

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF MARTINEZ ESQUIVIA VS. COLOMBIA
JUDGMENT OF JUNE 21, 2021

(Interpretation of the judgment on preliminary objections, merits, and reparations)

In the case of *Martinez Esquivia vs. Colombia*

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

Elizabeth Odio Benito, President;
Patricio Pazmiño Freire, Vice President;
Eduardo Vio Grossi, Judge;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Romina I. Sijniensky, Deputy Registrar,**

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 Court's Rules of procedure (hereinafter also "the Rules"), resolves the request for interpretation of the judgment on preliminary objections, merits, and reparations issued by this Court on October 6, 2020, filed on March 15, 2021 by the Republic of Colombia (hereinafter also "the State" or "Colombia").

* Judge Humberto Antonio Sierra Porto, a Colombian national, did not participate in the deliberation and signing of this judgment, pursuant to Articles 19(1) and 19(2) of the Court's Rules of Procedure.

** The Registrar, Pablo Saavedra Alessandri, did not participate in the handling of this case or in the deliberation and signing of this judgment.

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

1. On October 6, 2020, the Inter-American Court issued the judgment on this case and so notified the parties and the Inter-American Commission on Human Rights (hereinafter also "the Commission") on December 14 of the same year.
2. On March 15, 2021, the State submitted a request for the Court to vacate the judgment for "the violation of due process and procedural fairness during the process" and, as a subsidiary motion, requested an interpretation related to the scope of two operative paragraphs of the judgment. First, it asked the Court to interpret operative paragraph seven on the State's obligation to cover the payments to Yenina Esther Martínez Esquivia's pension fund, specifying whether the State is exempt from paying the pension contributions corresponding to the time when the victim had been reinstated to her position. Likewise, it requested interpretation of operative paragraph nine on the need to adapt the internal regulations in order to guarantee the stability of provisional prosecutors.
3. On March 24, 2021, in accordance with Article 68(2) of the Rules of procedure and following the instructions of the President of the Court, the Court Registrar sent on the aforementioned request for interpretation to the victim's representatives (hereinafter "the representatives")¹ and to the Commission, and granted them a term so that, no later than April 26, 2021, they could present in writing the observations that they considered to be pertinent. On March 30 and April 26, 2021, the representatives and the Commission, respectively, sent their observations.

**II
JURISDICTION**

4. Article 67 of the American Convention provides:

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.

5. Pursuant to this Article, the Inter-American Court is competent to interpret its rulings. When examining and judging on requests for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment in reference, in accordance with Article 68(3) of the Rules of procedure. On this occasion, the Court is effectively made up of the same Judges who delivered the judgment whose interpretation has been requested.²

**III
ADMISSIBILITY**

6. It is the Court's task to verify whether the request filed by the State meets the requirements established in the norms applicable to a request for interpretation of judgment, namely, Article 67

¹ The victim's representatives are Cyrus Colombara Lopez and Branislav Marelic Rocov. In the brief of final arguments, it was reported that Maité de Rue and Juliana Vengoechea Barrios of the Open Society Justice Initiative were attending as part of the team of representatives.

² Due to the exceptional circumstances caused by the COVID-19 pandemic, this judgment was deliberated and passed during the 142nd regular session, which was carried out remotely using technological means as required under the Court's rules.

of the Convention as cited above, and Article 68 of the Rules of procedure. Likewise, Article 31(3) of the Rules of procedure establishes that “[j]udgments and orders of the Court may not be contested in any way.”

7. In its brief dated March 15, 2021, the State presented two requests: annulment of the decision for an alleged violation of due process and procedural fairness during the processing of the matter and, in a subsidiary manner, a request for an interpretation of the seventh and ninth operative paragraphs of the judgment. Accordingly, this Court will analyze the admissibility of each of these two requests.

A. Request to vacate the judgement for alleged violation of due process and procedural fairness during the case processing

A.1. Pleadings by the parties and the Commission

8. The **State** argued that, during the processing of this case, violations of due process and procedural fairness had been committed to the detriment of the State. It indicated that Ms. Martínez Esquivia's defense had submitted their brief of pleadings, motions, and evidence outside of the permitted time, in response to which the Court did not impose any legal consequences, but instead corrected the error made by the victim's defense. It contrasted this with the Court's decision to dismiss the State's preliminary objections on what, in its opinion, was a technicality. It went on to conclude that “issues of a procedural nature are applied quite rigorously for the State, but more loosely when it comes to the victim's representation. The State considers that this extreme defense of the interests of the victims constitutes a lack of due process guarantees and judicial impartiality [...].”

9. Specifically, the State expressed its disagreement with the Court's assessment of the domestic remedies available for Mrs. Martínez Esquivia to challenge her dismissal. The State held that throughout the admissibility stage, it had consistently opposed the claims of Mrs. Martínez Esquivia, and as a result, it could not be found to have waived its objection concerning failure to exhaust domestic remedies. Likewise, it considered that the Court had not adequately assessed the scope of its actions for annulment and reinstatement of the right and the amparo. It also considered that the Court had ignored the State's arguments regarding the action lodged in the labor union jurisdiction. For all these reasons, the State “question[ed] the content of the judgment and the determinations made therein” and requested its annulment.

10. The **Commission** considered that the State's request to vacate the judgment should be dismissed as unfounded. Likewise, it considered that the State's arguments lacked justification. It argued that the Court had the power to incorporate evidence to facilitate adjudication and that “it cannot blame the [...] Court for a lack of impartiality merely for not having obtained a decision favorable to its claims.” It added that the State “did not provide any elements to prove that violations of judicial impartiality were committed in the context of the process [...].”

11. The **representatives** asked that the request for annulment of the judgment be rejected outright, as it was not protected by any provision of the American Convention.

A.2. Considerations of the Court

12. As to the request for annulment requested by the State based on arguments about an alleged violation of due process and procedural fairness, as well as the arguments regarding domestic proceedings, the Court considers it pertinent to recall that, in accordance with Article 67 of the American Convention, “The judgment of the Court shall be final and not subject to appeal,” such that once this Court issues a judgment, it produces the effects and authority of *res judicata*

and must be promptly complied with by the State in good faith and in full form.³ Likewise, article 31(3) of the Rules of procedure establishes that "[j]udgments and orders of the Court may not be contested in any way." Consequently, any appeal against the judgment is inadmissible.

13. Moreover, the Court considers it appropriate to note that the State exercised its right to defense and adversarial proceedings throughout the process, and its arguments were analyzed in a timely manner. The State now asks this Court to re-examine questions of fact and law that were already addressed and resolved in the judgment. In doing so, the State is asking for a review of evidence and arguments on which this Court has already decided, which is contrary to the final and unappealable nature of the Court's judgments.

14. Based on the foregoing, this Court considers that the State's request is inadmissible under Articles 67 of the Convention and 31(3) of the Rules of procedure.

B. Request for interpretation of operative paragraphs seven and nine of the judgment

15. The Court notes that the State submitted its subsidiary request for interpretation within the 90-day period established in Article 67 of the Convention, since the parties and the Commission received notification of the judgment on December 14, 2020. The request on these points is therefore admissible in terms of the timetable for submission. The Court will discuss the other requirements in its examination of the content of the motion in the following chapter.

**IV
ANALYSIS OF THE VALIDITY OF THE MOTION FOR INTERPRETATION**

16. This Court will analyze the State's request for interpretation to determine whether, in accordance with the regulations and standards developed in its case law, it is appropriate to clarify the meaning or scope of the points of the judgment requested.

17. The Court has indicated that a request for interpretation of judgment cannot be used as a means of challenging the decision on which interpretation has been requested. It must be made for the sole purpose of working out the meaning of the decision when one of the parties maintains that the text of its operative paragraphs or its consideranda is unclear or imprecise, provided those consideranda affect that operative paragraph. Hence, a request for interpretation may not be used to seek amendment or nullification of the judgment in question.⁴

18. The Court has also indicated that it is inadmissible to use a request for interpretation to submit considerations on factual and legal matters that have already been submitted at the proper procedural moment and on which the Court has already taken a decision,⁵ or to expect the Court

³ Cf. *Case of Gelman v. Uruguay Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights dated March 20, 2013, whereas clauses 61 and 68, and *Case of Herzog et al. v. Brazil. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights dated April 30, 2021, whereas clause eight.

⁴ 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, y *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the judgment on merits, reparations and costs*. Judgment dated November 24, 2020. Series C No. 420, para. 9.

⁵ Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment on reparations and costs*. Judgment dated June 03, 1999. Series C No. 53, para. 15, y *Case of Indigenous Communities of Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the judgment on merits, reparations and costs, supra*, para. 10.

to reassess matters that have been decided in the judgment.⁶ Similarly, a request cannot be used to try and expand the scope of a measure of reparation that was ordered at the opportune procedural moment.⁷

19. The Inter-American Court will examine the issues raised in the following order: (A) the request for an interpretation regarding the State's obligation to pay the contributions to Yenina Esther Martínez Esquivia's pension fund and (B) the request for an interpretation regarding the need to adapt domestic provisions to guarantee the stability of provisional prosecutors.

A. Scope of the State's obligation to pay contributions to Yenina Esther Martínez Esquivia's pension fund

A.1. Pleadings by the parties and the Commission

20. The **State** requested clarification on the reparation measure ordered in the operative paragraph seven of the judgment, that "[t]he State shall pay the contributions to Yenina Esther Martínez Esquivia's pension fund, pursuant to paragraph 155 of this judgment." In this regard, it requested that the Court "specify whether the State is exempt from paying the contributions to Yenina Esther Martínez Esquivia's pension fund during the period between August 2 and October 15, 2015," a when, according to the State, the victim had been reinstated to her position.

21. The **Commission** considered that, in the paragraphs of the judgment referring to paying the contributions to the victim's pension fund, "there is no ambiguity, lack of clarity, or contradiction, since the order of the [...] Court is to pay the contributions to the victim's pension fund from the date of her dismissal, which is clearly established in court records, until March 16, 2017." Therefore, it requested that this point of interpretation be dismissed.

22. The **representatives** concurred with the State, considering that the contributions to the victim's pension fund during the period when she had been reinstated to her position should be paid only once, thus making it necessary to exclude those 74 days from the payment ordered in the judgment. They clarified that the period while the victim was provisionally reinstated to her position occurred between August 2 and October 15, 2005.

A.2. Considerations of the Court

23. The Court considers it pertinent to clarify the meaning of the reparation measure ordered in the operative paragraph seven, in relation to paragraph 155 of the judgment, in which the Court determined the following:

155. Mrs. Martínez Esquivia's provisional status continued for more than twelve years, and this led to her expectation that she would remain in her post permanently. Consequently, the victim reasonably expected to remain in her post and to continue contributing to her pension. Therefore, the Court considers that the State must cover the contributions to Mrs. Martínez Esquivia's pension from the time of her dismissal and until she would have been legally entitled to retire, namely, March 16, 2017, according to the statement she submitted

⁶ Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*. Judgment dated August 29, 2011. Series C No. 230, para. 30 y *Case Indigenous Communities of Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the judgment on merits, reparations and costs, supra*, para. 10.

⁷ Cf. *Case of Escher et al. v. Brazil. Interpretation of the Judgment on preliminary objections, merits, reparations and costs*. Judgment dated November 20, 2009. Series C No. 208, para. 11 y *Case Indigenous Communities of Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the judgment on merits, reparations and costs, supra*, para. 10.

as helpful evidence. This measure must be complied with within one year of notification of this judgment at the latest.

24. Indeed, as can be inferred from paragraph 66 of the judgment, in application of the decision of July 26, 2005 of the Judicial Disciplinary Chamber of the Bolívar Sectional Judicial Council, Mrs. Martínez Esquivia was reinstated to her post. However, through an order dated September 7, 2005, the Judicial Disciplinary Chamber of the Supreme Judicial Council revoked this amparo ruling. According to the State, Mrs. Martínez Esquivia was reinstated in her position from August 2, 2015 to October 15, 2015, although the representatives rectified these dates to the effect that the reinstatement occurred between August 2, 2005 and October 15, 2005.

25. Consequently, the Court deems it appropriate to clarify that the State must pay the contributions to Mrs. Yenina Esther Martínez Esquivia's pension fund from the time of her dismissal until March 16, 2017, discounting the days when payment was made while she was discharging her post from August 2 to October 15, 2005.

B. The need to adapt domestic provisions to guarantee the stability of provisional prosecutors

B.1. Arguments of the parties and the Commission

26. The **State** requested an interpretation of operative paragraph nine of the judgment, by which the State was ordered to adapt "its laws in order to guarantee the stability of provisional prosecutors." He argued that, under article 125 of the Constitution and article 23 of Law 909 of 2004, provisional employment is a temporary way of being hired for an administrative job. It added that article 96 of Executive Order 020 of 2014 clearly establishes the grounds for removal from service of those who perform administrative jobs, which are applicable to provisional prosecutors. Therefore, it considered that the Colombian legal system contained specific provisions that regulate the dismissal of provisional prosecutors and argued that "it is not clear why the Court finds it necessary for the State to adapt its laws."

27. The **Commission** pointed out that the State had already argued that it had sufficient, Convention-based regulations governing the work of provisional prosecutors; it believed, therefore, that the real intent of the State's request was to question the meaning of the Court's decision, and that it should be dismissed.

28. The **representatives** asked for the State's request to be rejected, considering that it "is not a request for interpretation, but rather a request to review operative paragraph nine, as an inappropriate means to have it eliminated." They added that if the State wished to allege and prove that its legal system was compatible with the Court's ruling, it should do so in the stage of monitoring compliance with the judgment.

B.2. Considerations of the Court

29. The Court's judgment held as follows regarding guarantees of non-repetition:

161. The **Court** notes that, in addition to the general constitutional provisions on the nature of the Prosecutor General's Office and of public employment, the current organization and employment regime of the Prosecutor General's Office are regulated by the Statutory Law on the Administration of Justice (Law No. 270 of 1996), the Organic Statute of the Prosecutor General's Office (Law No. 938 of 2004), and the Decree Law classifying employments and defining the special career regime of the

Prosecutor General's Office and subordinate bodies (Decree Law No. 20 of 2014). Regarding provisional appointments, article 11 of Decree Law No. 20 of 2014 stipulates:

Art. 11. Types of appointment. In the Prosecutor General's Office and subordinate bodies posts shall be filled by appointment:

1. Ordinary: For filling posts of free appointment and removal.
2. With a trial period: For filling career posts with the person ranked first on the list of eligible candidates who have passed the selection or competitive process conducted in keeping with the procedure defined in the present decree law.
3. Provisional: To fill career posts or posts of free appointment and removal that are temporarily vacant, while the incumbent is not receiving remuneration, for as long as the administrative situation lasts.

Special career posts that are definitively vacant may also be filled by the provisional appointment of a person who has not been selected under the merits system, while the post is being filled through a competitive selection process.

The Prosecutor General's Office may conduct any tests considered necessary on the candidate to occupy a career position by a provisional appointment to assess when the candidate has a suitable profile for the post to be filled; in this regard, if necessary, it will seek the support of the Civil Service Administrative Department.

4. By assignment: To fill career posts or posts of free appointment and removal that are temporarily of definitively vacant, and this shall be governed by the provisions of the regulations relating to administrative situations for staff of the Prosecutor General's Office and subordinate bodies.

162. However, the Court notes that there are no specific provisions that regulate the removal of provisional prosecutors and that, as it is considered that they can be appointed on a discretionary basis, they are only protected by a moderate stability. However, the Court takes note of the evolution of the case law of both the Council of State and the Constitutional Court (*supra* paras. 137 and 138) as regards the inclusion of a statement of reasons in the administrative removal order.

163. Taking into account that the Court has declared the violation of the rights to judicial guarantees and judicial protection, both in relation to the guarantee of stability of prosecutors, it considers that, as a guarantee of non-repetition, the State must, within a reasonable time, adapt its domestic law to the standards developed in this judgment in relation to the stability of provisional prosecutors as regards their appointment and removal.

30. The Court reiterates that it considers it inadmissible to use a request for interpretation to submit considerations on factual and legal matters that have already been submitted at the proper procedural moment and on which the Court has already taken a decision,⁸ or to expect the Court to reassess matters that have been decided in the judgment.⁹ With its request for interpretation, the State is asking the Court to reconsider its analysis of the domestic provisions for the dismissal of provisional prosecutors, which would imply reassessing considerations of fact and law that were already decided in the judgment. Thus, the Court finds this request inadmissible, since it exceeds the scope of the Court's jurisdiction to interpret its judgments established in Article 67 of the Convention.

⁸ Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment on reparations and costs, Supra*, para 15 y *Case Indigenous Communities of Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the judgment on merits, reparations and costs, supra*, para. 10.

⁹ Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs, supra*, para 30 y *Case Indigenous Communities of Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the judgment on merits, reparations, and costs, supra*, para. 10.

V
OPERATIVE PARAGRAPHS

31. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To hold inadmissible the State's request for annulment of the judgment for alleged violations of due process and procedural fairness, in the terms of paragraph 14 of this judgment of interpretation.

2. To hold admissible the subsidiary request for interpretation of the judgment on preliminary objections, merits, and reparations in the case of *Martinez Esquivia v. Colombia*, presented by the State, in the terms of paragraph 15 of this judgment of interpretation.

3. To clarify, through interpretation, the judgment on preliminary objections, merits, and reparations in the case of *Martinez Esquivia v. Colombia*, regarding the State's obligation to pay the contributions to Yenina Esther Martínez Esquivia's pension fund, in the terms of paragraphs 24 and 25 of this judgment of interpretation.

4. To dismiss as inadmissible the request for interpretation of the operative paragraph nine of the judgment on preliminary objections, merits, and reparations in the case of *Martinez Esquivia v. Colombia*, filed by the State, in the terms of paragraph 30 of this judgment of interpretation.

5. To order the Court Registrar to notify the Republic of Colombia, the representatives of the victim, and the Inter-American Commission on Human Rights concerning this judgment of interpretation.

IACtHR. *Case of Martínez Esquivia v. Colombia* Interpretation of the judgment on preliminary objections, merits, and reparations. Judgment dated June 21, 2021. Judgment adopted in San Jose, Costa Rica in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Romina I. Sijniensky
Deputy Registrar

So ordered,

Elizabeth Odio Benito
President

Romina I. Sijniensky
Deputy Registrar