

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF MAIDANIK ET AL. V. URUGUAY
JUDGMENT OF NOVEMBER 21, 2022
(Interpretation of Judgment on Merits and Reparations)

In the case of *Maidanik et al. v. Uruguay*,

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

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge, and
Eugenio Raúl Zaffaroni, Judge.

also present,

Pablo Saavedra Alessandri, Registrar, and
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 Rules of Procedure of the Court (hereinafter also “the Rules of Procedure”) resolves the request for interpretation of the Judgment on Merits and Reparations issued by this Court on November 15, 2021, in this case (hereinafter also “the Judgment”), presented on February 22, 2022, by the Oriental Republic of Uruguay (hereinafter “the State” or “Uruguay”).

* Judge Ricardo C. Pérez Manrique, a Uruguayan national, did not take part in the deliberation or signature of this judgment, in accordance with the provisions of Article 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court. Judge Eduardo Vio Grossi recused himself from participating in this case for reasons of force majeure, pursuant to the provisions of Article 19(2) of the Statute of the Court and Article 21 of its Rules of Procedure, which was accepted by the full Court.

I REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On November 15, 2021, the Inter-American Court issued the judgment in this case, of which the parties and the Inter-American Commission on Human Rights (hereinafter also "the Commission") were notified on December 20, 2021.
2. On February 22, 2022, the State submitted a request for interpretation related to the scope of the provisions of paragraph 279 of the Judgment, regarding the distribution of a victim's compensation among his heirs, as well as the provisions of paragraph 278, regarding the possibility of deducting from the compensation amounts set in the Judgment the sums of money delivered to the victims as reparations prior to its issuance.¹
3. On February 23, 2022, in accordance with Article 68(2) of the Rules of Procedure and upon instructions from the Presidency, the Office of the Registrar of the Court transmitted the above request for interpretation to the representatives of the victims² (hereinafter "the representatives") and to the Commission, and granted them a deadline of March 24, 2022, to submit any written observations they deemed pertinent. On March 24, 2022, the Commission submitted its comments. The representatives did not submit any comments to the State's request for interpretation.

II JURISDICTION

4. Article 67 of the American Convention establishes as follows:

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. In accordance with this article, the Inter-American Court is competent to interpret its judgments. To analyze requests for interpretation and resolve them 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

6. It falls to the Court to verify that the request presented by the State meets 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

¹ The State also noted an editing error in the judgment. The Court corrected the error on its own motion, in accordance with Article 76 of the Rules of Procedure of the Court. The parties and the Commission were notified on February 23, 2022. The notification also clarified that the editing correction pointed out by Uruguay was not part of the judgment interpretation process.

² The victims are represented by the Instituto de Estudios Legales y Sociales de Uruguay (IELSUR).

orders of the Court may not be contested in any way.”

7. The Court notes that the State submitted its request for interpretation within the 90-day period established in Article 67 of the Convention. Indeed, the judgment was notified on December 20, 2021, and therefore, the request for interpretation—filed on February 22, 2022—is admissible as far as the deadline for its submission is concerned. With regard to the other requirements, the Inter-American Court will perform the corresponding analysis in the next chapter.

IV ANALYSIS OF THE ADMISSIBILITY OF THE REQUESTS FOR INTERPRETATION

8. The Court will now examine the State’s request for interpretation to determine whether, in accordance with the law and the standards developed in its case law, it is admissible to clarify the meaning or scope of any point of the Judgment.

9. 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 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.³

10. 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,⁴ or to ask the Court to reassess matters that it has already ruled on in its judgment.⁵ This proceeding can also not be used to broaden the scope of a measure of reparation ordered at the proper procedural moment.⁶

11. Hereinafter, the Inter-American Court will examine the issues raised in the following order: a) the request for interpretation of paragraph 279 of the judgment, regarding the reason for determination of distribution of the corresponding compensation

³ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of Judgment on Merits*. Order of the Court of March 8, 1998. Series C No. 47, para. 16, and *Case of Manuela et al. v. El Salvador. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 27, 2022. Series C No. 461, para. 10.

⁴ 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, and *Case of Manuela et al. v. El Salvador. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 27, 2022. Series C No. 461, para. 11.

⁵ 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 Manuela et al. v. El Salvador. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 27, 2022. Series C No. 461, para. 11.

⁶ 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 Manuela et al. v. El Salvador. Interpretation of Judgment of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 27, 2022. Series C No. 461, para. 11.

amount with respect to a specific victim among his heirs; and b) the request for interpretation of paragraph 278 of the judgment, regarding the possibility of updating, for the purpose of deducting from the amounts of compensation established in the judgment, the amounts of money paid to the victims prior to the issuance of the judgment as reparations.

A. Request for interpretation of the reason for the distribution of the amount of compensation corresponding to a victim among his heirs

A.1. Consultation of the State and comments from the Commission

12. The **State** inquired as to the reason for the inclusion of the name of Washington Javier Barrios Fernández in paragraph 279 of the Judgment, since "the amount that corresponds to him is as a relative of his wife, and not as a victim of forced disappearance, as in the case for [Mr.] González González and Mr. Tassino Asteazú." The State limited itself to the inquiry indicated, without elaborating on the grounds for its request.

13. The Commission stated that "there are no doubts as to the mention of Washington Javier Barrios Hernández in the Court's judgment on the merits, so this point does not appear to be open to interpretation."

A.2. Considerations of the Court

14. The Court notes that, as recognized by the State, because he is the husband of Silvia Reyes, who was a victim of extrajudicial execution, Washington Javier Barrios Fernández was himself considered by the judgment to be a victim of human rights violations and, therefore, a beneficiary of measures of reparation.⁷ Paragraph 277 of the judgment sets a sum of money as compensation for the non-pecuniary damage suffered by Mr. Barrios Fernandez due to the extrajudicial execution of his wife. The Court took cognizance of information—which is not in dispute—indicating that Mr. Barrios Fernandez is missing. While this matter of fact was noted in the judgment, its possible legal implications were not examined by the Court, since it was not one of the facts submitted to it.⁸ Taking into account this matter of fact, in paragraph 279 of its judgment, the Court established, in order to enable effective compliance with its decision, that the compensation amount corresponding to Mr. Barrios Fernández would be distributed among his heirs "pursuant to the applicable domestic law."

15. The judgment, then, is clear that the reasons why Washington Javier Barrios Fernández is included in paragraph 277 are not related to his possible status as a victim of forced disappearance, an issue that was not examined by the Court.

16. Therefore, the request for interpretation is inadmissible on this point.

B. Request for interpretation regarding the possibility of updating, for the purpose of deducting from the amounts of compensation established in

⁷ This is established in operative paragraphs 3, 4, and 13 of the judgment, as well as paragraphs 150, 182, 190, 195 and 277 thereof.

⁸ Thus, in footnote 41 of the judgment, which corresponds to paragraph 51, in chapter VI entitled "Facts," in the section headed "Regarding the alleged victims", it is stated: "The representative pointed out that Washington Javier Barrios Fernández is disappeared. The facts surrounding his disappearance were not submitted to the Court."

the judgment, the amounts of money paid to the victims prior to the issuance of the judgment

B.1. Consultation of the State and comments from the Commission

17. The **State** requested clarification as to whether "it is possible to update," upon "liquidation" of the pecuniary reparations, the monetary sums indicated in paragraph 278 of the judgment, which refers to sums already delivered to the victims in this case as reparations prior to the issuance of the judgment. Uruguay asked that it be taken into account that the "amounts already disbursed were disbursed some time ago." Beyond this statement, it did not offer further rationale for its request or detail the methodology to be used for the update.

18. The **Commission** indicated that "it would be pertinent for the Inter-American Court to clarify the matter for the State".

B.2. Considerations of the Court

19. The Court recalls that paragraph 278 of the Judgment it stated the following:

The amounts that have already been distributed domestically to the victims as monetary reparation for acts declared in violation of human rights in this judgment may be discounted by the State from the amount due to each victim as compensation under the terms of this judgment. This does not apply to the monetary reparations that the State awarded to the next of kin of Ms. Maidanik, Ms. Reyes and Ms. Raggio for their deaths since that is beyond the determination of reparations of this judgment. Notwithstanding the information that the State has already provided to the Court (*supra* para. 273), to implement the discount the State must, at the stage of monitoring compliance in this case, prove the effective delivery of the amounts awarded domestically. Moreover, in no case can the State view the domestic awarding of monetary reparations, set by domestic judicial and extrajudicial mechanisms, that might result in monetary amounts greater than those stipulated in this judgment as implying a balance in favor of the State that the beneficiaries are obligated to return.

20. This paragraph makes no specifications with respect to updating the amounts of money delivered to the victims prior to the issuance of the judgment, nor does the judgment do so elsewhere. In view of the foregoing, and given that the State's consultation has a bearing on the manner in which it must comply with the pecuniary reparations ordered in favor of the victims, it is admissible.

21. The Court notes that paragraph 273 of the judgment included some monetary amounts that the State reported that it had paid to the next of kin of the direct victims in this case, with their equivalence in United States dollars—included in the judgment—reported by Uruguay. The Court also provided for the possibility that, during the execution stage of the judgment, Uruguay may "prove the effective delivery of the amounts awarded domestically." Therefore, at that stage, the State may submit complete and accurate information on the amounts paid out prior to issuance of the judgment.

22. However, it should be noted that prior to the issuance of the judgment, when reporting on the amounts paid, the State gave their equivalence in United States dollars and did not request that provision be made to update those amounts should pecuniary reparations be ordered. Furthermore, in its request for interpretation of the Judgment, Uruguay merely asked whether it would be possible to update the monetary amounts paid prior to the issuance of the judgment. It offered no further considerations or explanations in this regard, beyond highlighting the obvious fact that they were paid "some time ago," something that can be ascertained from the information contained in

the judgment and that has therefore already been considered by this Court. In short, the State did not present enough information—either before the issuance of the judgment or subsequent to it—to allow for evaluation of whether it would be appropriate to update the amounts of the money delivered to the victims in the case.

23. This Court therefore clarifies that it is not appropriate to update the amounts set in paragraph 278 of the judgment at the moment the pecuniary amounts are paid out.

V OPERATIVE PARAGRAPHS

24. 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 dismiss as inadmissible the request for interpretation of the Judgment on the Merits and Reparations in the case of *Maidanik et al. v. Uruguay* presented by the State, with respect to why it was determined that for one of the victims, Washington Javier Barrios Fernández, the corresponding reparation amount would be distributed to his heirs, pursuant to the terms of paragraphs 14 to 16 of this judgment on interpretation.

2. To declare admissible the request for interpretation of the judgment on the merits and reparations in the case of *Maidanik et al. v. Uruguay* presented by the State regarding the possibility of updating, for the purpose of deducting from the amounts of compensation established in the judgment, the amounts of money paid to the victims prior to the issuance of the judgment as reparations, pursuant to the terms of paragraphs 7 and 20 of this judgment of interpretation.

3. To clarify, by means of interpretation, the judgment on the merits and reparations in the case of *Maidanik et al. vs. Uruguay* regarding the possibility of updating, for the purpose of deducting from the amounts of compensation established in the Judgment the amounts of money paid to the victims prior to the issuance of the judgment, pursuant to the terms of paragraphs 19 to 23 of this judgment on interpretation.

4. To order the Office of the Registrar of the Court to notify the Oriental Republic of Uruguay, the representatives of the victims, and the Inter-American Commission on Human Rights of this judgment of interpretation.

I/A Court H.R. *Case of Maidanik et al. v. Uruguay*. Interpretation of Judgment on Merits and Reparations. Judgment of November 21, 2022.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Pablo Saavedra Alessandri
Registrar

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Registrar