agreements entered into by the State for the provision of medical and psychological care for the victim's next-of-kin

23. The State mentioned that prior to the delivery of the Judgment of the Court, it had entered into agreements with two public hospitals in order to provide medical care to the victim's next-of-kin, and therefore it requested the Court its positive consideration and the rendering of an interpretative criteria in order to properly comply with the reparation order by the Court in relation to the medical and psychological treatment for the victim's next-of-kin.

24. The Commission noted that "the Court already valued the information presented by the State and that the clarification requested seems to be a matter of monitoring compliance with the judgment; [it therefore] considers that the interpretation requested [by the State] is unnecessary".

25. The representatives made reference to the brief dated November 18, 2008 forwarded to the Court in which they indicated that Mrs. María Honoria Estrada was forced to pay for medical services rendered to the Hospital Complex. The foregoing is mentioned in order for the Court to take it into account to urge the State to strictly comply with the reparations of medical and psychological care for the victim's next-of-kin, as ordered by this Tribunal.

26. The Court valued in paragraphs 168 and 169 of the Judgment the parties' positions and ordered, as a precise measure of reparation, the provision of medical and psychological care for the next-of-kin, free of charge, as long as they need it, including the provision of medicines required, considering the expert's reports and the evidence produced in the case file. In this sense, the duly implementation of said measure of reparation shall be assessed in the stage of the procedure to monitor compliance. Therefore, in view of the fact that the argument does not correspond to a case of interpretation of the Judgment according to the applicable rules, the Court declares it is inadmissible.

VIII

Operative Paragraphs

27. Based on the foregoing reasons,

The Inter-American Court of Human Rights

Pursuant to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Rules of Procedure,

Decides:

Unanimously,

1. To declare the request for interpretation of the Judgment on merits, reparations and costs delivered on November 27, 2008 in the case of *Ticona Estrada et al.* submitted by the State, to be partially admissible.
2. To determine the scope and meaning of the questionings of the State, identified in paragraphs 14 and 18 of this Judgment in relation to Considering Clauses 136 and 131, 132, and 139 of the Judgment on the merits, reparations and costs delivered on November 27, 2008 in the case of *Ticona Estrada et al.*, which has been clarified by the Tribunal in paragraphs 17, 21 and 22 of this Judgment.
3. To declare the questionings made by the State, identified in paragraphs 9 and 23 in relation to Considering clauses 104 and 105, 168 and 169 of the Judgment on the merits, reparations and costs, delivered on November 27, 2008 in the case of *Ticona Estrada et al.*, to be inadmissible in light of the fact that they are not in keeping with the terms of Articles 67 of the Convention and 29(3) and 59 of the Rules of Procedure, pursuant to the terms mentioned in paragraphs 12, 13 and 26 of this Judgment.
4. To require the Secretariat of the Inter-American Court of Human Rights to notify this Judgment to the State, the Inter-American Commission on Human Rights and the victims' representatives.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary