

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF THE FORMER EMPLOYEES OF THE JUDICIARY V. GUATEMALA
JUDGMENT OF JULY 27, 2022
***(Interpretation of the Judgment on Preliminary Objections, Merits
and Reparations)***

In the case of the *Former Employees of the Judiciary v. Guatemala*,

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

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

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, 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 Court’s Rules of Procedure (hereinafter also “the Rules of Procedure”), decides on the request for interpretation of the Judgment on Preliminary Objections, Merits and Reparations, issued by this Court in this case on November 17, 2021 (hereinafter also “the judgment” or “the decision”). The request was filed on April 22, 2022, by the Republic of Guatemala (hereinafter “the State” or “Guatemala”).

I

* This judgment was deliberated and adopted during the Court’s 65th special session, which was held virtually using technological resources as established in the Court’s Rules of Procedure. Judge Elizabeth Odio Benito and Judge Eduardo Vio Grossi did not participate in the deliberation and signing of this judgment for reasons of force majeure that were accepted by the full Court.

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

1. On November 17, 2021, the Inter-American Court issued a judgment on this case, and so notified the parties and the Inter-American Commission on Human rights (hereinafter also "the Inter-American Commission" or "the Commission") on January 26, 2022.
2. On April 22, 2022, the State submitted a request for interpretation in order to "elaborate on the content of the [j]udgment so as to endorse the direct incorporation into the catalog of protected rights derived from article 26 of the Convention". Moreover, it requested the Court to rule over the "issues concerning the rights developed in the judgment that are not based on treaties subject to ratification by States."
3. On April 29, 2022, pursuant to Article 68(2) of the Rules of Procedure and following the instructions of the President of the Court, the Court's Secretariat sent the aforementioned request for interpretation to the victims' representative (hereinafter, "the representative")¹ and the Commission and gave them until May 30, 2022, to present in writing any observations they considered relevant. The Commission submitted its observations on May 30, 2022. Moreover, the representative submitted its observations on May 31, 2022. By means of note of the Tribunal's Secretariat of June 2, 2022, the parties and the Commission were informed that said brief was time-barred; therefore, following the instructions of the Presidency of the Court, it was neither transmitted to the State nor the Commission nor considered during the deliberation of this Judgment.

**II
JURISDICTION**

4. 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.

5. Pursuant to the cited article, the Inter-American Court is competent to interpret its judgments. In order to examine the requests for interpretation and to decide in respect of 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. On this occasion, the Court is mostly composed of the same judges who delivered the judgment whose interpretation has been requested.

**III
ADMISSIBILITY**

6. It is the responsibility of the Court to verify whether the request presented by the State meets the requirements established in the norms applicable to a request for

¹ César Augusto Canil Xirum of Centro de Acción Legal de Derechos Humanos (*Human Rights Legal Action Center* or "CALDH" for its acronym in Spanish).

interpretation of judgment, namely Article 67 of the aforementioned Convention and Article 68 of the Rules of Procedure. Similarly, 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. The Court notes that the State presented its request for interpretation within the 90-day period established in Article 67 of the Convention. Because the parties were notified of the judgment on January 26, 2022, the request for interpretation presented on April 22, 2022, is admissible as regards its timeliness. Regarding the other requirements, the Inter-American Court will analyze the merits in the following chapter.

IV ANALYSIS OF THE ADMISSIBILITY OF REQUESTS FOR INTERPRETATION

8. This Court will examine the request of the State to determine whether, based on the rules and standards developed in its case law, it is appropriate to clarify the meaning or scope of any provision of the judgment.

9. The Court has indicated that a request for interpretation of a judgment cannot be used as a means of challenging the decision whose interpretation is required. The purpose of said request is exclusively to determine the meaning of a ruling when one of the parties maintains that the text of its operative paragraphs or its considerations lacks clarity or precision, as long as those considerations affect said operative paragraphs. Therefore, the modification or annulment of the respective judgment cannot be sought through a request for interpretation².

10. Additionally, the Court has upheld the inadmissibility of using a request for interpretation to submit considerations on matters of fact and law already raised at the proper procedural time and on which the Court has already adopted a decision³, nor to seek that the Court again assess matters already decided in the judgment⁴. Similarly, this avenue cannot be used to attempt to broaden the scope of a reparation measure ordered in a timely manner⁵.

11. Below, the Inter-American Court will examine the matters raised in the following order: a) the State's request for interpretation regarding the direct incorporation of the rights derived from article 26 of the Convention, and b) the State's request for interpretation regarding the issues concerning the rights developed in the judgment that are not based on treaties subject to ratification by States."

² Cf. *Case of Loayza Tamayo V. Perú. Interpretation of the judgment on merits*. Order of the Court of March 8, 1998. Series C No. 47, para. 16, and *Case of Casa Nina V. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of September 1, 2021. Series C No. 433, para. 10.

³ Cf. *Case of Loayza Tamayo v. Perú. Interpretation of the judgment on reparations and costs, supra* , para. 15, and *Case of Casa Nina v. Perú. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

⁴ Cf. *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 Casa Nina v. Perú. Interpretation of the judgment of preliminary objections, merits, reparations and costs, supra* para. 11.

⁵ 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, and *Case of Casa Nina v. Perú. Interpretation of the judgment of preliminary objections, merits, reparations and costs, supra* para. 11.

A. State's request for interpretation regarding the direct incorporation of the rights derived from article 26 of the Convention

A.1 Arguments of the State and of the Commission

12. The State requested clarification of operative paragraph fourth of the judgment, which states that Guatemala is "responsible for the violation of the right to strike, to freedom of association, to freedom to organize and the right to work and to job security, recognized in Articles 16 and 26 of the American Convention". It pointed out that "there is a discrepancy regarding the justiciability of the ESCER, in relation to the practice of grouping together said rights in a direct or autonomous way, by virtue of the fact that there is no conventional clause granting recognition or protection of the right to strike and to work and to social stability. Therefore, based on the application of the Protocol of San Salvador and article 16 of the Convention, those rights have been protected through the theory of connection".

13. It argued that "the right to strike, to work and to social stability were not expressly stated in article 26 of the [Convention]," and thus it considered it was as "important [...] to elaborate on the scope of the [j]udgment in order to endorse the direct incorporation of those rights into the catalog of protected rights derived from article 26 [of the Convention], the evident relationship mentioned in the judgment on merits towards the right to strike, to work and to social stability and the legal consequences thereof, in view of the aspects of the instant case and its recognition as immediately enforceable rights."

14. The **Commission** considered that "the Court broadly explained the scope of article 26 of the Convention [...] and the way it 'incorporated the so-called economic, social, cultural and environmental rights (ESCER) into its catalog of protected rights, derived from the norms recognized in the Charter of the Organization of American States [...], as well as the rules of interpretation set forth in Article 29 of the Convention." Therefore, it considered that "the request for interpretation submitted by the State should be declared inadmissible."

A.2 Considerations of the Court

15. 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.

16. In this respect, it recalls that, as from paragraph 100 of the judgment, the Court declared it was competent to hear the issues related to article 26 of the American Convention as an integral part of the rights established therein and to declare the responsibility of a State who has consented to be bound by the Convention and has recognized, in addition, the contentious jurisdiction of the Inter-American Court.

17. Moreover, the Court reiterates that paragraphs 128 and 129 of the judgment established the following:

128. With regard to the specific labor rights protected by Article 26 of the American Convention, the Court has already determined that the wording of said article indicates that these rights are derived from the economic, social, educational, scientific and cultural standards contained in the OAS Charter. In this sense, articles 45(b) and (c), 140, 46, 141 y 34.g142 of the Charter establish that "[w]ork is a right and a social duty" and that this should

be performed with "fair wages, employment opportunities, and acceptable working conditions for all". These articles also establish the right of workers to "associate themselves freely for the defense and promotion of their interests." They also require the State to "harmonize the social legislation" for the protection of such rights. In its Advisory Opinion OC-10/89, the Court indicated that:

[...] The Member States [...] have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied, as far as human rights are concerned, without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.

129. In this regard, Article XIV of the American Declaration establishes that "[e]very person has the right to work, under proper conditions, and to follow his vocation freely [...]." This provision is relevant in defining the scope of Article 26, given that "the American Declaration constitutes, where applicable and in relation to the OAS Charter, a source of international obligations." Furthermore, Article 29(d) of the American Convention expressly establishes that "[n]o provision of this Convention may be interpreted as: [...] d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature have."

18. The Court considers that the wording of the judgment is absolutely clear inasmuch as it reiterates its constant case-law in which the Court has sustained it is competent to hear all issues related to article 26 of the American Convention as an integral part of the rights established therein, specifically labor rights. Therefore, the Court dismisses the State's request.

B. State's request for interpretation regarding the issues concerning the rights developed in the judgment that are not based on treaties subject to ratification by States

B.1 Arguments of the State and of the Commission

19. The **State** requested the Court to justify the arguments and reasons why "it takes into consideration the conclusions drawn by [...] bodies" like the "Committee on Freedom of Association and [...] the Committee of Experts" of the International Labour Organization. It indicated that "there is a question regarding the rights developed in the judgment based on issues not subject to treaties ratified by States and the fact that the Court takes into account conclusions drawn by oversight bodies" inasmuch "they do not set a precedent or are binding on States".

20. The **Commission** pointed out that "in accordance with a systematic, teleological and evolving interpretation, the Court 'has drawn on the international and national *corpus iuris* on the matter to give specific content to the scope of the rights protected by the Convention, in order to determine the scope of the specific obligations of each right'" and that "the decisions of the Committee on Freedom of Association and the ILO Committee of Experts, referred to by the State, are part of this international *corpus iuris*". Therefore, it considered that "the request for interpretation submitted by the State should be declared inadmissible."

B.2 Considerations of the Court

21. In relation to the request for interpretation submitted by the State, the Court verifies that in the State's answering brief as well as in the final written arguments, the State itself referred to the interpretation made by the Committee on Freedom of Association to determine the scope of the right to strike in light of the Convention. Therefore, the Court notes it is contradictory to request the Court to justify the reasons

why 'it takes into account the conclusions drawn by [...] bodies" like the "Committee on Freedom of Association and [...] the Committee of Experts of the International Labour Organization (hereinafter also "ILO").

22. Moreover, along the judgment, the Court uses the sources, principles and criteria of the international *corpus iuris* which include the ILO Conventions and the conclusions drawn by the Committee on Freedom of Association and the Committee of Experts of the International Labour Organization, as applicable norm to determine the content of the economic, social, cultural and environmental rights (hereinafter, also "ESCER") protected by article 26 of the Convention. To this end, in paragraphs 100, 101 and 103 of the judgment, the Court stated the following:

100. Regarding the scope of Article 26 of the American Convention in relation to Articles 1(1) and 2 thereof, this Court has understood that the Convention incorporates the so-called economic, social, cultural and environmental rights (ESCER) into its catalog of protected rights, derived from the norms recognized in the Charter of the Organization of American States (OAS), as well as the rules of interpretation set forth in Article 29 of the Convention. This instrument prevents the limitation or exclusion of the enjoyment of the rights established in the American Declaration, including those recognized in domestic law. Likewise, in accordance with a systematic, teleological and evolving interpretation, the Court has drawn on the international and national *corpus iuris* on the matter to give specific content to the scope of the rights protected by the Convention, in order to determine the scope of the specific obligations of each right.

101. Accordingly, the Court uses the sources, principles and criteria of the international *corpus iuris* as special applicable norms to determine the content of the ESCER protected by Article 26 of the Convention. The Court has also indicated that the aforementioned norms are used to determine the rights in question as a complement to the provisions of the Convention. Thus, it has repeatedly affirmed that it is not assuming jurisdiction over treaties in which it has none; nor is it granting conventional rank to norms contained in other national or international instruments related to ESCER. On the contrary, the Court makes an interpretation in accordance with the guidelines set forth in Article 29 and in line with its case law, which allows it to update the significance of the rights derived from the OAS Charter that are recognized by Article 26 of the Convention.

103. The Court also reiterates that human rights treaties are living instruments, the interpretation of which must evolve with the times and with current living conditions. This evolutive interpretation is consistent with the general rules of treaty interpretation established in Article 29 of the American Convention, and in the Vienna Convention. Furthermore, the third paragraph of Article 31 of the Vienna Convention authorizes the use of interpretative means such as agreements or the relevant rules or practice of international law that States have expressed on the subject matter of the treaty, which are some of the methods related to an evolving view of the Treaty. Thus, in order to determine the scope of the rights derived from the economic, social, educational, scientific and cultural norms contained in the OAS Charter, the Court refers to the relevant instruments of the international *corpus iuris*.

23. The Court recalls that the parties must consider the judgment as a whole and each paragraph in light of the rest rather than interpreting paragraphs in isolation⁶. The Court considers that the above passages are sufficiently clear and precise as to the interpretation guidelines followed by this Court. Therefore, the Court declares the State's request is inadmissible in this regard, given that the purpose of a request for interpretation must be to clarify an imprecise or ambiguous aspect about the meaning of scope of the judgment, which has not been the case.

V.

⁶ Cf. *Case of Pollo Rivera et al v. Perú. Request for Interpretation of the judgment on merits, reparations and costs*. Judgment of May 25, 2017. Series C No. 335, para. 26, and *Case of Casa Nina v. Perú. Interpretation of the judgment of preliminary objections, merits, reparations and costs*, supra para. 33.

OPERATIVE PARAGRAPHS

24. Therefore,

THE COURT

in accordance with Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of the Court's Rules of Procedure,

DECIDES,

Unanimously,

1. To declare admissible the request for interpretation of the judgment on preliminary objections, merits and reparations issued in the case of *the Former Employees of the Judiciary v. Guatemala*, presented by the State, pursuant to the terms of paragraph 7 of this judgment of interpretation.

2. To declare inadmissible the request for interpretation of the Judgment on Preliminary Objections, Merits and Reparations issued in the case of *the Former Employees of the Judiciary v. Guatemala*, submitted by the State, pursuant to the terms of paragraphs 15 to 18 and 21 to 23 of this judgment of interpretation.

3. To order that the Secretariat of the Court notify the Republic of Guatemala, the victims' representative, and the Inter-American Commission on Human Rights of this judgment of interpretation.

I/A Court HR. *Case of the Former Employees of the Judiciary v. Guatemala*. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations. Judgment of July 27, 2022. Judgment adopted in San José, Costa Rica, in a virtual session.

L. Patricio Pazmiño
Freire
Acting President

Humberto Antonio Sierra Porto
Poisot

Eduardo Ferrer Mac-Gregor

Eugenio Raúl Zaffaroni
Manrique

Ricardo C. Pérez

Pablo Saavedra Alessandri
Secretary

So ordered,

L. Patricio Pazmiño Freire
Acting President

Pablo Saavedra Alessandri
Secretary