

INTER-AMERICAN COURT OF HUMAN RIGHTS

**CASE OF THE WORKERS OF THE FIREWORKS FACTORY IN SANTO ANTÔNIO DE
JESUS AND THEIR FAMILIES V. BRAZIL**

JUDGMENT OF JUNE 21, 2021

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

*In the Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their
families v. Brazil,*

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;
Eduardo Vio Grossi, Judge;
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,

pursuant to Article 67 of the American Convention on Human Rights (hereinafter “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
July 15, 2020, in the present case (hereinafter “the Judgment”), filed on January 21 and
January 22, 2021, respectively, by the representatives of the victims (hereinafter “the
representatives”) and the Federative Republic of Brazil (hereinafter “the State” or “Brazil”).

I
REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On July 15, 2020, the Court issued its Judgment on Preliminary Objections, Merits, Reparations and Costs, which was notified to the parties and to the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission" or "the Commission") on October 26, 2020.
2. On January 21, 2021, the representatives filed a request for interpretation of judgment pursuant to Articles 67 of the Convention and 68 of the Rules of Procedure, in relation to the absence of some names of underage victims in paragraph 303, subsection "a", of the Judgment, and to errors in the spelling of some of the victims' names. The representatives referred to material errors that were corrected by this Court pursuant to Article 76 of the Rules of the Court, as informed to the Commission and to the parties on May 19, 2021. Therefore, said request will not be addressed in the present Judgment.
3. On January 22, 2021, Brazil submitted a request for interpretation of judgment, pursuant to Articles 67 of the Convention and 68 of the Rules of Procedure, regarding: a) jurisdiction *ratione materiae* to declare alleged violations of the right to work, set out in Article 26 of the American Convention on Human Rights (paragraphs 21 to 23 of the Judgment); b) the assessment of the amount to be paid as compensation for pecuniary and non-pecuniary damages (paragraphs 298 and 305 of the Judgment), relating to domestic proceedings acknowledging the State's civil liability for the same events in the present case; and c) the modality of compliance with the payments ordered (paragraphs 313 to 317 of the Judgment).
4. On February 16, 2021, following the instructions of the President, the Secretariat of the Court sent the requests for interpretation to the parties and to the Inter-American Commission on Human Rights, with a time frame up to March 15 of the same year to submit any relevant observations in writing.
5. On March 15, 2021, the representatives and the Commission filed their written observations. The State failed to submit observations.

II
JURISDICTION

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. Pursuant to this article, the Court has jurisdiction to interpret its judgments. In order to examine the requests for interpretation and decide them accordingly, the Court should, whenever possible, have the same composition as it did when delivering the respective Judgment, pursuant to Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed of the same Judges who issued the Judgment, the interpretation of which has been requested by the parties.¹

¹ Due to the exceptional circumstances caused by the COVID-19 pandemic, the deliberation and approval of this Judgment took place during the 142nd regular sessions, which were held remotely via technological resources, pursuant to the provisions of the Court's Rules of Procedure.

III ADMISSIBILITY

8. It is the responsibility of the Court to verify whether the request submitted by the State meets the requirements established in the norms applicable to a request for interpretation of judgment, namely, Article 67 of the Convention and Article 68 of the Rules of Procedure.²

9. The Court observes that the parties were notified of the Judgment on October 26, 2020, and the State submitted its request for interpretation on January 22, 2021, within the period established in Article 67 of the Convention. Therefore, the request is admissible with regard to the time frame for submission. Regarding the remaining requirements, the Court will assess them analysis in the following chapter.

IV ANALYSIS OF THE ADMISSIBILITY OF THE REQUEST FOR INTERPRETATION

10. The Court will now examine the State's request to determine whether, based on the regulations and the standards developed in its case law, it is admissible to clarify the meaning or scope of any provision of the Judgment.

11. The Court has indicated that a request for interpretation of judgment cannot be used as a means of contesting the decision whose interpretation is required. The purpose of this type of 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 are unclear or imprecise, as long as those considerations affect the operative part of the judgment. Therefore, pursuant to Article 31(3) of the Regulation, the modification or annulment of the respective decision cannot be sought through a request for interpretation.³

12. Additionally, as indicated by the Court, it is inadmissible to use a request for interpretation to resubmit questions of fact and law previously raised at the appropriate procedural opportunity and that have already been resolved by the Court;⁴ as well as to request that the Court reassess issues that have already been resolved in the Judgment.⁵ Similarly, this procedure cannot be invoked to broaden the scope of reparations duly ordered.⁶

² This Article provides, so far as is relevant: "1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which interpretation is requested. [...] 4. A request for interpretation shall not suspend the effect of the judgment. 5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment."

³ Cf. I/A Court H.R., *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment of Merits*. Order of the Court of March 8, 1998. Series C No. 47, paras. 15 to 16, and I/A Court H.R., *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the Judgment on Merits, Reparations and Costs*. Judgment of November 24, 2020. Series C No. 420, para. 9.

⁴ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on Reparations and Costs*, *supra*, para. 15, and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the Judgment on Merits, Reparations and Costs*, *supra*, para. 10.

⁵ Cf. I/A Court H.R., *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 the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the Judgment on Merits, Reparations and Costs*, *supra*, para. 10.

⁶ Cf. I/A Court H.R., *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 the*

13. With this in mind, the Court will examine the issues presented by the State, as well as the observations of the representatives and the Commission, in the following order: a) jurisdiction *ratione materiae* to find alleged violations of Article 26 of the American Convention; b) the payment of compensation for pecuniary and non-pecuniary damages, and c) the modality of compliance with the payments ordered.

A. Competence *ratione materiae* to declare alleged violations of Article 26 of the American Convention

A.1. Arguments of the parties and of the Commission

14. The **State** claimed that the rules of the inter-American system do not allow the filing of complaints regarding the right to work under the system of individual petitions. It added that, according to Article 19(6) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador", only the rights of workers to organize trade unions and join the union of their choice, and the right to education, may be the subject of contentious cases before the Inter-American Commission or Court. In addition, it pointed out that the justiciability of economic, social and cultural rights through the direct application of Article 26 of the American Convention is flawed in a manner that should have led the Court to declare its lack of competence to directly examine possible violations of the right to work, with the consequent acceptance of the preliminary objection raised by the State. Finally, it requested that "obscure elements" in the second operative Paragraph of the Judgment,⁷ justifying the jurisdiction *ratione materiae* to examine possible violations of Article 26 of the American Convention be rectified.

15. The **representatives** argued that the issues include in the State's request for interpretation of the Judgment are in fact objections to the merits of said judgment, and should not be allowed to proceed, given that the judgments of the Court are not subject to appeal.

16. The **Commission** pointed out that, according to paragraph 21 of the Judgment, the State submitted similar arguments in its allegations the case, and therefore the issue was examined and resolved with clarity by the Court in paragraph 23 of its Judgment.

A.2. Considerations of the Court

17. The Court recalls that it is inappropriate to utilize a request for interpretation to submit issues of fact and law previously raised at the appropriate procedural stage and in connection with which the Court has already adopted a decision.

Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Interpretation of the Judgment on Merits, Reparations and Costs, supra, para. 10.

⁷ The second operative paragraph of the Judgment on Preliminary Objections, Merits, Reparations and Costs in *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, provides as follows: "2. To reject the preliminary objection concerning the alleged lack of jurisdiction *ratione materiae* regarding the supposed violations of the right to work, pursuant to paragraph 23 of this judgment". Paragraph 23 of the said Judgment states: "23. The Court reaffirms its jurisdiction to hear and decide disputes concerning Article 26 of the American Convention as an integral part of the rights listed in its text, regarding which Article 1(1) establishes obligations of respect and guarantee. As indicated in previous decisions, the arguments concerning the possible occurrence of such violations must be examined with the merits of the case. Therefore, the Court rejects this preliminary objection".

18. Regarding the Court's alleged lack of jurisdiction to examine violations of the right to work and Article 26 of the Convention, the State filed an objection *ratione materiae*, which was dismissed. In paragraph 23 of the Judgment, the Court declared itself competent to hear and decide disputes concerning Article 26 of the American Convention as an integral part of the rights listed in its text and to declare the responsibility of a State that has given its consent to be bound by the Convention, and that has also accepted the jurisdiction of the Inter-American Court.

19. The Court considers that the wording of paragraph 23 and footnotes 25 and 26 of the Judgment is absolutely clear in following a consistent line of case law in more than ten cases, where the Court has confirmed its jurisdiction to hear and decide controversies relating to Article 26 of the American Convention, as an integral part of the rights listed in its text. Thus, the Court notes that, under the guise of a request for interpretation, the position of the State is at variance with the considerations and decision of the Court, because it intends to have the Court's jurisdiction to declare violations of the right to work reversed. This is an issue on which this Court has already adopted a decision, fully reasoned not only at the moment of deciding upon the preliminary objections submitted by the State, but also in para 155 et seq. of the Decision on the Merits.

20. The rationale of the interpretation must be to clarify some imprecise or ambiguous issue about the meaning or scope of the Judgment, and not to resubmit questions that have already been resolved. For this reason, the Court declares this request for interpretation inadmissible.

B. Payment of indemnity for pecuniary and non-pecuniary damages

B.1. Arguments of the parties and of the Commission

21. The **State** argued that given the identical nature of the facts of the case before the Court and the facts examined in the domestic judicial proceedings on the State's civil liability, the determination made by the Court in paragraphs 298 and 305 of the Judgment would imply "unlawful compensatory *bis in idem*". On this basis, it requested clarification of the findings in said paragraphs, in the sense that their enforcement must be limited to domestic proceedings not involving state entities.

22. The **representatives** argued that the issues which are the subject of the State's request for interpretation of the Judgment are, in reality, objections to the merits of the said judgment, and should not be allowed to proceed, given that the judgments of the Court are not subject to appeal.

23. The **Commission** argued that paragraph 298 is clear in stating that the compensation ordered by the Court "shall be paid irrespective of the amounts recognized, or to be recognized in future, in the domestic proceedings in favor of the victims in this case" and that the State's allegation seeks to dispute that determination.

B.2. Considerations of the Court

24. The Court recalls that a request for interpretation of judgment cannot be utilized to challenge questions of fact and law that have already been resolved in its decision. In this regard, at the moment of issuing its judgment, the Court examined the existing civil proceedings in connection with potential compensation. On this point, paragraph 233 of the Judgment provides:

The first civil case, initiated on March 4, 2002, by the victims and their next of kin, contained a request for advance relief in favor of the young people under 18 years of age whose mothers had died in the explosion, which was accepted by the competent federal judge the following day. Of the 44 children who lost their mothers and sued the Federal Government, 39 benefited from the preliminary protection decision with a monthly pension of a minimum wage and, of these, only 16 effectively received this payment because, owing to the passage of time, the others had already reached 18 years of age. The other family members received no reparation from the State. Following the decisions on the appeals filed against the decision 63 on the advance relief, in 2004, the proceedings were disaggregated owing to the large number of co-litigants (84) and, as a result, 14 different claims were filed. The first instance judgments were delivered between July 2010 and August 2011, and appeals were filed against them that were rejected between August 2013 and March 2017. Appeals for clarification were filed against the appeal decisions, and these were decided between October 26, 2015, and May 5, 2018. Special and extraordinary appeals were filed in 12 of the 14 proceedings, resulting in 10 remaining pending and two with final decisions in September 2017 and April 2018. The available evidence reveals that the presumed victims received no payments as a result of these proceedings.

25. However, paragraphs 298 and 305 of the Judgment established that the payments made by the State as a result of domestic proceedings should not be deducted from the compensation for pecuniary and non-pecuniary damages. Thus, the Judgment is clear in stating that the State must pay said compensation "regardless of the amounts recognized [...]" (underlining added), that is, any amount that may eventually be paid by the State or by individuals at the domestic level. Consequently, the Court finds that this request for interpretation is inadmissible.

C. Modality of compliance with the payments ordered

C.1. Compliance with payment

C.1.1. Arguments of the parties and of the Commission

26. The **State** requested clarification of paragraph 315 of the Judgment. On this point, it argued that, in Brazil, the national currency is the compulsory legal tender and it is not freely convertible. As a result, operations with foreign currency are restricted to specific cases that, as a general rule, are connected with an operation abroad. The State requested that the Court clarify whether a deposit in a solvent Brazilian financial institution can be made in reais, using the exchange rate on the day prior to deposit.

27. The **representatives** argued that the issues which are the subject of the State's request for interpretation of the Judgment are, in reality, objections to the merits of the said judgment, and should not be allowed to proceed, given that the judgments of the Court are not subject to appeal.

28. The **Commission** argued that this issue, on which the State requests interpretation, has already been clarified in paragraph 314 of the Judgment.

C.1.2. Considerations of the Court

29. Paragraphs 314 and 315 of the Court's Judgment established the conditions for payment of compensatory damages:

314. The State must comply with its monetary obligations by payment in United States dollars or the equivalent in Brazilian currency, using the exchange rate in force on the New York Stock Exchange (United States of America) the day before the payment to make the respective calculation.

315. If, for causes that can be attributed to any of the beneficiaries of the compensation or their heirs, it is not possible to pay all or part of the amounts established within the indicated time frame,

the State shall deposit the said amounts in their favor in a deposit certificate or account in a solvent Brazilian financial institution, in United States dollars, and in the most favorable financial conditions allowed by the State's banking laws and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

30. The Court considers that, from the reading of paragraph 314, it is clear that the amounts established in United States dollars can be paid in Brazilian currency. Thus, the Court clarifies that paragraph 315 must be interpreted in accordance with paragraph 314: in the sense that in the event payment of the amounts established in United States dollars cannot be made in that currency, said payment shall be made in Brazilian currency, using the exchange rate in force on the New York Stock Exchange, United States of America, on the day prior to payment.⁸

C.2. Interest on Arrears

C.2.1. Arguments of the parties and of the Commission

31. The **State** requested clarification of paragraph 317 of the Judgment as to whether the payment of interest on arrears should affect the value of the compensation already converted into reais, on the date when the potential default begins. It clarified that it makes the request as a precaution, with the purpose of avoiding an interpretation resulting in the calculation of interest applicable to the national currency, to the payment in United States dollars.

32. Similarly, the State observed that Article 68(2) of the American Convention provides that the section of the judgment establishing compensatory damages may be enforced in the country concerned in accordance with domestic procedure governing the execution of judgments against the State. It also indicated that, at the domestic level, the public entity (the Treasury) is responsible for setting the interest on arrears according to remuneration accrued in the savings account, pursuant to Article 1-F of Law 9,494/1997. In view of the foregoing, the State also requested clarification whether the expression "banking interest on arrears", cited in the same paragraph 317 of the Judgment, should be interpreted in accordance with the domestic legislation governing public entities.

33. The **representatives** argued that the issues which are the subject of the State's request for interpretation of the Judgment are, in reality, objections to the merits of the said judgment, and should not be allowed to proceed, given that the judgments of the Court are not subject to appeal.

34. The **Commission** stated that the issue, on which the State requests interpretation, has already been clarified in paragraph 314 of the Judgment.

C.2.2. Considerations of the Court

35. The Court recalls that according to paragraph 317 of the Judgment:

If the State falls in arrears, it must pay interest on the amount owed corresponding to banking interest on arrears in the Federative Republic of Brazil.

⁸ Cf. I/A Court H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2017. Series C No. 337, paras. 37 to 39, and I/A Court H.R., *Case of Favela Nova Brasília v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 5, 2018. Series C No. 345, paras. 57 to 59.

36. In light of the foregoing, as regards the first part of the State's request, the Court clarifies that paragraph 317 of the Judgment must be interpreted in accordance with paragraph 314 thereof, establishing that the State "must comply with its monetary obligations by payment in United States dollars or the equivalent in Brazilian currency, using the exchange rate in force on the New York Stock Exchange (United States of America) the day before the payment to make the respective calculation". Thus, the payment of interest on arrears must be calculated on the amount in reais, once the amounts established in the Judgment have been converted from United States dollars to the Brazilian real.

37. Notwithstanding the foregoing, the Court considers that the second part of the State's request, in relation to the applicable bank interest rate on the amount in default, is connected to the supervision of compliance with the Judgment, and cannot be subject to an abstract interpretation by the Inter-American Court in this Decision.⁹ Consequently, it declares the request for interpretation on this issue inadmissible.

V OPERATIVE PARAGRAPHS

38. Therefore,

THE COURT,

pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of its Rules of Procedure,

DECIDES:

Unanimously,

1. To declare admissible the request for interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, issued in the *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, filed by the State of Brazil.

2. To dismiss as inadmissible the request for interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs issued in the *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil*, filed by the State of Brazil referring to: i) the competence *ratione materiae* to declare alleged violations of Article 26 of the American Convention on Human Rights, as established in paragraphs 17 to 20 of this judgment on interpretation; ii) the payment of compensation for pecuniary and non-pecuniary damages, as established in paragraphs 24 and 25 of this judgment on interpretation; and iii) the applicable banking interest rate on the amount in arrears, as established in paragraph 37 of this judgment on interpretation.

3. To Determine the meaning and scope of the Judgment on Preliminary Objections, Merits, Reparations and Costs issued in the *Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil*, as established in paragraphs 29, 30, 35 and 36 of this judgment on interpretation.

⁹ Cf. *Case of the Hacienda Brasil Verde Workers v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*, *supra*, paras. 44 to 45, and *Case of Favela Nova Brasília v. Brazil. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 66.

4. To require that the Secretariat of the Inter-American Court of Human Rights notify the State, the representatives of the victims, and the Inter-American Commission of this judgment on interpretation.

I/A Court H.R., *Case of the Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of June 21, 2021.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

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,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary