SEPARATE OPINION OF JUDGE EDUARDO VIO GROSSI

CASE OF GARCÍA AND FAMILY MEMBERS *v.* GUATEMALA

JUDGMENT OF NOVEMBER 29, 2012
(*Merits, reparations and costs*)
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

I am issuing this separate opinion[1] with regard to the Judgment delivered in this case (hereinafter "the Judgment") in order to place on record that, even though I voted in favor of it, I do not agree, with the fact that the Inter-American Court of Human Rights (hereinafter "the Court") has considered it "*prudent to grant the request of the representatives to keep the amount of compensation agreed by the parties confidential; hence, it [does] not include the amount in th[e] Judgment"* and orders that "*the parties must also respect the confidentiality of this information.*"[2]

My discrepancy with the Judgment relates to the fact that the said request for confidentiality was not included in the agreement on reparations of April 20, 2012, signed by the parties to the case; to the obligation to include the reparations and compensation in the corresponding judgment; to the principles of full disclosure and transparency that should inspire the judgment and, lastly, to the failure to substantiate the safety concerns cited in this case to request and order the said confidentiality.

I. The reparations agreement and the request

As revealed by the Judgment itself, this request for confidentiality was not only made after the signature of the said reparations agreement but, also, the State did not have the opportunity to rule on it, or simply did not do so.

Admittedly, although the State's acquiescence is not a requirement *sine qua non*[3] for the Court to proceed as it has, it is not less true that the absence of an observation by the State may constitute an infringement of the principle of procedural equality.

II. The Judgment of the Court

In addition, it is evident that the Judgment must include the section on compensation,[4] particularly when there is no provision, either in the Convention, the Statutes or the

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1 Art. 66(2) of the American Convention: *"If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment."*

2 Para. 225.

3 Art. 63 of the Court's Rules of Procedure: *"When the Commission, the victims or alleged victims, or their representatives, the respondent State or, if applicable, the petitioning State in a case before the Court inform it of the existence of a friendly settlement, commitment, or any other occurrence likely to lead to a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural time."*

4 Art. 63(1) of the American Convention on Human Rights (hereinafter "the Convention"): "*If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."* And, Article 65(g) and (h) of the Court's Rules of Procedure: "*the decision on the case," and "the ruling on reparations and costs, if applicable."*

Rules of Procedure, that exempts the Court from determining this compensation in its judgment, either on merits or on reparations and costs.

III. Principle of full disclosure

Furthermore, it should be added that neither is there a provision in the Convention, the Statute or the Rules of Procedure that authorizes the Court to maintain secret or confidential the amount of the reparations and compensation that it orders in its judgments.

And, quite to the contrary, there is a provision of the Convention that supposes precisely the public nature of this amount or sum,[5] because the execution of an international judgment at the domestic level necessarily requires awareness of everything that the said judgment orders.

IV. Principle of transparency

In addition, respect for the principle of transparency that inspires the Court's judgments and that is established in the Convention,[6] the Statute of the Court,[7] and in its Rules of Procedure,[8] must be taken into consideration.

Thus, the said provisions establish the full disclosure and publication of the Court's decisions, including its judgments. In addition, they stipulate the notification or the communication of the judgments not only to the parties to the pertinent litigation, but also to the States Parties to the Convention. And, finally, not only the parties and the States Parties may request a copy of the judgment, but also the organs of the Organization of American States, and even any interested person.

Hence, all the natural or legal persons indicated above have the right to know the judgments in their entirety, particularly when the provisions that regulate them make no mention of the Court's authority to order the confidentiality or secrecy of part of them.

V. Safety concerns

Lastly, it should be considered that the "safety concerns" cited to justify and to obtain the requested confidentiality were not explained and do not appear in the proceedings, so that, by allowing this confidentiality, the Court may be granting the public a certain

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[5] Art. 68(2) of the Convention: *"That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the State."*

[6] Art. 69 of the Convention: "*The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.*"

[7] Art. 24(3) of the Statute of the Court: "*The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with the judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate."*

[8] Art. 32 of the Court's Rules of Procedure: *"Publication of judgments and other decisions. 1. The Court shall make public: (a) its judgments, orders, opinions, and other decisions, including separate opinions, dissenting or concurring, whenever they fulfill the requirements set forth in Article 65(2) of these Rules; (b) documents from the case file, except those considered unsuitable for publication; (c) the conduct of the hearings, except private hearings, through the appropriate means; (d) any other document that the Court considers suitable for publication. 2. Judgments shall be published in the working languages used in each case. All other documents shall be published in their original language. 3. Documents submitted to the Secretariat of the Court that relate to cases already adjudicated shall be made accessible to the public, unless the Court decides otherwise."* Also Art. 67(6) of the Rules of Procedure: "*The originals of the judgments shall be deposited in the archives of the Court. The Secretary shall dispatch certified copies to the States Parties; the Commission; the victims or alleged victims, or their representatives; the respondent State; the petitioning State, if applicable; the Permanent Council through its Presidency; the Secretary General of the OAS, and any other interested person who requests them*."

margin of doubt with regard to the discretionary nature of its decisions, which thus could, instead, be perceived as arbitrary.

Judge Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary