

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ROSADIO VILLAVICENCIO V. PERU

JUDGMENT OF OCTOBER 8, 2020

(Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs)

In the case of *Rosadio Villavicencio v. Peru*,

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

L. Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Vice President;
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

in accordance with 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 (hereinafter "the Rules of Procedure") resolves the requests for interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs issued by this Court on October 14, 2019, in this case (hereinafter also "the Judgment"), presented on May 25, 2020, respectively, by the Republic of Peru (hereinafter "the State" or "Peru") and by Jorge Enrique Rosadio Villavicencio (hereinafter "the victim" or "Mr. Rosadio Villavicencio").¹

* Judge Elizabeth Odio Benito, President of the Court, did not take part in the deliberation and signature of this judgment for reasons of force majeure that were accepted by the full Court. Therefore, pursuant to articles 4(2) and 5 of the Rules of Procedure of the Court, Judge Patricio Pazmiño Freire, vice president of the Court, assumed the role of acting President.

¹ Due to the exceptional circumstances brought about by the COVID-19 pandemic, this judgment was deliberated and approved during the one hundred and thirty-seventh regular sessions, which was held remotely, using technological means, as provided for by the Rules of Procedure of the Court.

I
REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On October 14, 2019, the Court issued the Judgment on Preliminary Objections, Merits, Reparations, and Costs in this case, of which the parties and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") were notified on December 23, 2019.
2. On May 25, 2020, the State submitted a request for interpretation regarding the measure of restitution involving the elimination of the victim's disciplinary sanction and the victim's criminal record.
3. Also, on May 25, 2020, the victim submitted a request for interpretation regarding new argumentation based on supervening facts and evidence.
4. On May 29, 2020, pursuant to Article 68(2) of the Rules of Procedure and following instructions of the President of the Court, the Secretariat forwarded the aforementioned request for interpretation to the parties and to the Commission and gave them until July 1 to submit any written pleadings deemed pertinent.
5. On July 1, 2020, the victim and the State submitted their arguments to the Court. The Commission did not submit written pleadings on the requests for interpretation.

II
COMPETENCE

6. 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.
7. In accordance with this article, the Court is competent to interpret its judgments. To analyze the request for interpretation and resolve it as necessary, the Court must, if possible, have the same composition as when it handed down the corresponding Judgment, in accordance with Article 68(3) of its Rules of Procedure. At this time, the Court is composed of the same judges that handed down the Judgment of which interpretation is requested.

III
ADMISSIBILITY

8. It falls to the Court to verify that the requests presented by the victim and the State meet the requirements established in the norms applicable to a request for interpretation of judgment—that is, Article 67 of the Convention and Article 68 of the Rules of Procedure. Additionally, Article 31(3) of the Rules of Procedure establishes that "Judgments and orders of the Court may not be contested in any way."
9. The Court notes that both the State and the victim submitted their request for interpretation on May 25, 2020, within the 90-day deadline established in Article 67 of the Convention. This is in view of the fact that the parties were notified of the Judgment on

December 23, 2019, via email, and the deadline for submitting the request for interpretation was June 12, 2020, pursuant to the provisions of Orders of the Court 1/20 of March 17, 2020,² and 2/20 of April 16, 2020,³ whereby the Court ordered the suspension of all deadlines due to the health emergency caused by the COVID-19 pandemic. The requests are therefore admissible with regard to their deadline for presentation. With regard to the other requirements, the Court will perform the corresponding analysis in the next chapter.

IV

ANALYSIS OF THE ADMISSIBILITY OF THE REQUEST FOR INTERPRETATION

10. The Court will now examine the requests by the State and the victim to determine whether, in accordance with the regulations and the standards developed in its case law, it is admissible to clarify the meaning or scope of any point of the Judgment.

11. The Court has found that a request for interpretation of judgment cannot be used to challenge a decision whose interpretation is being requested. The exclusive purpose of such a request is to determine the meaning or scope of a judgment when one of the parties finds that the text of its operative paragraphs or its considerations are unclear or imprecise, as long as these considerations have an impact on the operative paragraphs. Therefore, the modification or annulment of the judgment in question cannot be requested through a request for interpretation.⁴

12. The Court has also held that it is inadmissible to use a request for interpretation to submit considerations on matters of fact and law that were already raised at the proper procedural moment and regarding which the Court has already issued a decision,⁵ or to asked the Court to reassess matters that it has already ruled on in its judgment.⁶ This proceeding can also not be used to broaden the scope of a measure of reparation ordered at the proper procedural moment.⁷

13. Hereinafter, the Court shall examine the issues raised by the State and the victim in the following order: A) clarification of operative paragraph 20 of the Judgment; and B) exposition of the alleged exceptional situations, new facts, and supervening evidence presented by the victim.

A. Clarification of operative paragraph 20 of the Judgment

² Available at: http://www.corteidh.or.cr/docs/comunicados/cp_18_2020.pdf

³ Available at: http://www.corteidh.or.cr/docs/comunicados/cp_28_2020.pdf

⁴ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of Judgment on Merits*. Order of the Court of March 8, 1998. Series C No. 47, paras. 12 and 16; and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 8, 2020. Series C No. 413, para. 10.

⁵ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of Judgment on Reparations and Costs*. Judgment of June 3, 1999. Series C No. 53, para. 15, *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*, *supra*, para. 11.

⁶ Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of Judgment on Reparations and Costs*. Judgment of August 29, 2011. Series C No. 230, para. 30; and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*, *supra*, para. 11.

⁷ Cf. *Case of Escher et al. v. Brazil. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 20, 2009. Series C No. 208, para. 11; and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*, *supra*, para. 11.

A.1. Arguments of the parties

14. The **State** held that, from an integral reading of the Judgment and its operative paragraphs, it is not clear what the meaning and scope are of the order to nullify in all their aspects the judgments to convict handed down against Jorge Rosadio Villavicencio in ordinary criminal proceedings, military criminal proceedings, and the disciplinary proceeding, contained in operative paragraph 20 of the Judgment.

15. In view of this, it noted that the operative paragraph can only be interpreted based on two rationales:

- a. That, having found that the ordinary criminal processes, military criminal processes, and disciplinary proceedings violated judicial guarantees, these proceedings were to be declared null and void for domestic purposes, and therefore new investigations would have to be launched into the facts in question, all while respecting the standards that the Inter-American Court had outlined in its judgment, or
- b. That, given that the sentences in question were final, they have not been declared null and void, and only their effects had been revoked. That is, the Inter-American Court had only ordered elimination of Jorge Rosadio Villavicencio's judicial or disciplinary (both criminal and military) records.

16. The **victim** stated that a close reading of the Judgment does not in any way lead to the conclusion that it has ordered new investigations or the elimination only of the records of the proceedings carried out against the victim. He also indicated that "as can be noted in the same paragraph 224, in footnotes 195 and 196, the [...] Court references a total of 13 judgments in which it ordered to nullify judgments to convict and expunge the records, and based a review and reading of the reports on supervision of compliance with judgment, found through the caselaw search on the IA Court's website, it can be noted and verified that in none of these cases were new investigations ordered or only the records expunged." He therefore concluded that the State is seeking modification of the judgment by giving the Court two alternatives arrived at through its own interpretation.

17. He also held that, pursuant to the caselaw of the inter-American system, the State must eliminate, *ex officio*, "[...] all repercussions, causes, effects, or legal records or precedents, whether administrative, police, judicial, or criminal (both ordinary and military jurisdiction) [...] nullifying the assignation of administrative disciplinary, ordinary criminal, and military criminal responsibility, as well as ineligibilities or payments of compensation to the State as civil reparation [...]." In this regard, he added that, when clarifying for the State the scope of the judgment, the content of paragraph 227 of the Judgment must be taken into account in the sense that "[...] The Court finds it reasonable to assume that the victim would have continued in the military if not for the proceedings to which he was subjected [...]."

18. Lastly, Mr. Rosadio Villavicencio submitted a series of pleadings related to: 1) the reinstatement of the victim to active military service with retroactive promotions to the immediately higher rank; 2) the obligation to comprehensively and retroactively provide reparations to the victim; 3) the alleged fraudulent manner in which the victim's retirement was handled; and 4) the request for comprehensive reparations from domestic courts. He therefore asked that the request for interpretation of Judgment with regard to whether to launch new investigations or simply expunge the judicial records be dismissed; that the State's request be admitted only insofar as it seeks clarification or specificity as to the scope of the Judgment; and that it be expressed "clearly and precisely" that the State must provide the victim with comprehensive reparations.

A.2. Considerations of the Court

19. In its judgment, the Court found the following:

223. First, in this judgment, the Court found that the State violated the rights of Mr. Rosadio to be notified beforehand and in detail of the accusation and to be notified, without delay, of the charges brought against him, as regards the ordinary criminal proceedings, the military criminal proceedings, and the disciplinary procedure. Additionally, as regards the military disciplinary proceeding, the State also violated, to his detriment, the right to a defense attorney, the right to be heard, the right to a properly grounded decision, and the right to defense (*supra* para. 161). Regarding the ordinary criminal proceeding, the Court found that Peru violated Mr. Rosadio Villavicencio's right to a suitable defender (*supra* para. 180). Lastly, with respect to the military criminal proceeding, the Court found that the State violated the principle of *ne bis in idem* and also failed to ensure that Mr. Rosadio was judged by an impartial court.

224. Therefore, in view of the characteristics of this case and as the Court has done in other cases, it orders the State to adopt, within six months of receiving notification of this judgment, all the judicial, administrative, or other measures necessary to nullify the judgments to convict that were handed down in ordinary criminal proceedings, military criminal proceedings, and the disciplinary proceeding in all their effects, and expunge the judicial or disciplinary records—criminal or military—that may exist as a result of the aforementioned proceedings.

225. The Court notes that in this case, as of the issuance of this judgment, Jorge Enrique Rosadio Villavicencio has already fully served his sentences and been released. The Court will take this into account when it addresses pecuniary and nonpecuniary damage.

226. Second, regarding the request for reinstatement in the military, the representatives did not provide the Court with the proper and sufficient evidence necessary to make such determinations, for which reason the Court finds that it does not have the necessary elements to order such a measure of reparation.

227. However, the Court finds it reasonable to assume that the victim would have continued in the military if not for the proceedings to which he was subjected. This will be taken into account when setting the compensation amounts for pecuniary and nonpecuniary damage.

20. Based on these considerations, the Court ordered the following in operative paragraph 20:

20. The State shall adopt, within six months of receiving notification of this judgment, all the judicial, administrative, or other measures necessary to nullify the judgments to convict that were handed down in ordinary criminal proceedings, military criminal proceedings, and the disciplinary proceeding in all their effects, and expunge the judicial or disciplinary records—criminal or military—that may exist as a result of the aforementioned proceedings, pursuant to the terms of paragraph 223 through 227 of this judgment.

21. In view of the State's request, the Court deems it pertinent to clarify the meaning of the measures of reparation ordered in operative paragraph 20 of the Judgment. Paragraph 224 of the judgment indicates that the State must adopt whatever measures necessary to "nullify the judgments to convict that were handed down in ordinary criminal proceedings, military criminal proceedings, and the disciplinary proceeding in all their effects" and "expunge the judicial or disciplinary records—criminal or military—that may exist as a result of the aforementioned proceedings." These are therefore two separate measures of reparation that must not be confused as to their scope and effects.

22. That said, implementation of the measure to nullify the judgments issued against Mr. Rosadio Villavicencio in ordinary criminal proceedings, military criminal proceedings, and disciplinary proceedings could be carried out via domestic declaration that the aforementioned proceedings are null and void, as the State proposes in its request for interpretation. However, the result of this declaration of nullification cannot be the opening of new proceedings against the victim, as the State would again be in violation of Mr. Rosadio Villavicencio's guarantee of *ne bis in idem* because, as indicated in paragraph 225 of the Judgment: "The Court notes that in this case, as of the issuance of this judgment, Jorge Enrique Rosadio Villavicencio has already fully served his sentences and been released."

23. Therefore, the Court clarifies that operative paragraph 20 of the Judgment as follows: Nullification of the judgments to convict issued in the ordinary criminal proceedings, the military criminal proceedings, and the administrative disciplinary proceeding means that they lose all force and all their negative effects are expunged, and the State shall not be able to launch new proceedings against the victim for the facts examined in the Judgment, regardless of any domestic law the State might invoke. Additionally, as established in operative paragraph 20 of the Judgment, the State shall adopt measures to expunge any judicial or disciplinary records—both criminal and military—that may exist for Mr. Rosadio Villavicencio as a result of these proceedings.

B. Regarding the exceptional situations, new facts, and supervening evidence presented by the victim.

B.1. Arguments of the parties

24. The **victim** submitted a request for “review” of the Judgment, alleging “exceptional situations” amounting to a new fact, thereby necessitating the presentation of supervening evidence. He indicated that in an “unprecedented act,” the State released information on the victim’s personnel record, information that, according to the victim, had been denied for more than 25 years on the grounds of being classified confidential. He maintains that this had prevented him from using this information as evidence during the proceeding before the inter-American system. He therefore asked that it be incorporated into the process for evaluation. Lastly, he asked that his “new argumentation” be evaluated and that a new judgment be issued regarding the measures of restitution and reparation outlined in his brief with pleadings, motions, and evidence.

25. The **State** first noted that the proper procedural moment to submit the evidence considered pertinent is the brief with pleadings, motions, and evidence. Second, it observed that what the victim actually wants is a change to the Judgment, “instrumentalizing the interpretation as a motion of appeal,” which, it said, was evidenced by the fact that he presented a “request for revision of judgment” seeking not a juridical interpretation but rather attempting to call into question both the merits and the operative paragraphs. Lastly, it recalled that the request for interpretation cannot address matters of fact and law that were already raised and regarding which the Court has issued a decision. The State therefore asked that the request for interpretation submitted by the victim be declared inadmissible.

B.2. Considerations of the Court

26. As regards the alleged exceptional situations, new facts, and supervening evidence on which the “request for revision” of the Judgment of October 14, 2019, is based, the Court deems it pertinent to recall that the exclusive purpose of a request for interpretation is to determine the meaning of a judgment when one of the parties finds that the text of its operative paragraphs or its considerations are unclear or imprecise, as long as these considerations have an impact on the operative paragraphs. Therefore, the modification or annulment of the judgment in question cannot be requested through a request for interpretation.⁸ This proceeding can also not be used to broaden the scope of a measure of reparation ordered at the proper procedural moment.⁹

27. In that regard, the victim is not requesting interpretation of the Judgment but its revision, for which it asks the Court to assess new evidence and, based on it, issue a new judgment containing additional measures of reparations. All these requests are manifestly inadmissible, as they exceed by a wide margin the scope of the Court’s competence to interpret its judgments established in Article 67 of the Convention.

⁸ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of Judgment on Merits*. Order of the Court of March 8, 1998. Series C No. 47, paras. 12 and 16; and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*, *supra*, para. 10.

⁹ Cf. *Case of Escher et al. v. Brazil. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 20, 2009. Series C No. 208, para. 11; and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence v. Peru. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*, *supra*, para. 11.

V
OPERATIVE PARAGRAPHS

28. 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 of the Court,

DECIDES:

Unanimously:

1. To declare the request for interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs in the *Case of Rosadio Villavicencio v. Peru*, presented by the State and by the victim, admissible, pursuant to the terms of paragraph 9 of this Judgment of Interpretation.
2. To clarify through this Interpretation the Judgment of Preliminary Objections, Merits, Reparations, and Costs issued in the *Case of Rosadio Villavicencio v. Peru*, pursuant to the terms of paragraphs 21 through 23 of this Judgment of Interpretation.
3. To dismiss as groundless the request for interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs issued in the *Case of Rosadio Villavicencio v. Peru*, presented by the victim in the terms of paragraphs 26 and 27 of this Judgment of Interpretation.
4. To order the Secretariat of the Court to notify the State of Peru, the victim, and the Inter-American Commission on Human Rights of this Judgment of Interpretation.

I/A Court HR. *Case of Rosadio Villavicencio v. Peru*. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 8, 2020.

L. Patricio Pazmiño Freire
Acting President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

L. Patricio Pazmiño Freire
Acting President

Pablo Saavedra Alessandri
Secretary