

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF ALVARADO ESPINOZA ET AL. V. MEXICO

JUDGMENT OF AUGUST 30, 2019
(Interpretation of the Judgment on Merits, Reparations and Costs)

In the case of *Alvarado Espinoza et al. v. Mexico*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) composed of the following judges¹:

Eduardo Vio Grossi, acting President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge, and
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, 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 Court’s Rules of Procedure (hereinafter also “the Rules of Procedure”), decides on the request for interpretation of the Judgment on Merits, Reparations and Costs issued by this Court in this case on November 28, 2018 (hereinafter also “the judgment”), filed on March 14, 2019, by the victim’s representatives (hereinafter also “the representatives”).

¹ Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not take part in the deliberation of this Judgment, in accordance with the provisions of Articles 19(2) of the Court’s Statute and 19(1) of the Court’s Rules of Procedure.

I

REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On November 28, 2018, the Court issued the judgement on merits, reparations, and costs in this case, which was notified to the parties and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" and "the Commission") on December 20 of the same year.
2. On March 14, 2019, the representatives of the victims (hereinafter "the representatives") submitted a request for interpretation regarding: a) the scope and obligations related to the determination of the whereabouts of Nitza Paola, José Ángel y Rocío Irene Alvarado, and b) the scope and timeline related to the measure of reparation about the National Register of Missing and Disappeared Persons.
3. On April 1, 2019, according to Article 68(2) of the Rules of Procedures and following the instructions of the President of the Court, the Court's Secretariat sent the request for interpretation to the parties and the Commission and gave them until April 23 to present the written observations they considered relevant.
4. On April 23 and 29, 2019, the State and the Commission, respectively, submitted their observations to the request for interpretation submitted by the representatives.

II

JURISDICTION

5. Article 67 of the American 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. Pursuant to said article, the Court has jurisdiction to interpret its judgments. In order to examine the request for interpretation and to decide on this matter, the Court must, whenever possible, be composed of the same judges who delivered the corresponding judgment, in accordance with Article 68(3) of the Rules of Procedure (*supra*).

III

ADMISSIBILITY

7. The Court must verify if the request submitted by the representatives meets the requirements established in the applicable rules for requests of interpretation of judgments, namely, Article 67 of the Convention, previously cited, and Article 68 of the Rules of Procedure, which establishes in its pertinent part, 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. Additionally, Article 31(3) of the Rules of Procedure establishes that "[j]udgments and orders of the Court may not be contested in any way."

9. The Court notes that the representatives submitted their request for interpretation of the judgment of March 14, 2019 within the 90-day period established in Article 67 of the Convention, since the judgement was notified on December 20, 2018 by email. Therefore, the request for interpretation is admissible as regards its timeliness. Regarding the other requirements, the Court will analyze them when examining the merits of the interpretation request in the following chapter.

IV

ANALYSIS OF THE VALIDITY OF THE REQUEST FOR INTERPRETATION

10. This Court will analyze the State's request to determine whether, in accordance with the rules and standards developed in its case law, it is appropriate to clarify the meaning or scope of any point of the judgment.

11. In order to examine the representatives' request for interpretation, the Court considers its jurisprudence, based in the relevant regulations, whereby it has been indicated that a request for interpretation of a judgment cannot be used as a means of challenging the decision for which an interpretation has been requested. A request for interpretation must have the sole purpose of determining the meaning of the decision when one of the parties asserts that the text of its operative paragraphs or of its reasonings are unclear or imprecise, provided those reasonings affect the operative part of the judgment.² Hence, according to Article 31(3) of the Rules of Procedure, a request for interpretation may not be used to seek an amendment or nullification of the judgment in question.³

12. In this manner, the Court will consider the request regarding the scope of the measures of reparation granted related to the operative paragraphs 10 and 16 of the Judgment on merits, reparations and costs issued in this case.

A. Regarding the scope and obligations related to the determination of the whereabouts of Nitza Paola, José Ángel y Rocío Irene Alvarado

A.1. Arguments of the parties and the Commission

13. The **representatives** indicated that operative paragraph 10⁴ of the judgment

² Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment of merits*. Order of the Court of March 8, 1998. Series C No. 47, para. 16, and *Case of Omeara Carrascal et al. v. Colombia. Interpretation of the Judgment on Merits, Reparations and Costs*. Judgment of October 14, 2019. Series C No. 389., para. 10.

³ Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment of merits*, *supra* para. 16, and *Case of Omeara Carrascal et al. v. Colombia*, *supra*, para. 10.

⁴ Operative paragraph 10: The State shall conduct, as soon as possible, a rigorous and systematic search using the appropriate human, technical and financial resources, during which it makes every effort to

should refer not only to paragraphs 247⁵ and 300⁶ of the Judgment, but also directly to paragraph 299, based on the obligation to carry out a rigorous, systematic search with adequate resources.

14. They considered that the obligation contained in paragraph 299 on the responsibility of the State to “[...] prepare a search timetable and, in its next annual report, inform the Court of the results of the actions undertaken”⁷ is a differentiated measure within the same category as that contained in paragraph 300.⁸ Because of this, in their opinion, operative paragraph 10 should refer directly to both paragraph 300 and 299, to generate “[...] certainty in the parties both in the obligation to immediately search for the victims and to present a search schedule [...].” Thus, they requested that the Court define the content and scope of the reparation ordered through operative paragraph 10, in light of both paragraph 299 and paragraph 300 of the judgment.

15. The **State** considered that what is referred to in operative paragraph 10, as well as its direct reference to paragraph 299, does not affect the development and timing of the investigation. Rather, on the contrary, it allows planning for the development of the proceedings and determining the availability of the interdisciplinary team that will intervene in such prospecting proceedings. For this reason, the State considered that, by not expressly referring to paragraph 299 in operative paragraph 10, the legitimate interest of the victims is not affected, since the judgment itself orders that the measures to be carried out must be made known to the indirect victims and their representatives.

16. For its part, the **Commission** considered that said request is valid insofar as the paragraph in question ordered the State to develop a search schedule for the victims and include it in its annual report to the Court, and operative paragraph 10 made no reference to said paragraph and does not reflect that the State has such an obligation. For this reason, the Commission considered it pertinent for the Court to clarify the scope of operative paragraph 10.

A.2. Considerations of the Court

17. In its Judgment, the Court resolved through its operative paragraph 10 that:

determine the whereabouts of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, pursuant to paragraphs 247 and 300 of this judgment.

⁵ Paragraph 247: In short, the above-mentioned deficiencies in the investigation constitute a violation of the State’s obligation to conduct a serious, impartial, effective and thorough investigation, which has contributed to the fact that, to date, the victims have not been found, and the perpetrators of the forced disappearances have not been identified. This violates Articles 8 and 25 of the American Convention, and also Article I(b) of the Inter-American Convention on Forced Disappearance, to the detriment of Nitza Paola, Rocío Irene and José Ángel Alvarado and the direct members of their families (*infra* para. 265).

⁶ Paragraph 300: In the eventuality that the victims are deceased, their mortal remains must be returned to their families, after genetic testing to verify the relationship, as soon as possible and without any cost to them. In addition, the State must cover the funeral costs, as agreed with the families.

⁷ Paragraph 299: Consequently, the State must make every effort to ensure a thorough search using the appropriate judicial and/or administrative means to determine the whereabouts of the disappeared as soon as possible, and this must be conducted systematically and rigorously, and be provided with the appropriate human, technical and scientific resources. The families must be kept informed of these procedures and, to this end, the State must prepare a search timetable and, in its next annual report, inform the Court of the results of the actions undertaken.

⁸ *Supra*, note 6.

The State shall conduct, as soon as possible, a rigorous and systematic search using the appropriate human, technical and financial resources, during which it makes every effort to determine the whereabouts of Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes and José Ángel Alvarado Herrera, pursuant to paragraphs 247 and 300 of this judgment.

18. Based on the request of the representatives, the Court considers it pertinent to recall that it is necessary for the parties to read the judgment in its entirety and not consider each paragraph of the judgment as if it were independent of the rest.⁹ In this regard, the joint reading of paragraphs 298 to 300, in light of what is established in operative paragraph 10 of the judgment, gives the criteria ordered by this Court to comply with the measure of reparation related to the obligation to determine the whereabouts of the victims. Based on the foregoing, this Court does not consider it relevant to outline further considerations in this regard.

B. Regarding the scope and timeline related to the measure of reparation about the National Register of Missing and Disappeared Persons

B.1. Arguments of the parties and the Commission

19. The **representatives** highlighted that the use of the term “recommends” in paragraph 325 of the judgment¹⁰ causes confusion regarding the scope of the obligation contained in said paragraph, in light of what was resolved in operative paragraph 16.¹¹ In this regard, they detailed a series of questions generated by the phrasing used:

a. How should the term “recommends” be understood and what is the scope in this paragraph of the order of the Honorable Court in light of the obligation contained in operative paragraph 16 of the same ruling?

b. Which of the criteria provided for in paragraph 325 are necessary for the measures analyzed by the Illustrious Mexican State to constitute “adequate measures to create a single updated register of disappeared persons”?

c. Although the Honorable Court establishes that the State must report on this issue in its annual compliance report (in similarity with all the reparations ordered, except those related to operative paragraph 14), we consider that it would be very important to define a specific deadline for the State to analyze the suitability of the measures to create the aforementioned registry and, if applicable, the type of follow-up that this Court will carry out on the information provided by the condemned State.

20. For the above reasons, they requested that the scope of said measure be clarified, in order to generate certainty for the parties.

⁹ *Case of Pollo Rivera et al. v. Peru. Request for Interpretation of the Judgment on Merits, Reparations and Costs.* Judgment of May 25, 2017. Series C No. 335, para. 26.

¹⁰ Paragraph 325: Although the representatives were not clear in their arguments regarding this measure of non-repetition, the **Court** recommends [...] that the State, within its actual legal framework, analyze adequate measures to create a single updated register of disappeared persons that generates statistics, disaggregated by sex, age, place, and authorities presumably involved, and that allows for the clear determination of the cases that are related to “forced disappearances,” in order to devise comprehensive and coordinated public policies for the prevention, investigation, punishment and elimination of this practice. To this end, in its annual report, the State must inform the Court on the adoption of such measures.

¹¹ Operative paragraph 16: The State shall analyze the appropriate measures to create a single and updated list of disappeared persons which generates statistical data that allows cases of “forced disappearances” to be determined clearly, pursuant to paragraph 325 of this judgment.

21. The **State**, first of all, highlighted that the General Law on the Forced Disappearance of Persons, Disappearances Committed by Private Parties and the National Search System of November 17, 2017, created the National Registry of Missing and Not Located Persons. In this regard, the State indicated that the obligation to create a registry of Missing Persons is an obligation established in said law, that continues to be strengthened in order to continue its proper and effective operation. Thus, the State established that, regardless of the term used by the Court in operative paragraph 16, the State will comply with the judgment issued in this case.

22. For its part, the **Commission** deemed it necessary to clarify the scope of operative paragraph 16, specifically whether the criteria in paragraph 325 are mandatory for the State.

B.2. Considerations of the Court

23. Based on what was requested by the representatives, as well as the questions posed, the **Court** notes that three different aspects were raised: a) the scope of the term "recommends", b) the criteria recommended in paragraph 325, and c) the request that a deadline be set for the State to carry out an analysis of the suitability of the measures to create the aforementioned registry.

24. In relation to the first two aspects, the Court clarifies that what is established in paragraph 325 of the judgment are criteria that the State may analyze and even incorporate, if it so determines, in order to comply with the obligation contained in operative paragraph 16 to create a "single and updated [registry] of disappeared persons which generates statistical data that allows cases of "forced disappearances" to be determined clearly". Thus, the reparation measure ordered is to create this registry, and not necessarily to incorporate the criteria recommended by this Court in paragraph 325.

25. Regarding the last aspect, the Court considers it important to recall that this Court's interpretation function must be limited to clarifying the meaning or scope of some point of the judgment. Thus, it would not be appropriate to use said power to broaden the meaning of the reparation measures ordered or include requests that were not made at the appropriate procedural moment. Therefore, through this function, the scope of a reparation measure ordered in a timely manner cannot be broadened.¹²

26. Based on the foregoing, this Court admits the request for interpretation regarding the first two questions made by the representatives, and rejects the request made in the third question because it is contrary to the purpose of the interpretive power of this Court, established in articles 67 of the Convention and 31 of the Rules of Procedure.

V

OPERATIVE PARAGRAPHS

27. Therefore, pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of the Court's Rules of Procedure,

¹² Cf. *Case of Escher et al. v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 208, para. 11, *Case of Carvajal Carvajal et al. v. Colombia. Interpretation of the Judgment on Merits, Reparations and Costs.* Judgment of November 21, 2018. Series C No. 365, para. 17.

THE COURT DECIDES:

Unanimously,

1. To declare admissible the request for interpretation of the judgment on merits, reparations and costs in the case of *Alvarado Espinoza et al. v. Mexico*, submitted by the representatives of the victims, pursuant to the terms of paragraph 9 of this interpretation judgment.
2. To clarify, through interpretation, the judgment on merits, reparations and costs issued in the case of *Alvarado Espinoza et al. v. Mexico*, in the terms of paragraph 24 of this interpretation judgment.
3. To dismiss as inadmissible the request for interpretation of the judgment on merits, reparations and costs issued in the case of *Alvarado Espinoza et al. v. Mexico*, in the terms of paragraph 18, 25 and 26 of this interpretation judgment.
4. To order that the Secretariat of the Court notify this interpretation judgment to the State, the representatives, and the Commission.

Issued in Spanish, in Barranquilla, Colombia on August 30, 2019.

I/A Court H.R., *Case of Alvarado Espinoza et al. v. Mexico*. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of August 30, 2019.

Eduardo Vio Grossi
Acting President

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Vio Grossi
Acting President

Pablo Saavedra Alessandri
Secretary