

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

***CASE OF THE MASSACRE OF SANTO DOMINGO v. COLOMBIA***

***JUDGMENT OF AUGUST 19, 2013***

***(Request for interpretation of the Judgment on preliminary objections,  
merits, reparations and costs)***

In the case of the *Massacre of Santo Domingo*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges<sup>1</sup>:

Diego García-Sayán, President  
Leonardo A. Franco, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge, and  
Eduardo Vio Grossi, Judge;

also present,

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

pursuant to Article 67 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Article 68 of the Rules of Procedure of the Court<sup>2</sup> (hereinafter “the Rules of Procedure”), decides the request for interpretation of the Judgment on preliminary objections, merits and reparations in this case delivered by the Court on November 30, 2012 (hereinafter also “the Judgment”), filed on February 20, 2013, by the representatives of the victims and their next of kin (hereinafter “the representatives”).

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<sup>1</sup> Judge Manuel E. Ventura Robles did not take part in the deliberation and signature of this Judgment for reasons beyond his control.

<sup>2</sup> The Court’s Rules of Procedure approved by the Court at its eighty-fifty regular session held from November 16 to 28, 2009, which apply to this case under Article 79 thereof.

**I**  
**REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE  
THE COURT**

1. On November 30, 2012, the Court delivered the Judgment, which was notified to the parties and to the Commission on December 18 that year.
2. On February 20, 2013, the representatives filed a request for interpretation of the Judgment. Specifically, they asked the Court to “clarify various aspects related to the reparations ordered in favor of the victims.”
3. On April 3, 2013, pursuant to the provisions of Article 68(2) of the Rules of Procedure and on the instructions of the President, the Secretariat of the Court (hereinafter “the Secretariat”) forwarded the said request for interpretation to the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) and to the State of Colombia (hereinafter “the State” or “Colombia”) and granted them until May 3, 2013, to present any written arguments they deemed pertinent.
4. On May 3, 2013, the Commission and the State presented their arguments and observations with regard to the representatives’ request for interpretation.

**II**  
**COMPETENCE**

5. 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.

6. According to this article, the Court is competent to interpret its judgments. Under Article 68(3) of the Rules of Procedure, in order to examine the request for interpretation and reach the corresponding decision the Court must, if possible, have the same composition that it had when it delivered the respective Judgment. On this occasion, the Court is composed of the judges who delivered the Judgment the interpretation of which has been requested by the representatives.

**III**  
**ADMISSIBILITY**

7. The Court must verify whether the request presented by the representatives complies with the requirements established in the norms applicable to a request for interpretation of judgment, namely Article 67 of the Convention, cited above, and the pertinent parts of Article 68 of the Rules of Procedure, which stipulate that:

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

[...]

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

8. Furthermore, Article 31(3) of the Rules of Procedure establishes that the “[j]udgments and orders of the Court may not be contested in any way.”

9. The Court observes that the representatives presented their request for interpretation of the Judgment within the 90-day period established in Article 67 of the Convention, because it was notified on December 18, 2012.

#### IV ANALYSIS OF THE ADMISSIBILITY OF THE REQUEST FOR INTERPRETATION

10. As this Court has established in its consistent case law, clearly supported by the applicable law, a request for interpretation of judgment may not be used as a means of contesting the decision the interpretation of which is requested. The exclusive purpose of this request is to determine the meaning of a judgment when one of the parties affirms that the text of its operative paragraphs or of its considerations lacks clarity or precision, provided that these considerations have an impact on the said operative paragraphs.<sup>3</sup> Consequently, it is not possible to request the modification or annulment of the respective judgment by means of a request for interpretation.<sup>4</sup>

11. Furthermore, the Court has affirmed the inadmissibility of using a request for interpretation in order to submit factual or legal questions that were brought up at the appropriate procedural moment and on which the Court has already adopted a decision.<sup>5</sup>

12. The Court will proceed to analyze the request for interpretation filed by the representatives in order to determine whether it is in order to clarify the meaning or scope of any point of the Judgment. To this end, it will examine the questions posed by the representatives, as well as the arguments and observations of the State and of the Commission.

13. The representatives filed the request for interpretation for the Court to clarify “various aspects related to the reparations ordered in favor of the victims,” which they divided into three elements: (i) an alleged discrepancy between the persons identified as injured party and the entitlement to the reparations ordered; (ii) the victims of forced displacement, and (iii) the situation of the next of kin of Luis Enrique Ropero and others. Nevertheless, the representatives posed several questions that were not clearly related to these issues; therefore, the Court will examine each question in the order in which it was posed, namely:

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<sup>3</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits*. Order of the Inter-American Court of Human Rights of March 8, 1998. Series C No. 47, para. 16, and *Atala Riffo and Daughters v. Chile. Interpretation of the judgment on merits, reparations and costs*. Judgment of November 21, 2012. Series C No. 254, para. 11.

<sup>4</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits*, para. 16, and *Atala Riffo and Daughters v. Chile. Interpretation of the judgment on merits, reparations and costs*, para. 11.

<sup>5</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on reparations and costs*. Judgment of June 3, 1999. Series C No. 53, para. 15; *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*, Judgment of August 29, 2011. Series C No. 230, para. 30, and *Case of Abrill Alosilla et al. v. Peru. Interpretation of the judgment on merits, reparations and costs*, Judgment of November 21, 2011, Series C NO. 235, para. 17.

1. *Can the heirs of the 16 victims of the violation of the right to life have recourse to the compensation mechanism established in paragraph 337 of the Judgment?*
2. *Can the victims of the violation of the right to property have recourse to the compensation mechanism established in paragraph 337?*
3. *Can the 27 victims of forced displacement recognized in paragraph 268 of the Judgment have recourse to the compensation mechanism established in paragraph 337 of the Judgment for this concept?*
4. *Can the victims of forced displacement file an administrative action against the State for the facts of forced displacement, or can they have recourse to Law 288 of 1996?*
5. *Does the Judgment enable the next of kin of Luis Enrique Parada Ropero – who have not been compensated – to have recourse to the mechanism under Law 288 of 1996 or to the mechanism that the Court refers to in paragraph 337 of the Judgment?*
6. *Does the Judgment enable the 18 persons who were not recognized as injured party, whose mandate was accredited by the representatives and who were not included in the Commission's Merits Report, to have recourse to the mechanism established by Law 288 of 1996 or to the mechanism referred to by the Court in paragraph 337 of the Judgment?*
7. *If there are other family members of victims of the violation of the right to life, who did not have recourse to the contentious administrative jurisdiction, and who were not represented at the inter-American level, can they have recourse to the mechanism established by Law 288 of 1996 or to the mechanism referred to by the Court in paragraph 337 of the Judgment?*

**A. *First question: Can the heirs of the 16 victims of the violation of the right to life have recourse to the compensation mechanism established in paragraph 337 of the Judgment?***

*Arguments of the representatives and observations of the Commission and the State*

14. The representatives indicated that, in paragraph 337 of the Judgment, which established a domestic mechanism so that certain victims could receive the corresponding reparations, the Court had failed to mention two groups of victims recognized as injured party: (i) the "direct" victims, who had not been considered beneficiaries of reparations under domestic law, and (ii) the victims of the violation of the right to property. Thus, they indicated that, even though the Court had declared 17 persons (16 of them represented by the representatives) to be victims of the violation of the right to life, it had "not attributed any legal consequence to this fact, contrary to its reiterated case law according to which the victims themselves have a right to compensation"; in other words, it did not indicate the reparation that was due to these 16 persons "recognized as direct victims of the violation of Article 4." Consequently, they asked the Court to clarify whether the heirs of these 16 victims can have recourse to the mechanism established in paragraph 337 of the Judgment.

15. The Commission observed, in relation to the scope of the reparations derived from the violation of the right to life, that "[i]n the consistent case law of the Inter-American Court, it has been understood that violations of the right to life give rise to pecuniary reparations both with regard to the person deceased, as a direct victim, and with regard to the next of kin, as victims because of the effects on their mental and moral integrity due to

the loss of a loved one. Owing to the nature of this violation, in the practice, this signifies that the deceased victims' heirs (who in most cases are the next of kin) are the beneficiaries of the compensation corresponding to the deceased victim, while the next of kin who are declared to be victims in the judgment, because of the damage to their mental and moral integrity due to the loss of a loved one, are the beneficiaries of a distinct compensation amount related to this additional damage." The Commission added that, "in paragraphs 334 to 338 of the Judgment, especially in the assessment of the aspects covered by the reparations granted at the domestic level and the consequent determination of who and for what concepts may have recourse to the mechanism established in [paragraph] 337 of the Judgment, these elements are not clearly distinguished from the pecuniary reparations based on the right to life in light of the consistent case law of the Inter-American Court." Thus, "and given that on previous occasions the Court has taken a different approach in similar situations [...]," the Commission considered that the request for interpretation filed by the representatives was admissible.

16. The State indicated that the request was inadmissible because "the intention was to contest the ruling issued by the Court and [...] to expand its scope as regards the measures of compensation granted and the persons who would benefit from them." It added that such matters "are outside the regulatory sphere of Article 67 of the American Convention, because they would lead to the modification of the previously delivered judgment." Furthermore, it indicated that the representatives were not referring to a problem of interpretation but, to the contrary, were merely contesting substantial matters relating to the Judgment. Lastly, the State considered that the compensation mechanism of paragraph 337 of the Judgment "was established expressly by the Court for the injured victims and their next of kin who, being identified as injured party during these proceedings, had not exhausted the contentious-administrative jurisdiction, and for five family members of two deceased victims who were recognized as injured party and who had not received reparation at the domestic level. Consequently, the mechanism [could] not be extended to the "heirs" of the 16 deceased victims who, in the Court's understanding, had already received satisfactory compensation under domestic law."

#### *Considerations of the Court*

17. The Court recalls that the Judgment considered the following with regard to the reparations granted at the domestic level in relation to the death of the persons who were declared victims of the violation of the right to life:

"334. [...] the Court notes that the next of kin of those who died in Santo Domingo received reparation under the Colombian contentious-administrative proceeding [...]. Thus, 107 relatives of 16 of the 17 presumed victims who were killed have received compensation under the contentious-administrative jurisdiction.<sup>6</sup> These next of kin

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<sup>6</sup> Cf. Judgment of the Contentious-Administrative Court of Arauca, Mario Galvis Gelvez *et al.*, case file No. 81-001-23-2000-348, May 20, 2004 (evidence file, tome 20, folio 10180 to 10274), the Conciliation Agreement, Third Section, Council of State, Mario Galvis Gelvez *et al.*, proceedings No. 28259, November 8, 2007 (evidence file, tome 3, folios 1044 and 1045), and the approval of the Conciliation Agreement, Judgment of the Third Section, Council of State, Mario Galvis Gelvez *et al.*, case file No. 07001-23-31-000-2000-0348-01, December 13, 2007 (evidence file, tome 2, folios 751-806). In this judgment, the conciliation was approved between the Nation and 19 of the 23 joint litigators, it was declared that the proceedings were terminated with regard to them, and the agreement was not approved with regard to the remaining four, ordering that the proceedings should continue in their regard. Subsequently, in a judgment of November 19, 2008, the Nation-Ministry of Defense was declared materially responsible for the damage caused to the four remaining co-litigants. See Third Section, Council of State, Mario Galvis Gelvez *et al.*, case file No. 07001-23-31-000-2000-0348-01, November 19, 2008 (evidence file, tome 3, folios 1047-1127).

obtained reparation after signing a conciliation agreement with the Ministry of Defense that was endorsed by the Council of State.<sup>7</sup> [...]

336. Taking into account that the contentious courts have established reparations in this case based on what the victims claimed and even conciliated, and in keeping with the principle of complementarity, the Court finds that it is not appropriate to order additional monetary reparations, for either pecuniary or non-pecuniary damage in favor of the next of kin of the victims who died, or of those injured during the events, who have already received reparation under the domestic system of justice."<sup>8</sup>

18. In addition, in paragraph 337 of the Judgment a mechanism was indeed established so that determined victims could receive at the domestic level, rapidly and directly and if appropriate, the compensation and indemnities for pecuniary and non-pecuniary damage. This paragraph indicates:

Nevertheless, the Court must determine the situation of the injured victims (*supra* para. 335), as well as of five family members of two deceased victims,<sup>9</sup> and the next of kin of the injured victims, who did not have recourse to the domestic contentious-administrative jurisdiction. In this regard, the Court finds that the State must grant and execute, within one year and using a prompt domestic mechanism, the pertinent compensation and indemnities for pecuniary and non-pecuniary damage, as appropriate, which must be established based on the objective, reasonable and effective criteria of the Colombian contentious-administrative jurisdiction. The next of kin of victims who consider that they are beneficiaries of the provisions of this paragraph should approach the corresponding State authorities within three months at the latest of notification of this Judgment."<sup>10</sup>

19. Thus, paragraph 337 of the Judgment established a mechanism so that three groups of victims could claim the corresponding reparations promptly: (i) the injured victims; (ii) five family members of two deceased victims, and (iii) the next of kin of the injured victims. In other words, it is clear that the heirs of the 16 victims of violations of the right to life are not included in these categories that establish the requirements for having recourse to the domestic mechanism established in the said paragraph 337.

20. The Court recalls that, before this case was submitted to its consideration, the domestic courts had already established compensation in favor of the next of kin of the victims who died during the events, based on what these next of kin had requested, and even conciliated, as reparation for various aspects of the pecuniary and non-pecuniary damage that they had suffered in relation to the death of their family members. Hence, and as indicated in paragraph 336 of the Judgment, the Court found that, based on the principle of complementarity, it was not in order to establish additional pecuniary reparations, for either pecuniary or non-pecuniary damage in favor of those who were able to file their claims and had received reparation at the domestic level.

21. In addition, it is true that, in other cases that involve violations of the right to life, the Court has established reparations of a pecuniary nature for certain aspects of the pecuniary and non-pecuniary damage suffered by the victim directly affected by the facts of

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<sup>7</sup> *Case of the Massacre of Santo Domingo v. Colombia. Preliminary objections, merits and reparations.* Judgment of November 30, 2012. Series C No. 259, para. 334.

<sup>8</sup> *Case of the Massacre of Santo Domingo v. Colombia*, para. 336.

<sup>9</sup> Nerys Duarte Cárdenas (permanent companion of Carmen Antonio Díaz), Andersson Duarte Cárdenas (son of Carmen Antonio Díaz), Davinson Duarte Cárdenas (son of Carmen Antonio Díaz), Lucero Talero Sánchez (permanent companion of Levis Orlando Martínez Carreña) and María Elena Carreño (sister of Levis Orlando Martínez Carreña).

<sup>10</sup> *Case of the Massacre of Santo Domingo v. Colombia*, para. 337.

the case. An example of this is the non-pecuniary damage suffered directly by the person who died, and the amount of the reparation for this is received by his or her heirs. However, this Court has considered that, if national mechanisms to determine forms of reparation exist, such procedures and results may be assessed and that, if these mechanisms do not meet criteria of objectivity, reasonableness and effectiveness to make adequate reparation for the violations of the rights recognized in the Convention, the Court may, in exercise of its subsidiary and complementary competence, establish pertinent measures of reparation.<sup>11</sup> This is a matter that must be deliberated and decided in each case during the merits and reparations stages, based on the corresponding arguments of the parties.

22. Consequently, it is not for the Court to re-assess, by means of interpretation of judgment, the suitability of the domestic mechanisms to establish adequate reparation for the violations of the rights that were declared, particularly if the matter was not clearly explained by the representatives or, if applicable, by the Commission at the appropriate procedural opportunities during the merits and reparations stages. Accordingly, in answer to the question posed by the representatives, the heirs of the 16 victims who died cannot be considered within the mechanism established in paragraph 337 of the Judgment.

23. Consequently, the Court finds that accepting the interpretation suggested by the representatives would suppose the modification or expansion of the decision taken in the Judgment, and this is not possible pursuant to Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure. Therefore, this aspect of the request for interpretation is inadmissible.

**B. *Second question: Can the victims of the violation of the right to property have recourse to the compensation mechanism established in paragraph 337 of the Judgment?***

*Arguments of the representatives and observations of the Commission and the State*

24. In relation to the preceding question (*supra* para. 14), the representatives indicated that the five victims<sup>12</sup> of damage to the right to property did not receive compensation at the domestic level and that some of them had not received compensation under any other heading.<sup>13</sup> This is why they asked the Court to clarify whether these five victims could have recourse to the compensation mechanism established in paragraph 337 of the Judgment.

25. The Commission indicated that the Court's considerations on the pecuniary and non-pecuniary damage "appear to circumscribe its analysis to the victims, and the next of kin of the victims, of the violation of the rights to life and to personal integrity, without making explicit reference to the compensation for pecuniary or non-pecuniary damage to which some of these same persons would be beneficiaries, but as victims of other violations declared in the Judgment, such as the rights to property, or to freedom of movement and residence arising from the displacement." Thus, considering that the determination of the

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<sup>11</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 246. Similarly, see *Case of the Massacre of Santo Domingo v. Colombia*, para. 337.

<sup>12</sup> Namely: Mario Galvis, Víctor Palomino, Margarita Tilano, María Cenobia Panqueva and Olimpo Cárdenas, *Case of the Massacre of Santo Domingo v. Colombia*, para. 282.

<sup>13</sup> Namely: Víctor Palomino and María Cenobia Panqueva.

persons who had already obtained reparation or who had not obtained reparation appeared to be based only on the reparations obtained at the domestic level due to the violation of the rights to life and to personal integrity, the Commission indicated that, “[f]rom the analysis of paragraphs 334 to 338, it was unclear whether the [...] Court understood that the pecuniary reparations granted at the domestic level were sufficient to make reparation also for the pecuniary and non-pecuniary damage arising from other violations declared in the Judgment to the detriment of some of these same persons, such as the violations of the rights to property and to freedom of movement and residence.”

26. The State indicated that “the request in reference seeks to contest the judgment that has been handed down by the Inter-American Court. When the petitioners argue that no compensation has been awarded for the violation of the right to property, they are not referring to a problem of interpretation. And this is because they argue the existence of a supposed error in the decision and seek to have it amended in accordance with their own arguments.” In addition, the State reiterated that “the mechanism contemplated in paragraph 337 of the Judgment was expressly established by the Court [...] in relation to the declared violations to the rights to life and integrity of the group of persons included in the text” and that, therefore, “it cannot be extended to the declared violation of the right to property.”

#### *Considerations of the Court*

27. Regarding this point, the Court observes that paragraph 282 of the Judgment indicates that:

“[S]ince it is evident that the damage produced by the launching of a cluster bomb in Santo Domingo can be attributed to the Colombian Air Force, the Court finds that the State is responsible for the violation of Article 21 of the Convention in relation to 1(1) of this instrument, to the detriment of the owners of the stores and dwellings affected, namely: Mario Galvis, Víctor Palomino, Margarita Tilano, María Cenobia Panqueva and Olimpo Cárdenas.”<sup>14</sup>

28. Furthermore, with regard to paragraph 337 of the Judgment, the Court notes that the victims of violations of the right to property – with the exception of María Cenobia Panqueva who could have recourse in her capacity as injured victim – are not included in any of the three groups of victims who meet requirements to access the domestic mechanism established in this paragraph (*supra* para. 19).

29. According to the evidence file, Mario Galvis, Víctor Palomino, María Cenobia Panqueva and Margarita Tilano Yanez (wife of Olimpo Cárdenas Castañeda, also declared victim of a violation of the right to property in the Judgment) had recourse to the contentious-administrative jurisdiction and requested reparation for the violations of the right to property they suffered as a result of the events of December 13, 1997. However, they were not granted pecuniary reparation by this contentious-administrative mechanism.<sup>15</sup> In addition, the representatives did not file requests for compensation before

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<sup>14</sup> *Case of the Massacre of Santo Domingo v. Colombia*, para. 282.

<sup>15</sup> In the case of Mario Galvis, it was decided that there was no evidence of the pre-existence of the commercial establishment, Judgment of the Contentious-Administrative Court of Arauca, Judge Wilson Arcila Arango. May 22, 2004 (evidence file, tome 20, folio 10240). In the case of Víctor Julio Palomino, it was indicated that his ownership of the vehicle whose destruction was claimed had not been proved. Judgment of the Contentious-Administrative Court of Arauca, Judge Wilson Arcila Arango. May 22, 2004 (evidence file, tome 20, folio 10256). In the cases of María Cenobia Panqueva, and of Margarita Tilano Yañez and her husband Olimpo Cárdenas Castañeda, there is no specific reference to motives. *Cf.* Judgment of the Contentious-Administrative Court of Arauca, Judge Wilson Arcila Arango. May 22, 2004 (evidence file, tome 20, folio); Judgment of the Contentious-Administrative Court of Arauca, Judge Wilson Arcila Arango. May 22, 2004 (evidence file, tome 20, folios 10240, 10253, 10256 to 10260).

the Court in relation to the violation of the right to property in favor of two of these victims.<sup>16</sup> In other words, the domestic contentious administrative courts had already attended the requests for reparation of these persons for the damage caused to their properties and had taken a decision in this regard.

30. Consequently, since it is not incumbent on the Court to re-assess the suitability of the domestic mechanisms to establish adequate redress for the violations of the rights that were declared, this aspect of the request for interpretation is inadmissible, because accepting the interpretation proposed by the representatives would suppose modifying or expanding the decision taken in the Judgment, and this is not possible pursuant to Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure.

**C. Third and fourth questions with regard to the 27 victims of forced displacement**

*Arguments of the representatives and observations of the Commission and the State*

31. The representatives indicated that "none of the victims in this case were compensated for the forced displacement they underwent." Thus, they argued that "although the Court recognizes a group of [these] victims as injured party, it does not attribute any legal consequence to this recognition," so that it is necessary to clarify "what reparations are due to the victims of forced displacement that the Court individualizes as injured persons, and their next of kin." Accordingly, the representatives asked whether the 27 victims of forced displacement recognized in paragraph 268 of the Judgment could have recourse to the compensation mechanism established in paragraph 337 of the Judgment for this concept.

32. Also, in the opinion of the representatives, "in both paragraph 266 and paragraph 338 of the Judgment it is reiterated that the victims of forced displacement who did not have recourse to the Inter-American Court or who were not recognized as victims in the proceedings before the Court may file claims at the domestic level for this concept."<sup>17</sup> Therefore, they asked the Court to clarify whether the victims of forced displacement could file administrative actions against the State for the facts of the forced displacement or have recourse to Law 288 of 1996.<sup>18</sup>

33. The Commission did not present specific observations, or add to those it had made previously.

34. The State considered that the representatives' request sought to contest the Judgment and that it "suggests the existence of a supposed error in the decision, with the subsequent claim for additional compensation to be recognized. The State reiterated that the universe of victims entitled to claim the compensation established in paragraph 337 is clearly defined in the said text, so that any expansion to victims of Article 22 of the

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<sup>16</sup> The representatives did not file claims under this heading before this Court on behalf of Margarita Tilano Yanez and her husband Olimpo Cárdenas Castañeda.

<sup>17</sup> They added that in "this situation are, for example, those who helped to evacuate the injured, those who were in their homes or in public establishments and were not struck by the AN-M1A2 device, but it has been proved by their testimony before the domestic organs that, on December 13, 1998, they were in the village of Santo Domingo."

<sup>18</sup> Law of July 9, 1996, establishing instruments to compensate damage to the victims of human rights violations, based on the decisions of specific international human rights organs.

Convention would entail a modification of the Judgment and, consequently, would contravene the scope of Article 67 of the Convention.

35. In addition, the State considered that “the presumed victims of displacement who were not recognized as injured party in the proceedings in question are not entitled to have recourse to the mechanism established in paragraph 337 of the Judgment,” nor can they benefit from Law 288 of 1996, because they were not identified in the proceedings before the Court. It also indicated that, as established in paragraphs 294 and 338 of the Judgment, it was possible for the presumed victims of displacement, who were not recognized during the proceedings, to have recourse to the national administrative or judicial mechanisms to obtain compensation, provided they met the requirements of Colombian law to do so and, since “the foregoing [...] applies to persons who the Court has not individualized as victims, they must substantiate this status.” Similarly, the State indicated that the said paragraphs of the Judgment “do not establish exceptions with regard to the exhaustion of proceedings, compliance with the probative requirements, and observance of the time frames established in Colombian law to obtain reparation through judicial or administrative mechanisms.

#### *Considerations of the Court*

36. Regarding the displaced persons, the Judgment establishes the following:

265. [...] the Court notes that, although the representatives argued the violation of Article 22 in relation to all the inhabitants of Santo Domingo, it is also true that the Commission only identified and individualized as presumed victims those persons injured during the bombardment with the cluster bomb. The Court also notes that, in the context of these contentious proceedings, the representatives and the Commission have referred to 200 or 300 displaced persons without individualizing them.

266. Regarding the foregoing, the Court observes that the failure to identify all the persons who were displaced is partly due to the circumstances in which the facts of the case occurred and the profound fear felt by the inhabitants of the village of Santo Domingo (*supra* para. 243). This makes it impossible to know with certainty how many people were displaced in this case. As indicated previously,<sup>19</sup> the Court notes that many other villagers faced this situation but were not individualized by the Commission or the representatives, so that this situation can only be assessed in relation to those who have been identified in these proceedings as injured victims, without prejudice to the measures that the State must adopt at the domestic level with regard to the other displaced persons.

267. In conclusion, the persons who survived the events that occurred in Santo Domingo on December 13 and 14, 1998, were forced to leave their usual place of residence until approximately January 1999. In this regard, the Court observes that the situation of internal forced displacement faced by the victims who had been injured and their next of kin resulted from the explosion of the cluster bomb in the village of Santo Domingo [...], added to the fear and the psychological effects of the nearby confrontations, as well as the machine gun attack [...].

268. The State is responsible for the violation of Article 22(1) of the Convention, in relation to Articles 5(1) and 1(1) thereof, with regard to Edwin Fernando Vanegas Tulibila; Milciades Bonilla Ostos; Ludwing Vanegas; Gleydis Xiomara García Guevara; Mario Galvis Gelves; Fredy Monoga Villamizar (o Fredy Villamizar Monoga); Mónica Bello Tilano; Maribel Daza Rojas; Amalio Neite González; Marian Arévalo; José Agudelo Tamayo; María Cenobia Panqueva; Pedro Uriel Duarte Lagos; Ludo Vanegas; Adela Carrillo; Alcides Bonilla and Fredy Mora. Also the children, Alba Yaneth García Guevara; Marcos Aurelio Neite Méndez; Erinson Olimpo Cárdenas;

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<sup>19</sup> Cf. *Case of the “Mapiripán Massacre” v. Colombia. Merits, reparations and costs*, para. 183, and *Case of the Ituango Massacres v. Colombia*, para. 221.

Hilda Yuraime Barranco; Ricardo Ramírez; Yeimi Viviana Contreras; Maryori Agudelo Flórez; Rosmira Daza Rojas; Neftalí Neite González and Lida Barranca."<sup>20</sup>

37. In the Judgment, the group composed of the 27 injured victims coincides with the 27 displaced victims. As already indicated (*supra* paras. 18 and 19), in paragraph 337 of the Judgment, the Court established that the injured victims could have recourse to a domestic reparation mechanism for the pertinent compensation and indemnities to be established for pecuniary and non-pecuniary damage, if applicable, which should be calculated based on the objective, reasonable and effective criteria of the Colombian contentious-administrative jurisdiction. However, despite the correlation between the identity of the two groups of victims (injured and displaced), paragraph 337 of the Judgment refers to the injured persons indicated in paragraph 335 thereof, according to which 11 of these 27 victims had received compensation under the Colombian contentious-administrative jurisdiction (some of whom also received compensation as family members of those who died<sup>21</sup>); two of those victims who had recourse to the contentious-administrative jurisdiction were not compensated,<sup>22</sup> and there is no record of whether the remaining 14 injured victims had recourse to this jurisdiction.<sup>23</sup>

38. Thus, paragraph 337 establishes the possibility for the injured victims "who did not have recourse to the contentious-administrative jurisdiction at the domestic level," to request the pertinent compensation and indemnities, if appropriate, only for pecuniary and non-pecuniary damage arising from having been injured in the facts of the case and not based on their condition of having been displaced.

39. Consequently, the Court observes that an affirmative answer to the representative's question would suppose the modification or expansion of the decision taken in the Judgment, and this is not possible pursuant to Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure. Therefore, this aspect of the request for interpretation is inadmissible.

40. The representatives also posed a second question relating to other persons who underwent displacement and who were not identified in the proceedings or declared victims or injured party in the Judgment. In this regard, the Court found, as indicated in paragraphs 265 and 266 of the Judgment, that many other inhabitants of Santo Domingo were affected by the displacement and that the failure to identify all these persons was due, in part, to the circumstances in which the facts of the case occurred and to the profound fear they felt, which made it impossible to know with certainty how many people were displaced, in

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<sup>20</sup> *Case of the Massacre of Santo Domingo v. Colombia*, paras. 265 to 268.

<sup>21</sup> Namely: Edwin Fernando Vanegas Tulibila (brother of Oscar Esneider Vanegas Tulibila), Milciades Bonilla Ostos (permanent companion of Nancy Ávila Abaunza), Mario Galvis Gelves (husband of Teresa Mojica Hernández), Mónica Bello Tilano (mother of Eгна Margarita Bello Tilano and sister of Katherine Cárdenas Tilano), Amalio Neite González (son of Salomón Neite), Marcos Aurelio Neite Méndez (brother of Luis Carlos Neite Méndez), Erinson Olimpo Cárdenas Tilano (brother of Katherine Cárdenas Tilano) and Neftalí Neite González (son of Salomón Neite).

<sup>22</sup> These were: María Cenobia Panqueva and Neftalí Neite González. In the case of the former, it was not determined that she was unable to work and in that of the latter, the medical record was not provided so that it was not possible to determine that he was unable to work. See judgment of the Contentious-Administrative Court of Arauca, Mario Galvis Gelves *et al.*, Case file No. 81-001-23-200-348, May 20, 2004 (evidence file, tome 20, folio 10253); Judgment of the Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, December 13, 2007 (evidence file, tome 2, folio 783), and Judgment of the Third Section, Council of State, Mario Galvis Gelves *et al.*, case file No. 07001-23-31-000-2000-0348-01, November 19, 2008 (evidence file, tome 3, folios 1081 and 1082).

<sup>23</sup> The State referred only to the sisters Maribel Daza Rojas and Rusmira Daza Rojas, as injured victims who had not had recourse to the contentious-administrative jurisdiction.

addition to the fact that they were not individualized by the Commission or by the representatives during the proceedings.

41. The victims of forced displacement and their next of kin, both those who were declared as such in the Judgment and those who were not identified during the proceedings, or declared victims or injured party, could effectively be beneficiaries of other measures that it would correspond to the State to adopt at the domestic level, within the framework of its own laws and institutions, in favor of displaced persons (as indicated in paragraph 266). According to paragraph 338 of the Judgment, the decisions taken in the Judgment do not preclude the possibility for such victims filing “any actions [that might be pertinent] at the domestic level” in relation to these events and to their situation of displacement.

42. Nevertheless, it is not for this Court to determine the applicable or relevant domestic provisions, or to indicate which persons are entitled to have recourse to them. Paragraph 338 merely established that, should these persons have a right to file some type of action at the domestic level to obtain compensation or a benefit, the Judgment can in no way constitute an obstacle for such proceedings to be used effectively. Therefore, the request for interpretation is also inadmissible as regards this question.

***D. Fifth question: “Does the Judgment enable the next of kin of Luis Enrique Parada Ropero – who have not received compensation – to have recourse to the mechanism under Law 288 of 1996 or the mechanism that the Court refers to in paragraph 337 of its Judgment?”***

*Arguments of the representatives and observations of the State*

43. The representatives indicated that the Court had been able to corroborate that the relatives of 16 of the 17 victims who were killed had received compensation at the domestic level, but that doubt subsists regarding the next of kin of Luis Enrique Parada Ropero (victim 6 – Annex I), to whom the Court referred tacitly in paragraph 338, indicating that it did not preclude any actions that could be filed at the domestic level. The representatives pointed out that the action for direct reparation established in the domestic sphere in the Contentious-Administrative Code expires after two years, and therefore asked the Court to clarify whether the Judgment would authorize the next of kin of Luis Enrique Parada Ropero – who have not received compensation – to have recourse to the mechanism under Law 288 of 1996 or the mechanism that the Court refers to in paragraph 337 of its Judgment.

44. The Commission did not present specific observations on this point.

45. The State indicated that the next of kin of Luis Enrique Parada Ropero were not included in the Commission’s report under Article 50, even though it acknowledged that the “representatives’ mandate” had been accredited. Similarly, it reiterated its arguments regarding the universe of victims that would be included under the mechanism of paragraph 337, indicating, in particular, that this cannot be extended to those who are not included in the group contemplated by the Court in the text of its decision, so that a different assessment would blatantly contravene the provisions of Article 67 of the Convention. Second, regarding the possibility of access to the mechanism of Law 288 of 1996, the State indicated that “[t]he members of the groups in question do not comply with the requirements established in this law, because they were not individualized in the report under Article 50. Therefore, no decision of the Inter-American Commission on Human Rights exists in their regard that would authorize them to have recourse to this mechanism.”

### *Considerations of the Court*

46. The Court observes that, indeed, paragraph 334 of the Judgment indicates that 107 relatives of 16 of the 17 victims who were killed have received compensation under the contentious-administrative jurisdiction. Regarding the next of kin of the deceased victim, Luis Enrique Parada Ropero, footnote 462 to this paragraph of the Judgment indicates the following:

“In the case of victim 17 [Luis Enrique Parada Ropero], according to the representatives, the young man Luis Enrique Parada Ropero was raised from an early age by Myriam Soreira Tulibila Macualo (merits file, tome 1, folio 240). However, she has received reparation for the death of her son, Oscar Esneider Vanegas Tulibila, and not for the death of Luis Enrique Parada Ropero. This means that she did not have recourse to the contentious-administrative jurisdiction in relation to the death of the youth Parada. In addition, according to the representatives, some members of the family of Luis Enrique Parada live in the state of Barinas in the Bolivarian Republic of Venezuela, and they listed the names of uncles [...]: Isidro, Andres and Isaías Paradas, however, they do not appear as victims.”<sup>24</sup>

47. On this point, the Court notes that, as revealed by the facts of the case and the case file, the next of kin of Luis Enrique Parada Ropero did not have recourse to the Colombian contentious-administrative jurisdiction in order to claim the corresponding reparations. Accordingly, the Court must analyze the question posed by the representatives only with regard to Myriam Soreira Tulibila Macualo, who was identified as a victim in the case and, according to the representatives, was the surrogate mother of Mr. Parada Ropero who was declared a victim who died during the events of this case. In this regard, it is on record that Mrs. Tulibila Macualo had recourse to the contentious-administrative jurisdiction in relation to the death and injuries of her sons Oscar Esneider and Edwin Fernando Venegas Tulibila, but did not do so specifically for the death of Mr. Parada Ropero. During the proceedings, no information was provided that would confirm this relationship or explain why the surrogate mother of Mr. Parada Ropero did not file requests for reparation in relation to his death when she had recourse to the contentious administrative proceeding.

48. Thus, it is not for the Court to re-assess the decision of the domestic mechanisms or their suitability to establish adequate redress for the violations of the rights that were declared. This aspect of the request for interpretation is inadmissible, since accepting the interpretation proposed by the representatives would suppose modifying or expanding the decision taken in the Judgment, and this is not possible pursuant to Articles 67 of the American Convention and 31(3) and 68 of the Court’s Rules of Procedure.

49. The Court reiterates that, pursuant to paragraph 338 of the Judgment, the determination made in paragraph 337 “does not affect the next of kin of victims who were not petitioners, who have not been represented in the proceedings before the Commission and the Court, and who have not been included as victims or injured parties in this Judgment, insofar as it does not preclude any actions that they may file at the domestic level.” The Court reiterates what it indicated previously, to the effect that it is not incumbent on it to determine which domestic provisions may be applicable or relevant, or to indicate which persons are entitled to have recourse to them.

***E. Sixth question: regarding the situation of the 18 victims who were not recognized as injured party who were not included in the Commission’s Merits Report, but who were considered in the mandates of the representatives***

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<sup>24</sup> Case of the Massacre of Santo Domingo v. Colombia, footnote 462.

*Arguments of the representatives and observations of the State*

50. The representatives asked the Court to clarify whether the 18 victims who were not recognized as injured party,<sup>25</sup> referred to in paragraph 295 of the Judgment, and who, although their mandate was accredited by the representatives, were not included in the Commission's Merits Report, were in the same situation as the next of kin of Luis Enrique Ropero Parada and, consequently, whether they can consider themselves included in the reparation mechanism established in paragraph 337 or whether they can have recourse to the mechanism of Law 288 of 1996.

51. The Commission did not present observations on this point.

52. The State referred to the situation of these persons together with the arguments relating to the situation of Luis Enrique Parada Ropero (*supra* para. 46). Regarding the question on the possibility that the group analyzed may have recourse to the action for direct reparation established under domestic law, the State reiterated its previous observations and added that, even though the time frame had expired, "[w]hen the Court established that the Judgment delivered in this case 'does not preclude any actions that [might be filed] at the domestic level' by those who were not recognized as injured party, it indicated that its decision did not prevent those who were part of this group having recourse to the appropriate domestic mechanisms," but the Inter-American Court did not contemplate exceptions with regard to the exhaustion of the proceedings, compliance with the probative requirements, and observance of the time frames established by law and the Colombian Constitution. It again indicated that the inclusion of these persons in this procedural instance "would entail modification of the original Judgment."

*Considerations of the Court*

53. Regarding the 18 persons indicated by the representatives, paragraph 294 of the Judgment establishes the following:

"[...] the Court has stated that the presumed victims must be indicated in the Merits Report of the Inter-American Commission, and observes that 24 individuals named by the representatives as next of kin of the victims, are not included in the Merits Report issued by the Commission in this case. Nevertheless, of these 24 individuals, six family members of two of the deceased victims received reparation under the contentious-administrative jurisdiction; thus it can be understood that the State acknowledged them as victims. Consequently, the Court finds that it is not appropriate to consider as victims or as injured party 18 of the persons presented as next of kin of victims by the representatives, without prejudice to the reparations that may correspond to them at the domestic level."<sup>26</sup>

54. It is clear that paragraph 337 applies solely to those persons who were declared victims or injured party in the Judgment. Consequently, it is clear that the 18 persons indicated by the representatives cannot be considered in the reparation mechanism established in paragraph 337 of the Judgment, "notwithstanding the reparations that may correspond to them at the domestic level," as established in paragraph 295 of the Judgment. The Court reiterates that, pursuant to paragraph 338, the decisions made in the Judgment do not preclude these persons from filing "any [pertinent] actions [...] at the

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<sup>25</sup> The representatives referred to: Luis Felipe Durán Mora, Luz Dary Tellez Durán, Yamile Tellez Durán, Wilmer Tellez Durán, Emilse Hernández Durán, Milena Durán, Yeimi Sulai Hernández Mora, Mary Molina Panqueva, Moisés Molina Panqueva, Genny Carolina Molina Restrepo, Wilson García Reatiga, Wilson Enrique García Guevara, María Antonia Rojas, Elizabeth Daza Rojas, José Antonio Daza Rojas, Wilson Daza Rojas, Javier Daza Rojas and Frady Alexi Leal.

<sup>26</sup> *Case of the Massacre of Santo Domingo v. Colombia*, para. 294.

domestic level." Thus, the Court considers that this aspect of the request for interpretation is inadmissible.

***F. Seventh question: If there are other family members of victims of the violation of the right to life who did not have recourse to the contentious-administrative jurisdiction, and who were not represented at the inter-American level, can they have recourse to the mechanism established in paragraph 337 of the Judgment or to the mechanism of Law 288 of 1996?***

*Arguments of the representatives and observations of the State*

55. The representatives asked the Court to clarify whether other family members of victims of the violation of the right to life who did not have recourse to the contentious-administrative jurisdiction, and who were not represented at the inter-American level, could be understood to be included under the provisions of paragraph 337 of the Judgment or whether they can have recourse to the mechanisms of Law 288 of 1996. The Commission did not present observations on this point. The State referred to the situation of these persons together with the arguments relating to the situation of Luis Enrique Parada Roperó (*supra* para. 46)

*Considerations of the Court*

56. On this point, the Court reiterates its consideration concerning the previous question, indicating that paragraph 337 does not refer to next of kin – of victims who died – who were not identified in the Judgment. Consequently, if they exist, it does not correspond to consider these next of kin in the said mechanism, without prejudice to the provisions of paragraph 338 of the Judgment (*supra* para. 50). Moreover, it is not for this Court to determine which domestic provisions may be applicable or relevant, or to indicate which persons are entitled to have recourse to them. Consequently, this aspect of the request for interpretation is inadmissible.

**V  
OPERATIVE PARAGRAPHS**

57. Therefore,

**THE COURT**

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

**DECIDES:**

unanimously,

1. To reject as inadmissible the request for interpretation of the Judgment on preliminary objections, merits and reparations delivered in the case of the Massacre of Santo Domingo v. Colombia, filed by the representatives of the victims, for the reasons indicated in the relevant paragraphs of this Judgment.

2. To require the Secretariat of the Court to notify this Judgment to the State of Colombia, the representatives of the victims and next of kin, and the Inter-American Commission on Human Rights.

Diego García-Sayán  
President

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary