

# Duque v. Colombia

## ABSTRACT<sup>1</sup>

*This case is about a homosexual couple who had been cohabiting for more than ten years and could not marry. Upon death of his partner, who had been a State employee, the victim was denied a survivor's pension because that was only meant for heterosexual partnerships or married couples. Eventually, the Court found Colombia in violation of the right to equal protection contained in the American Convention but did not find violation of other articles.*

## I. FACTS

### A. Chronology of Events

**June 15, 1991:** Mr. Ángel Alberto Duque and JOJG begin cohabiting as a couple.<sup>2</sup> During his life, JOJG is enrolled with the Colombian Company Pension and Severance Fund Administration (*Compañía Colombiana Administradora de Fondos de Pensiones y Cesantías*; “COLFONDOS”) and works for the Office of the Deputy Director of Exchange Control in the Directorate of National Taxes and Customs.<sup>3</sup>

**August 4, 1997:** Mr. Duque is diagnosed with Human Immunodeficiency Virus (“HIV”).<sup>4</sup> He begins receiving anti-retroviral treatments.<sup>5</sup> Mr. Duque uses funds from his partner JOJG to cover the medical care and anti-retroviral treatments required for HIV.<sup>6</sup> Stopping these necessary treatments could potentially lead to Mr. Duque's death.<sup>7</sup>

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1. Lauren Mayes, Author; John Flynn, Senior IACHR Editor; Kimberly Elise Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Duque v. Colombia, Report on Merits, Report No. 5/14, Inter-Am. Comm'n H.R., Case No. 12.841, ¶ 38 (Apr. 2, 2014).

3. *Id.* ¶ 39.

4. *Id.* ¶ 38.

5. *Id.*

6. *Id.*

7. *Id.*

**September 15, 2001:** JOJG dies of Acquired Immune Deficiency Syndrome (AIDS).<sup>8</sup> At this point in time, Mr. Duque and JOJG had cohabitated as permanent domestic partners for ten years and three months.<sup>9</sup>

**March 19, 2002:** Mr. Duque requests COLFONDOS to inform him how he can apply for JOJG's survivor's pension.<sup>10</sup>

**April 3, 2002:** COLFONDOS advises Mr. Duque that he does not qualify as a legal beneficiary entitled to JOJG's survivor's pension.<sup>11</sup> In denying Mr. Duque his partner's pension benefits, COLFONDOS relies on Article 74 of Law 100 of 1993, which declares that for social security purposes, only spouses and surviving permanent partners are entitled to a survivor's pension.<sup>12</sup> Because the State does not recognize the marriage or partnership of a same sex couple, Mr. Duque is not a surviving permanent partner within the meaning of the law.<sup>13</sup>

**April 26, 2002:** Following COLFONDOS' denial, Mr. Duque files a *tutela* action with the Tenth Municipal Civil Law Court of Bogotá ("Tenth Municipal Court"). He requests the court to recognize his right to JOJG's survivor's pension. The court grants a provisional measure ordering that the survivor's pension be paid to Mr. Duque pending proceedings.<sup>14</sup> On the merits, Mr. Duque argues that: (1) he was JOJG's permanent partner; (2) he has no job, income, or revenue; (3) he contracted HIV and requires anti-retroviral treatment that cannot be stopped; (4) without an income, he will lose his healthcare, and; (5) use of the survivor's pension would ensure that Mr. Duque receive his required treatment.<sup>15</sup> Mr. Duque further alleges that denying a survivor's pension to a homosexual partner is a violation of multiple fundamental rights.<sup>16</sup>

**June 5, 2002:** The Tenth Municipal Judge for Civil Matters denies Mr. Duque's *tutela* action because Mr. Duque should challenge instead COLFONDOS's decision before ordinary courts, or file an appeal, or ask

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8. Duque v. Colombia, Report on Merits, ¶ 39.

9. *Id.* ¶ 38.

10. *Id.* ¶ 39.

11. *Id.* ¶ 40.

12. *Id.*

13. *Id.*

14. Duque v. Colombia, Report on Merits, ¶ 47.

15. *Id.* ¶ 47.

16. *Id.*

COLFONDOS to reconsider the decision.<sup>17</sup> The court suggests other remedies allegedly available to Mr. Duque, such as applying for financial assistance offered by the System for Identification of Potential Beneficiaries of Social Programs (“SISBEN”).<sup>18</sup>

**July 19, 2002:** Mr. Duque challenges the Tenth Municipal Court’s ruling before the Twelfth Circuit Civil Court.<sup>19</sup> The Twelfth Circuit Civil Court upholds the decision, on the ground that the social security law is meant to protect the family and, since homosexual couples cannot procreate, they cannot constitute a family.<sup>20</sup>

**August 26, 2002:** The Twelfth Circuit Civil Court refers Mr. Duque’s *tutela* action to the Constitutional Court, but the Court does not select it for review.<sup>21</sup>

### *B. Other Relevant Facts*

On December 23, 1993, Colombia’s legislature passed Law 100, creating the State’s comprehensive social security system.<sup>22</sup> The law specifies that its objective is to ensure that the pension system protects the public from the effects of death, disability, and old age.<sup>23</sup> It indicates that when a person with a pension dies, his or her spouse or permanent partner is entitled to a survivor’s pension.<sup>24</sup> In order to receive the pension, the survivor must prove that he or she was living in a marital union with the deceased for at least two years.<sup>25</sup> The State defines a marital union as that between a man and woman.<sup>26</sup>

Between the years of 2007 and 2008, Colombia’s Constitutional Court officially granted homosexual and same-sex couples the same social security, property rights and pension benefits as those “enjoyed by heterosexual couples.”<sup>27</sup> The Constitutional Court held “that there was no justification to authorize discriminatory treatment whereby persons who were in homosexual relationships could not have access to the survivor’s

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17. *Id.* ¶ 48.

18. *Id.*

19. *Id.* ¶ 13.

20. *Duque v. Colombia*, Report on Merits, ¶ 49.

21. *Id.* ¶ 50.

22. *Id.* ¶ 41.

23. *Id.*

24. *Id.* ¶ 42.

25. *Id.*

26. *Duque v. Colombia*, Report on Merits, ¶ 43.

27. *Id.* ¶ 51.

pension under the same conditions that applied in the case of heterosexual couples.”<sup>28</sup> The Court later held that this judgment was to have retroactive effect in the case of those whose spouses died prior to the issuance of the judgment.<sup>29</sup> Shortly thereafter, in 2009, Colombia’s Constitutional Court amended forty-two provisions appearing in about twenty laws to provide same-sex unions equal rights as heterosexual unions.<sup>30</sup> In 2010, sentence T-051 was issued “recognizing that same-sex couples have the right to survival pension in the same conditions as a heterosexual couple.”<sup>31</sup>

Similarly, in 2011, the Constitutional Court “concluded that there were no constitutionally valid grounds to find that it was reasonable to give same-sex couples only one method of proving that their union was permanent, when the system in the case of heterosexual couples offered such couples five different ways to prove that their relationship was permanent when adjudicating legal effects in the matter of pensions.”<sup>32</sup>

## II. PROCEDURAL HISTORY

### A. *Before the Commission*

**February 8, 2005:** The Colombian Commission of Jurists and Germán Humberto Rincón Perfetti file a petition with the Commission.<sup>33</sup>

**November 2, 2011:** The Commission approves Admissibility Report No. 150/11.<sup>34</sup>

**April 2, 2014:** The Commission issues Merits Report No. 5/14 and finds that the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) to the detriment of

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28. *Id.* ¶ 53.

29. *Id.*

30. *Id.* ¶ 51.

31. *Duque v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. Ser. C No. 310 ¶ 131 (Feb. 26, 2016).

32. *Duque v. Colombia*, Report on Merits, ¶ 53.

33. *Duque v. Colombia*, Merits, Reparations and Costs, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct. H.R. Ser. C No. 322 ¶ 2 (Nov. 21, 2016).

34. *Id.*

Mr. Duque.<sup>35</sup> The Commission recommends that the State: (1) provide pecuniary and non-pecuniary damages to Mr. Duque, including the grant of the survivor's pension and just compensation; (2) provide Mr. Duque uninterrupted access to healthcare services and treatments required to treat his HIV; (3) recognize the right for same-sex couples to have access to a survivor's pension; (4) ensure public and private social security agencies receive adequate training to process and accept requests of those in a same-sex partnership, and; (5) ensure same-sex couples are required to present the same evidence mandated for other couples when attempting to access social security services and are otherwise not discriminated against in the social security system.<sup>36</sup>

### *B. Before the Court*

**October 21, 2014:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>37</sup>

#### 1. Violations Alleged by Commission<sup>38</sup>

Article 5(1) (Right to Physical, Mental, and Moral Integrity)  
Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)  
Article 24 (Right to Equal Protection)  
Article 25 (Right to Judicial Protection)  
*all in relation to:*  
Article 1(1) (Obligation of Non-Discrimination)  
Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

#### 2. Violations Alleged by the Representatives<sup>39</sup>

The same violations alleged by the Commission, as well as

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)  
*in relation to:*

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35. Duque v. Colombia, Report on Merits, ¶ 102.

36. *Id.* ¶ 103.

37. Duque v. Colombia, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

38. Duque v. Colombia, Report on Merits, ¶ 3.

39. Duque v. Colombia, Final Allegations of the Representatives of Mr. Ángel Alberto Duque, Presented by Fredy Alejandro Malambo Ospina, ¶ D.

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

**May 5, 2015:** The President of the Court grants Mr. Duque access to the Victim's Legal Assistance Fund.<sup>40</sup>

**April 1, 2015:** The State submits three preliminary objections to the Court: (1) that Mr. Duque failed to exhaust domestic remedies to obtain recognition of his survivor's pension; (2) that Mr. Duque failed to provide any evidence that his antiretroviral treatments were suspended due to his lack of resources, which is intended to prove the State's violations of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, and; (3) Mr. Duque failed to exhaust domestic remedies for his rights to life and personal integrity.<sup>41</sup>

**April–September 2015:** The Court receives nine amicus curiae briefs.<sup>42</sup>

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40. Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, ¶ 8.

41. *Id.* ¶ 14.

42. *Id.* ¶ 10. The briefs are submitted by: (1) the Latin Culture Foundation; (2) Human Rights Clinic of the Faculty of Law of the University of Texas and International Gay and Lesbian Human Rights Commission; (3) Alliance Defending Freedom Organization; (4) Damián A. González-Salzberg; (5) Center Leitner for Justice and International Law at Fordham University and the International Human Rights Commission for Gays and Lesbians; (6) Colombia Diversa and the Program of Action for Equality and Social Inclusion (PAIIS) of the Faculty of Right of the Universidad de los Andes; (7) The Heartland Alliance for Human Needs and Human Rights, Venezuela Various Civil Association, United and Strong Inc., Corporation Women's Promotion/Women's Communication Workshop, SASOD – Society Against Sexual Orientation Discrimination, Women and Health Collective, Aireana Group for the Rights of Women Lesbians, United Belize Advocacy Movement, Mulabi – Latin American Space Sexualities and Rights, Akahatá – Work Team on Sexualities and Genders, Colectivo Ovejas Negras, Center for the Promotion and Defense of Sexual Rights and Foundation, Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG), Network Latin American and Caribbean Network of Trans People (Redlactrans), Amanda Jofré Trade Union, Trans of Peru, Panamanian Association of Trans People, Panambí Association and Association Bishop; (8) Human Rights Clinic of the Faculty of Law of the University of Santa Clara in California, and; (9) Group of Public Actions of the Faculty of Jurisprudence of the Universidad del Rosario, The Probono Colombia Foundation, Chile Probono Network, Study Jurídico Ferrada Nheme and Baker and McKenzie Law Firm of Colombia.

## III. MERITS

A. *Composition of the Court*<sup>43</sup>

Roberto F. Caldas, President  
Eduardo Ferrer Mac-Gregor Poisot, Vice-President  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

**February 26, 2016:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>44</sup>

The Court found unanimously that the State did not recognize international responsibility for a violation of the American Convention, because:

*Throughout the proceeding, the State recognized that it committed an international wrongful act by denying same-sex couples the right to a survivor's pension, but argued that a 2008 Constitutional Court of Colombia judgment granted same-sex couples the right to a survivor's pension and therefore remedied the State's international wrongful act.*<sup>45</sup> *The Court declared that a state recognizing it committed an international wrongful act does not equate to the state recognizing international responsibility for a violation of the American Convention.*<sup>46</sup>

The Court dismissed two preliminary objections in relation to Duque's alleged lack of exhaustion of resources,<sup>47</sup> because:

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43. Judge Humberto Antonio Sierra Porto did not participate in deliberating this Judgment as he is a Colombian national. *Id.* fn. 1.

44. See generally *Id.*

45. Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, ¶ 59.

46. *Id.* ¶ 61.

47. *Id.* "Decides," ¶ 1.

*Although the State claimed that Mr. Duque's claim before the Inter-American Court was improper due to failure to exhaust domestic remedies, the Court found that Mr. Duque had satisfactorily exhausted the domestic remedies available to him.<sup>48</sup> The Court noted that, first, Mr. Duque contacted COLFONDOS to inquire as to the survivor's pension and COLFONDOS advised Mr. Duque that couples of the same sex did not qualify for survivor's pensions under the law.<sup>49</sup> Next, Mr. Duque filed a tutela action before the Tenth Civil Municipal Court of Bogotá requesting that he be declared the pension beneficiary.<sup>50</sup> The court ruled that COLFONDOS's denial of the survivor's pension was in accordance with the law and did not violate Mr. Duque's fundamental rights—a decision upheld on appeal.<sup>51</sup> Finally, the Court found that “the violation of the right to health alleged in the a tutela action by Mr. Duque, was in close connection with the claim of access to a specific protection regime of the right to health which, in principle, the alleged victim allegedly could only access with the recognition of the quality of the beneficiary of the survivor's pension.”<sup>52</sup> Thus, the Court concluded it was reasonable to infer that domestic remedies were exhausted.<sup>53</sup>*

The Court dismissed the preliminary objection concerning the facts in which it was intended to establish the alleged violation of articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to article 1(1) (Obligation of Non-Discrimination) of the Convention,<sup>54</sup> because:

*While the State alleged that the representatives of Mr. Duque failed to present any evidence proving that a lack of resources was the reason Mr. Duque's antiretroviral treatment was suspended, the Court found that the State's allegation went to the merits of the case and did not constitute a preliminary objection.<sup>55</sup>*

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48. *Id.* ¶ 33.

49. *Id.* ¶¶ 26-27.

50. *Id.* ¶ 28.

51. *Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs*, ¶ 28.

52. *Id.* ¶ 54.

53. *Id.*

54. *Id.* ¶ 2.

55. *Id.* ¶¶ 44, 45.



The Court found that Colombia had violated:

Article 24 (Right to Equal Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Duque,<sup>56</sup> because:

*The State's domestic laws regulating de facto unions and the social-security scheme recognized a difference in treatment between that of heterosexual couples and that of homosexual couples.<sup>57</sup> The Court reasoned "no rule, decision or practice of law internally, either by state authorities or by private individuals, may diminish or restrict, in any way, the rights of a person based on their sexual orientation."<sup>58</sup> The Court further found that although the State's issuance of the 2010 T-051 judgment would have cured this violation, there was no guarantee that even if Mr. Duque had applied for and been granted the survivor's pension without discrimination it would apply retroactively.<sup>59</sup> Thus, the Court reasoned "it [was] reasonable to conclude that the illicit international act of which Mr. Duque was a victim still would not have been completely corrected, since the retroactive payments that could be received would not be equivalent to those that would have been received had it not been treated differently from discriminatory way."<sup>60</sup> Accordingly, the Court found that the State violated Article 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.<sup>61</sup>*

The Court found that Colombia had not violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 24(Right to Equal Protection) of the Convention, to the detriment of Mr. Duque,<sup>62</sup> because:

*Due to the State's jurisprudential evolution and change in domestic law regarding the protection of homosexual couples, the Court concluded the*

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56. *Id.* "Declares," ¶ 3.

57. *Duque v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 103.

58. *Id.* ¶ 104.

59. *Id.* ¶ 137.

60. *Id.*

61. *Id.* "Declares," ¶ 3.

62. *Id.* "Declares," ¶ 4.

*elements necessary to find the state in violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights) were not present.*<sup>63</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Duque,<sup>64</sup> because:

*Although the tutela action and appeal failed to grant Mr. Duque the survivor's pension, the Court concluded that it was not possible to abstractly determine that there were no suitable domestic remedies considering there were several options still available to him.<sup>65</sup> Accordingly, the Court found that the State did not violate Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.<sup>66</sup>*

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Duque,<sup>67</sup> because:

*Despite denial of survivor's pension benefits, Mr. Duque had other avenues available in the State to maintain his HIV treatment, including a program offered by SISBEN.<sup>68</sup> Thus, since Mr. Duque was never forced to utilize the subsidized regime, the Court had no basis to determine whether it would have provided for lower-quality treatment than that of the contributory regime.<sup>69</sup>*

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63. Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, ¶ 139.

64. *Id.* "Declares," ¶ 5.

65. *Id.* ¶¶ 157, 158.

66. *Id.* "Declares," ¶ 5.

67. *Id.* "Declares," ¶ 6.

68. *Id.* ¶¶ 186, 187.

69. Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 190-191.

*C. Dissenting and Concurring Opinions*

## 1. Dissenting Vote of Judge Manuel E. Ventura Robles

In a separate opinion, Judge Robles argued that the majority should have found that domestic remedies had not been exhausted.<sup>70</sup> He emphasized the fact that Colombia's Constitutional Court had "modified the domestic jurisprudence and opened the doors to reparation for the events that occurred[.]"<sup>71</sup>

## 2. Partially Dissenting Vote of Judge Eduardo Vio Grossi

In a separate opinion, Judge Grossi concluded that at the time of the filing of Mr. Duque's initial petition, "there was no international obligation to recognize the civil or de facto union between persons of the same sex, so that the act of the State for which he dismissed the alleged victim's claim to obtain a survivor's pension due to the death of his same-sex partner, did not constitute an international wrongful act."<sup>72</sup> Judge Grossi further contends that because marriage and civil unions are two different institutions, it is not appropriate to invoke discrimination.<sup>73</sup> Judge Grossi warned that the majority's logic effectively means "that all States Parties to the Convention that have not recognized in their domestic or national legislation the de facto or civil union between people of the same sex, who are, as noted above, the great majority, would be committing an international wrongful act[.]"<sup>74</sup>

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70. *Duque v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Vote of Judge Ventura Robles, Inter-Am Ct. H.R. Ser. C No. 310 p. 1 (Feb. 26, 2016).

71. *Id.*

72. *Duque v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Vote of Judge Vio Grossi, Inter-Am Ct. H.R. Ser. C No. 310 p. 1 (Feb. 26, 2016).

73. *Id.* p. 2.

74. *Id.* p. 7.

## IV. REPARATIONS

The Court ruled that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Prioritize Mr. Duque's Application

The Court found that the State had violated Article 24 (Right to Equal Protection) of the Convention.<sup>75</sup> As such, the Court ordered the State to guarantee that once Mr. Duque applies for the survivor's pension, his application must be processed immediately, and that the process must not exceed a period of three months.<sup>76</sup> Further, should the pension be granted to Mr. Duque, the State "must include the sum equivalent to all payments, including the corresponding interests in accordance with internal regulations Colombia, which were not received since Mr. Duque presented the request for information to COLFONDOS."<sup>77</sup>

2. Publication of the Order

The Court ordered the State to publish the order as follows: (1) the official summary of the Judgment in the Official Gazette and in a newspaper of wide national circulation in Colombia; and (2) the Judgment in its entirety, available for a period of at least one year, on an official website of the State.<sup>78</sup>

B. *Compensation*

The Court awarded the following amounts:

1. Non-Pecuniary Damages

The State must pay \$10,000 (USD) in non-pecuniary damages to Mr. Duque.<sup>79</sup>

2. Pecuniary Damages

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75. Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, ¶ 124.

76. *Id.* ¶ 199.

77. *Id.*

78. *Id.* ¶ 202.

79. *Id.* ¶ 221.

[None]

### 3. Costs and Expenses

The State must pay \$10,000 (USD) in costs and expenses to Mr. Duque's representatives for their work in the litigation of the case on both the national and international levels.<sup>80</sup> The State was further ordered to reimburse the Victims' Legal Assistance Fund in the amount of \$2,509.34 (USD) for expenses incurred.<sup>81</sup>

### 4. Total Compensation (including Costs and Expenses ordered):

\$ 22,509.34

### C. Deadlines

The State had one year from the date the Court issued this Judgment to make payment for the compensation of damages as well as reimbursement of costs and expenses.<sup>82</sup> The State was given three months (after submission) to process Mr. Duque's application for survivor's pension.<sup>83</sup> Finally, the State had six months to comply with the Court's requested publications.<sup>84</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**July 11, 2016:** The State submits a request for interpretation of paragraphs 199 and 227 of the Judgment.<sup>85</sup> The State specifically raised three questions: (1) what is Mr. Duque's deadline for submitting his request for recognition of his rights to the survivor's pension; (2) should Mr. Duque delay the filing of his request, what are the consequences of a prolonged delay in the request, and; (3) what are the reasonable expenses incurred during the procedural stage of the case that the State must pay.<sup>86</sup>

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80. *Id.* ¶ 227.

81. Duque v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, ¶ 230.

82. *Id.* ¶ 231.

83. *Id.* ¶ 199.

84. *Id.* ¶ 203.

85. Duque v. Colombia, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

86. *Id.* ¶ 2, fn. 2.

**October 3, 2016:** The State reported to the Court that Mr. Duque already submitted his request for the survivor's pension.<sup>87</sup> Accordingly, the State waived the two questions relating to the requested interpretation of paragraph 199.<sup>88</sup>

*A. Composition of the Court*<sup>89</sup>

Roberto F. Caldas, President  
Eduardo Ferrer Mac-Gregor Poisot, Vice President  
Manuel E. Ventura Robles, Judge  
Diego García Sayán, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

*B. Merits*

**November 21, 2016:** The Court replies that the Judgment clearly declared that the State must pay the procedural costs that accrue during the compliance monitoring stage of this proceeding.<sup>90</sup>

VI. COMPLIANCE AND FOLLOW-UP

**November 22, 2018:** The Court found that the State complied with its obligation to publish and disseminate the Judgment in two nationally-circulated newspapers and on the Presidential Council for Human Rights' website.<sup>91</sup> Next, the Court found that the State only partially complied with its obligation to provide Mr. Duque with his survivor's pension.<sup>92</sup> Although the State provided the pension within two months of Mr. Duque's request, it failed to pay the late-payment interest that accrued since it first denied Mr. Duque the survivor's pension.<sup>93</sup> The

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87. *Id.* ¶ 4.

88. *Id.*

89. Judge Humberto Antonio Sierra Porto did not participate in this Interpretation of the Judgment as he is a Colombian national. *Id.* fn. 1.

90. *Id.* ¶ 16.

91. *Duque v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Court H.R., "Considering That" ¶¶ 5-6.*

92. *Id.* "Considering That" ¶ 17.

93. *Id.* "Considering That" ¶¶ 9-10.

Court therefore ordered the State to pay the interest to Mr. Duque.<sup>94</sup> Finally, the Court found that the State failed to pay the non-pecuniary damages, costs, and expenses, and also failed to reimburse the Victim's Legal Assistance Fund.<sup>95</sup> Accordingly, the Court ordered the State to make the payments as soon as possible.<sup>96</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations and Costs

[Duque v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. Ser. C No. 310 \(Feb. 26, 2016\).](#)

[Duque v. Colombia, Merits, Reparations, and Costs, Dissenting Vote of Judge Ventura Robles, Inter-Am Ct. H.R. Ser. C No. 310 \(Feb. 26, 2016\).](#)

[Duque v. Colombia, Merits, Reparations, and Costs, Partially Dissenting Vote of Judge Vio Grossi, Inter-Am Ct. H.R. Ser. C No. 310 \(Feb. 26, 2016\).](#)

#### 3. Provisional Measures

[Duque v. Colombia, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(July 2, 2015\).](#)

[Duque v. Colombia, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(Oct. 7, 2016\).](#)

[Duque v. Colombia, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(May 5, 2015\).](#)

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94. *Id.* "Considering That" ¶ 17.

95. *Id.* "Considering That" ¶¶ 20, 25.

96. *Id.*

## 4. Compliance Monitoring

[Duque v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Court H.R. \(Nov. 22, 2018\)](#)

## 5. Review and Interpretation of Judgment

[Duque v. Colombia, Merits, Reparations and Costs, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct. H.R. Ser. C No. 322 \(Nov. 21, 2016\)](#).

*B. Inter-American Commission*

## 1. Petition to the Commission

[None]

## 2. Report on Admissibility

[Duque v. Colombia, Admissibility Report, Report No. 150/11, Inter-Am. Comm'n H.R., Pet. No. 123-05, ¶ # \(Nov. 2, 2011\)](#).

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Duque v. Colombia, Report on Merits, Report No. 5/14, Inter-Am. Comm'n H.R., Case No. 12.841, ¶ <pincite> \(Apr. 2, 2014\)](#).

## 5. Application to the Court

[None]

## VIII. BIBLIOGRAPHY

[None]