

Salvador Chiriboga v. Ecuador

ABSTRACT¹

This case is about the expropriation of a large tract of land by the Municipality of Quito, Ecuador, to build a public park. The case is notable because it is one of the few decided by the court on expropriations, for the discussion about the duty to balance public interests and private rights, and the discussions, in the holding of the majority as well as dissenting and separate opinions, of the way in which compensation should be calculated. The Court eventually found the State in violation of the American Convention and ordered the payment of a large sum. Ecuador complied fully with the judgment.

I. FACTS

A. Chronology of Events

Between December 1974 and September 1977: Mr. Guillermo Salvador Chiriboga and Ms. Maria Guillermo Salvador Chiriboga (“Petitioners”), siblings, inherit lot number N°108 “Batán de Merizalde” from their father, which contains 60 hectares of land.²

May 13, 1991: The Municipal Council of Quito (“Municipality”) decides to expropriate the Petitioners’ property and other surrounding properties to convert them into a public park, which is to be named “Metropolitan.”³ That year, the Petitioners and some of the affected landowners appeal the Municipality’s decision under Article 253 of the Law of “Municipal Regimes” to the Ministry of Interior (“Ministry”).⁴ Article 253 governs expropriation proceedings and mandates that the city inform “interested parties” of expropriation, and allows those parties to file their

1. John Kelly, Author; Emily Williams, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Salvador Chiriboga v. Ecuador, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.054, ¶ 33 (Dec. 12, 2006).

3. Salvador Chiriboga v. Ecuador, Admissibility Report, Report No. 76/03, Inter-Am. Comm’n H.R., Case No. 12.054, ¶ 3 (Oct. 22, 2003).

4. *Id.*; Salvador Chiriboga v. Ecuador, Petition to the Court ¶ 35.

concerns with the Ministry for a ruling.⁵

May 11, 1994: Petitioners file claim N° 1016 for “subjective or full jurisdiction” with the First District Administrative Court (“First District”), appealing the Municipality’s declaration of public utility.⁶ This type of suit is meant to protect “the subjective right of a person who has been allegedly affected by an administrative act” and a decision should be rendered in less than 37 days.⁷ In their complaint, the Petitioners claim the Municipality had improperly expropriated their property because it had listed their father as the owner, had failed to comply with other legal requirements for expropriation, and had failed to inform them of the May 13, 1991, administrative ruling.⁸

September 7, 1994: The Planning and Nomenclature Commission (“Planning Commission”) rejects a plan submitted by the Petitioners to build on three hectares of the Petitioners’ property.⁹

January 12, 1995: Petitioners file claim N° 1498-95 for “subjective or full jurisdiction remedy” with the First District against the Municipality and its Mayor, to void the September 7, 1994, decision of the Planning Commission.¹⁰

February 2, 1996: Petitioners file claim N° 2540-96 with the Second Chamber of the District Trial Court N ° 1 on Administrative Matters (“Second Chamber”) to object to the resolution by the Municipal Prosecutor that sought to “set aside” the Ministry’s failure to respond to the Petitioners’ claim against the expropriation of their property.¹¹

July 16, 1996: The Municipality begins proceedings N° 13000-96-C to expropriate Petitioners’ property in the Ninth Trial Court on Civil Matters in and for the city of Pichincha (“Ninth Court”).¹²

September 24, 1996: The Ninth Court approves the Municipality’s N°

5. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 58.

6. Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 11.

7. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 179, ¶ 82 (May 6, 2008).

8. Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 11.

9. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 36.

10. *Id.*

11. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 6.

12. *Id.* ¶ 4.

13000-96-C claim allowing for the immediate occupation of the Petitioners' land.¹³

June 6, 1997: The Petitioners learn of the court ruling on N° 13000-96-C.¹⁴ Petitioners ask the court to declare the September 24, 1996, ruling of the expropriation action void because the Municipality failed to satisfy all requirements for expropriation mandated under “Article 62 of the Constitution, Article 42 of the Public Procurement Law and its (own) regulations.”¹⁵

July 9, 1997: Petitioners file a constitutional *amparo* claim with the First District to protect their constitutional rights and their rights enshrined in Article 21(Right to Property) of the American Convention.¹⁶ The First District disqualifies itself from hearing the claim.¹⁷

July 10, 1997: The Municipality enters the property, begins construction, and bars the Petitioners from the property.¹⁸ The Municipality continues to assess taxes on the Petitioners' property.¹⁹

September 4, 1997: The Ninth Civil Court rules on claim N° 13000-96-C and finds the Municipality has not met all the requirements for expropriation required under law, voids the previous September 24, 1996 decision authorizing the State to occupy the land, and declares for the Petitioners that the Municipality's expropriation action initiated on July 16, 1996, is inadmissible.²⁰

September 15, 1997: The Petitioners appeal the First District's ruling to disqualify itself to the Supreme Court of Ecuador (“Supreme Court”).²¹ The Supreme Court rules that the lower court cannot disqualify itself from hearing the *amparo* claim.²²

September 16, 1997: The Ministry issues “Ministerial Decision N° 408”

13. *Id.*

14. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 38.

15. *Id.* ¶ 40.

16. *Id.* ¶ 43; Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 15. *Amapro* actions are brought when one wants to remedy an alleged constitutional violation.

17. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 44.

18. *Id.* ¶ 39.

19. Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 13.

20. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 40.

21. *Id.* ¶ 44.

22. *Id.*

to annul the prior decision that declared the property public utility.²³

September 18, 1997: Ministry issues Ministerial Decision N° 417, which voids Ministerial Decision N° 408.²⁴

September 23, 1997: The Municipality appeals the September 4, 1997 decision on N° 13000-96-C; however, that same day, the judge rules the appeal is inadmissible.²⁵

October 2, 1997: The First District, on rehearing of the *amparo* claim sent down by the Supreme Court on September 15, 1997, rejects the appeal, finding that the expropriation process carried out by the Municipality was legal.²⁶

December 17, 1997: Petitioners file claim N° 4431 for “subjective or full jurisdiction” with the Second Chamber to declare Ministerial Decision N° 417 illegitimate.²⁷

February 2, 1998: The Petitioners appeal the October 2, 1997, ruling of the First District to the Supreme Court regarding their *amparo* claim.²⁸ The Supreme Court rejects the appeal and holds the Municipality had acted within its powers and complied with the requirements for expropriation.²⁹

February 17, 1998: The Ninth Circuit judge who presided over the expropriation hearing on N° 13000-96-C recuses himself and sends the record to the First District, but the case is never addressed.³⁰

June 3, 1998: Petitioners present a petition to the Inter-American Commission on Human Rights (“the Commission”).³¹

February 13, 2001: The Supreme Court declines to hear Petitioners’ N° 2540-96 claim initiated on February 2, 1996.³²

23. *Id.* ¶ 41.

24. *Id.*

25. *Id.* ¶ 42.

26. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 44

27. *Id.* ¶ 45.

28. *Id.* ¶ 46.

29. *Id.*

30. *Id.* ¶ 42.

31. Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 1.

32. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶

B. Other Relevant Facts

In 1994, the public park officially opens.³³ The Parque Metropolitano Ganguiltagua is considered “one of Quito’s main lungs.”³⁴ The Mayor of the Municipality at the time is Dr. Jorge Jamil Mahuad Witt (“Dr. Jamil Mahuad.”)³⁵ In 1998, Dr. Jamil Mahuad is elected President of Ecuador but is forced to resign in 2000 because of protests.³⁶ On May 30, 2014, Ecuador’s National Court of Justice sentences Dr. Jamil Mahuad to twelve years in jail for embezzlement.³⁷

II. PROCEDURAL HISTORY

A. Before the Commission

June 3, 1998: Petitioners present a petition to the Commission.³⁸

October 22, 2003: The Commission issues the Report on Admissibility.³⁹ The State claims the petition is not admissible because the Petitioners have not exhausted all domestic remedies.⁴⁰ The Commission finds that Petitioners do not have to exhaust domestic remedies because there has been “unwarranted delay” in reaching a final judgment in the remedies the Petitioners have been pursuing.⁴¹ The State claims that the Petitioners have not stated facts to show a violation of the American Convention.⁴² The Commission finds there are sufficient facts to show possible violations of Articles 8 (Right to a Fair Trial), 21 (Right to Property), and 25 (Right to Judicial Protection) of the American Convention in connection with Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights).⁴³

6.

33. *Id.* ¶ 72.

34. Get Quito.Com, *Quito Metropolitan Park*, (January 10, 2006), http://www.getquitoecuador.com/quito-cultural-attractions/quito_metropolitan_park.html.

35. Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 14.

36. Biharprabha.Com, *Ex-Ecuadorian president Jamil Mahuad jailed for 12 years*, (May 30, 2014), <http://news.biharprabha.com/2014/05/ex-ecuadorian-president-jamil-mahuad-jailed-for-12-years/>.

37. *Id.*

38. Salvador Chiriboga v. Ecuador, Admissibility Report, ¶ 1.

39. *Id.*

40. *Id.* ¶ 4.

41. *Id.* ¶ 25.

42. *Id.* ¶ 4.

43. *Id.* ¶ 28.

October 15, 2005: The Commission issues Report on the Merits No 78/05.⁴⁴ It concludes that the State is responsible for violating Articles 8 (Right to a Fair Trial), 21 (Right to Property), and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.⁴⁵ The Commission recommends that the State: (1) fully compensate the victims for the property value and the time related to lost use of enjoyment; (2) take steps to practically enforce expropriation legislation; and (3) take steps to prevent this injury in the future.⁴⁶

B. Before the Court

December 8, 2006: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁷

1. Violations Alleged by Commission⁴⁸

Article 8 (Right to a Fair Trial)

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴⁹

Same Violations Alleged by Commission, plus:

Article 24 (Right to Equal Protection)

Article 29 (Interpretation of the Convention)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

44. Salvador Chiriboga v. Ecuador, Petition to the Court, ¶ 10.

45. *Id.*

46. *Id.* ¶ 21.

47. *Id.* ¶ 4.

48. *Id.* ¶ 131.

49. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 9. Mr. Alejandro Ponce Martinez and Mr. Alejandro Ponce Villacís served as representatives of the victims. *Id.*

February 13, 2007: The State appoints Diego Rodríguez Pinzón as judge *ad hoc*.⁵⁰

May 17, 2007: The State submits a preliminary objection that the Petitioners failed to exhaust domestic remedies.⁵¹

III. MERITS

A. Composition of the Court

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice President
Sergio García Ramírez, Judge
Manuel E. Ventrúa Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Diego Rodríguez Pinzón, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

May 6, 2008: The Court issues its Judgment on Preliminary Objections and Merits.⁵²

The Court found unanimously to:

Dismiss the State's "preliminary objection of non-exhaustion of domestic remedies,"⁵³ because:

When examining non-exhaustion of remedies, the Court asserts that the State must: (1) indicate still-available remedies, and (2) plead the objection in a timely fashion, or their right to object will be considered

50. *Id.* ¶ 8, n 15.

51. *Id.* ¶¶ 10, 33.

52. *See generally* Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs.

53. *Id.* "Decides" ¶ 1.

waived.⁵⁴ Based on the evidence provided by the State, the Court determined there were no grounds to review the objection's admissibility.⁵⁵ Further, the Court held that the argument about the unwarranted delay by some of the lower courts would be heard when it examines the alleged violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court).⁵⁶

The Court found by six votes to two that the State had violated:

Article 21(2) (Right to Compensation in Case of Expropriation), in relation to Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), all in relation to Article 1(1), to the detriment of Ms. Salvador Chiriboga,⁵⁷ because:

The State arbitrarily deprived Ms. Salvador Chiriboga of her property for an undetermined period without due compensation.⁵⁸ While the right to property enshrined in Article 21 is not an unlimited right, a State's restrictions on that right "must be proportionate to the legitimate interest that justifies it and must be limited to what is strictly necessary to achieve that objective."⁵⁹ As such, the Court analyzed the State's limitation on Ms. Salvador Chiriboga's right to property through the following factors: (a) social interest or public utility; and (b) due compensation.⁶⁰

Regarding the first factor, the Court determined that the State's purpose behind the expropriation served a legitimate public function: environmental protection.⁶¹ However, the Court noted that the two remedies Ms. Salvador Chiriboga sought to challenge the legality of the expropriation have been pending for eleven and fourteen years; this constitutes an unreasonable length of time since these remedies are supposed to be processed in less than forty days.⁶² This delay denied Ms. Salvador Chiriboga access to justice and limited the effectiveness of her

54. *Id.* ¶ 40.

55. *Id.* ¶ 44.

56. *Id.* ¶ 45.

57. *Id.* "Declares" ¶ 2.

58. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 117.

59. *Id.* ¶¶ 61, 62.

60. *Id.* ¶ 66.

61. *Id.* ¶ 76.

62. *Id.* ¶¶ 77, 82, 84.

remedies, which the Court determined placed uncertainty on the State's legitimate justification for the expropriation.⁶³

For the second factor, the Court found that the State had expropriated the property in a manner that was illegal and arbitrary.⁶⁴ For expropriation to be legal, Article 21(2) requires just compensation to be provided before the State takes control of the property.⁶⁵ Just compensation means that the public and individual interests are balanced, and the value of the property is established.⁶⁶ Here, the State had not paid appropriate compensation and the proceedings to determine appropriate compensation had not resulted in a final judgment after fifteen years, even though the State had taken control of the property.⁶⁷ Further, the failure of the expropriation proceeding to result in a final judgment made the proceedings an ineffective remedy.⁶⁸ Thus, while the expropriation's purpose was legitimate, the State violated Article 21(2) (Right to Compensation in Case of Expropriation) when it failed to compensate Ms. Salvador Chiriboga for the deprivation of her right to property.⁶⁹

The Court found unanimously that the State had not violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights)⁷⁰ because:

*The Court found there was nothing about the domestic legislation of the State that did not comply with the Convention.*⁷¹ While there were serious delays and the remedies were ineffective, the Court determined that these issues were not a result of any State legislation or procedural rule.⁷² Thus, the State did not violate Article 2 (Obligation to Give Domestic Effect to Rights) of the Convention.⁷³

63. *Id.* ¶¶ 87-89.

64. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 113.

65. *Id.* ¶ 95.

66. *Id.* ¶ 98.

67. *Id.* ¶ 110.

68. *Id.* ¶ 112.

69. *Id.* ¶¶ 113-14, 117-18.

70. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, "Declares" ¶ 3.

71. *Id.* ¶¶ 123-24.

72. *Id.* ¶ 123.

73. *Id.* ¶ 124.

Articles 24 (Right to Equal Protection)⁷⁴ and 29 (Interpretation of the Convention),⁷⁵ because:

*The Court found there was not enough evidence to establish whether the State had violated these provisions.*⁷⁶

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Manuel E. Ventura Robles

In a separate opinion, Judge Manuel E. Ventura Robles concurred with the Court's opinion, but issued his opinion to develop the concept of the "fair balance between a general interest and interest of the individual."⁷⁷ Judge Ventura Robles argued that the deprivation of property was disproportionate to the purpose the State was trying to accomplish through the land's use.⁷⁸ Specifically, Judge Ventura Robles looks to social interest, untimeliness, Ms. Salvador Chiriboga's erroneous taxes and penalties, and limitations to her rights.⁷⁹ Thus, the State did not fairly balance the interests in this case.⁸⁰

2. Partial Dissenting Opinion of Judge *Ad Hoc* Diego Rodríguez Pinzon

In a separate opinion, Judge *Ad Hoc* Diego Rodríguez Pinzon partially dissented with the Court's finding of a violation of Article 25 (Right to Judicial Protection).⁸¹ The Judge believed that it is important to distinguish the difference between violations of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection).⁸² He held that the drafters of the Convention meant Article 25 (Right to Judicial Protection) to concern whether a party had access to judicial remedies and whether those remedies provided effective relief, whereas Article 8(1) (Right to a

74. *Id.* "Declares" ¶ 3.

75. *Id.*

76. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs. ¶¶ 129, 133.

77. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion by Judge Ventura Robles, ¶¶ 1-2.

78. *Id.* ¶ 4.

79. *Id.* ¶¶ 8, 12-14.

80. *Id.* ¶ 15.

81. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissent by Judge *ad hoc* Rodríguez Pinzón, ¶ 1.

82. *Id.* ¶ 9.

Hearing Within Reasonable Time by a Competent and Independent Tribunal) was meant to concern whether there are adequate due process protections encompassed in those remedies.⁸³ In the instant case, he found that that Ecuadorian law has established judicial protections, and when those cases reach judgment they provide effective remedies; therefore, the State had not violated Article 25 (Right to Judicial Protection).⁸⁴

3. Partial Dissenting Opinion of Judge Cecilia Medina Quiroga

In a separate opinion, Judge Cecilia Medina Quiroga partially dissented with the Court's finding of a violation of Article 25 (Right to Judicial Protection).⁸⁵ Judge Cecilia Medina Quiroga acknowledged that there can be two interpretations of what constitutes a violation of Article 25 (Right to Judicial Protection), but that both interpretations focus on whether a remedy is effective.⁸⁶ In this case, Judge Cecilia Medina Quiroga believed that the remedies were effective and therefore did not constitute a violation of Article 25 (Right to Judicial Protection).⁸⁷

IV. REPARATIONS

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

The Court ruled unanimously that the State had the following obligations:

1. Judgment as a Form of Reparation

The Court explained that the judgment itself was “*per se* a form of reparation.”⁸⁸

2. Pay Restitution for Amounts Wrongfully Collected

The Court ordered the State to refund \$32,799.04 for taxes and fines wrongfully collected on the property.⁸⁹ The Court also ordered the State

83. *Id.* ¶ 11.

84. *Id.* ¶¶ 7-8.

85. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissent by Judge Medina Quiroga, ¶ 1.

86. *Id.* ¶ 4.

87. *Id.* ¶ 6.

88. *Id.* “Orders” ¶ 1.

89. *Id.* ¶¶ 124-25.

to pay interest totaling \$10,300.06.⁹⁰ Finally, the Court ordered the amount to be paid in cash since that is how the taxes and fines had been paid.⁹¹

3. Publish Judgement

The Court ordered the State to publish relevant portions of the Court's judgment.⁹² The State was to publish the judgment once in the Official Registry and once in a widely-circulated newspaper.⁹³

The Court ruled by five votes to three that the State had the following obligations:

4. Pay the Petitioners Just Compensation

The Court determined that petitioners were owed \$18,705,000 for just compensation.⁹⁴ The Court reached the amount after a determination that the nature of the property was rural and the property was burdened by the environmental protections enacted by the State.⁹⁵ The State was ordered to pay just compensation in cash and according to the payment plan laid out by the Court.⁹⁶ If payment was not made on time, the State was ordered to pay interest on the amount owed until payment was made.⁹⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded interest on the just compensation owed from July 1997 to February 2011 in the amount of \$9,435,757.80.⁹⁸ The State

90. *Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 124.

91. *Id.* ¶¶ 123-24.

92. *Id.* "Orders" ¶¶ 8, 127.

93. *Id.* ¶ 127.

94. *Id.* ¶ 84.

95. *Id.* ¶ 82.

96. *Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*, ¶ 102.

97. *Id.* ¶ 103.

98. *Id.* ¶ 101.

was ordered to pay the interest owed in cash and according to the payment plan laid out by the Court.⁹⁹ If payment was not made on time, the State was ordered to pay interest on the amount owed till payment was made.¹⁰⁰

2. Non-Pecuniary Damages

The Court awarded non-pecuniary damages of \$10,000 to the Petitioners.¹⁰¹

3. Costs and Expenses

The Court awarded \$50,000 to Petitioners for the costs and expenses they incurred presenting their case to the Commission.¹⁰²

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

\$28,243,856.90

C. Deadlines

The Court ordered the State to pay, in “five equal installments” over five years, the just compensation and interest owed, with the first payment being due March 30, 2012.¹⁰³

The Court ordered the State to pay back the pecuniary damages owed by the time the first payment for just compensation is due.¹⁰⁴

The Court ordered the State to pay the nonpecuniary damages within one year.¹⁰⁵

The Court ordered the State to pay back the taxes and fines owed within six months.¹⁰⁶

The Court ordered the State to comply with judgment publication orders within six months.¹⁰⁷

The Court ordered the State to submit a report on its compliance

99. *Id.* ¶ 102.

100. *Id.* ¶ 103.

101. *Id.* ¶ 112.

102. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, ¶ 141.

103. *Id.* ¶ 102.

104. *Id.* ¶ 104.

105. *Id.* ¶ 113.

106. *Id.* ¶ 124.

107. *Id.* ¶ 127.

with the judgment within one year.¹⁰⁸

D. Dissenting and Concurring Opinions

1. Partial Dissenting Opinion of Judge Diego García-Sayán

In a separate opinion, Judge Diego García-Sayán partially dissented with the method the Court used to reach a final number figure.¹⁰⁹ The Judge advocated for an approach that would give more value to a balancing of the property value and the public interest as opposed to a straight market approach.¹¹⁰

2. Partial Dissenting Opinion of Judge *Ad Hoc* Diego Rodríguez Pinzon and Judge Cecilia Medina Quiroga

In a separate opinion, Judge *Ad Hoc* Diego Rodríguez Pinzon and Judge Cecilia Medina Quiroga partially dissented with the Court's failure to allow the Petitioners to collect interest on the outstanding amounts of just compensation that will be paid over the five-year time frame mandated by the court.¹¹¹

3. Partial Dissenting Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge Sergio García Ramírez partially dissented because he believed it was "necessary to find. . . a number that is reasonable for the scope of the objective sought by the Court at this time."¹¹² Judge Sergio García Ramírez argued that the "award could have been more reasonable" and better reflected an equitable solution that reconciled the petitioner's right to property and the rights of the community.¹¹³ He refused to state what the number of damages should be.¹¹⁴

108. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs "Decides" ¶ 9.

109. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissent by Judge García-Sayán, Inter-Am. Ct. H.R. (ser. C) No. 222, ¶ 30 (March 3, 2011).

110. *Id.* ¶ 29.

111. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissent by Judge Meida Quiroga and Judge *ad hoc* Rodríguez Pinzón, Inter-Am. Ct. H.R. (ser. C) No. 222, ¶¶ 1-2 (March 3, 2011).

112. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissent by Judge García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 222, ¶ 14 (March 3, 2011).

113. *Id.* ¶ 16.

114. *Id.*

4. Partial Dissenting Opinion of Judge Leonardo A. Franco

In a separate opinion, Judge Leonardo A. Franco partially dissented with the size of the Court's damage award.¹¹⁵ He argued that just compensation should not simply be an average of the different damage awards sought.¹¹⁶ Rather, he believed the Court should have given more weight to the public interest concerns, particularly the impact that such a large award will have on the budget of the community.¹¹⁷ Judge Franco believed that a proper consideration of those concerns may result in an award that is smaller than the market value of the property.¹¹⁸

5. Dissenting Opinion of Judge Margarete May Macaulay

In a separate opinion, Judge Margarete May Macaulay partially dissented with the Court's method of payment it laid out.¹¹⁹ Specifically, Judge Macaulay felt that payment over five years and without the addition of interest on the amount still owed would result in the State being "granted an unfair advantage over the Payee."¹²⁰

V. INTERPRETATION AND REVISION OF JUDGMENT

June 2, 2011: The State requested an interpretation by the Court on how the domestic proceedings concerning the expropriation should proceed after the rulings by the Court, and the "substantiation of the amount of the compensation established by the Court."¹²¹

A. Merits

The Court found unanimously that:

The request for interpretation of the reparations and costs was admissible¹²² because the State had met the procedural requirements and

115. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissent by Judge Franco, Inter-Am. Ct. H.R. (ser. C) No. 222, ¶ 5 (March 3, 2011).

116. *Id.* ¶ 6.

117. *Id.* ¶ 9.

118. *Id.* ¶ 7.

119. Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion by Judge Margarete Macaulay, Inter-Am. Ct. H.R. (ser. C) No. 222, ¶ 3 (March 3, 2011).

120. *Id.* ¶¶ 3-5.

121. Salvador Chiriboga v. Ecuador, Application for Judicial Review of the Judgment of Reparations and Costs, Order of the Court, Inter-Am. Ct. H.R. (ser. C) No. 230, ¶ 2 (August 29, 2011).

122. *Id.* "Decides" ¶ 1.

had an appropriate reason for requesting the interpretation of the judgment.¹²³

Although the request for interpretation of the reparations and costs was admissible for analysis, the request for an interpretation regarding domestic proceedings was inadmissible¹²⁴ because the State and the Petitioners both agreed that the Court's prior judgments were final and therefore all other domestic proceedings should be closed in respect to the Court's judgment.¹²⁵

Although the request for interpretation was admissible for analysis, the request for an interpretation on the issue of substantiation was rejected¹²⁶ because the Court has already established the link between its logic and its decision, and the State is seeking an improper reassessment of the case.¹²⁷

VI. COMPLIANCE AND FOLLOW-UP

March 27, 2011: Attorneys for the Petitioners requested that the Court adopt provisional measures to prevent Ecuador from harassing them.¹²⁸ The request arose out of an alleged incident on March 26, 2011, where the attorneys were stopped and questioned by multiple groups of officers in a harassing manner, although no ticket was issued.¹²⁹

April 5, 2011: The attorneys reported another incident where a police officer from the prior incident drove by the window of a restaurant multiple times where one of the attorneys was eating.¹³⁰

May 15, 2011: The Court denied the request for provisional measures.¹³¹ Specifically, the Court found that the actions alleged did not meet the "extreme gravity" required for a request of provisional measures. Further, they had not shown evidence they had reported these incidents to the proper authorities.¹³²

123. *Id.* ¶ 10, 12.

124. *Id.* "Decides" ¶ 2.

125. *Id.* ¶ 20.

126. *Id.* "Decides" ¶ 3.

127. *Salvador Chiriboga v. Ecuador, Application for Judicial Review of the Judgment of Reparations and Costs, Order of the Court, ¶ 31.*

128. *Salvador Chiriboga v. Ecuador, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) ¶ 2 (May 15, 2011).*

129. *Id.* ¶ 3.

130. *Id.* ¶ 5.

131. *Id.* ¶ 11.

132. *Id.* ¶ 9-10.

October 24, 2012: The Court found that the State had met its obligations to pay the first installment of the amounts owed for just compensation and interests owed on the just compensation, pay back the amounts that were unduly collected on the property, and pay the amounts owed for non-pecuniary damages and costs and expenses.¹³³ The Court found the State had complied with its obligation to publish the judgments in a national newspaper, but not the Official Gazette.¹³⁴

August 22, 2013: The Court found that the State had met its obligations to pay the second installment of the amounts owed for just compensation and interests owed on the just compensation.¹³⁵ Also, the Court found the State had complied with its obligation to publish the judgments in the Official Gazette.¹³⁶

November 20, 2014: The Court found that the State had met its obligations to pay the third installment of the amounts owed for just compensation and interests owed on the just compensation.¹³⁷

June 23, 2015: The Court found that the State had met its obligations to pay the fourth installment of the amounts owed for just compensation and interests owed on the just compensation.¹³⁸

May 3, 2016: The Court found that the State had met its obligations to pay the fifth installment of the amounts owed for just compensation and interests owed on the just compensation.¹³⁹ The Court closed the proceeding.¹⁴⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

133. Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Declares” ¶ 1(a)-(c) (October 24, 2012).

134. *Id.* “Declares” ¶ 2(c).

135. Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Declares” ¶ 1(a) (August 22, 2013).

136. *Id.* “Declares” ¶ 1(b).

137. Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Declares” ¶ 1 (November 20, 2014) (Available only in Spanish).

138. Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Declares” ¶ 1 (June 23, 2015) (Available only in Spanish).

139. Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Declares” ¶ 1 (May 3, 2016) (Available only in Spanish).

140. *Id.* “Resolved” ¶ 2.

1. Preliminary Objections

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 179 \(May 6, 2008\).](#)

2. Decisions on Merits, Reparations and Costs

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 179 \(May 6, 2008\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissenting by Judge Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 179 \(May 6, 2008\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion by Judge Ventura Robles, Inter-Am. Ct. H.R. \(ser. C\) No. 179 \(May 6, 2008\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissenting by Judge *ad-hoc* Rodríguez Pinzón, Inter-Am. Ct. H.R. \(ser. C\) No. 179 \(May 6, 2008\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 222 \(March 3, 2011\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissenting by Judge García-Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 222 \(March 3, 2011\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissenting by Judge Meida Quiroga and Judge *ad-hoc* Rodríguez Pinzón, Inter-Am. Ct. H.R. \(ser. C\) No. 222 \(March 3, 2011\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissenting by Judge García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 222 \(March 3, 2011\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Partial Dissenting by Judge Franco, Inter-Am. Ct. H.R. \(ser. C\) No. 222 \(March 3, 2011\).](#)

[Salvador Chiriboga v. Ecuador, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion by Judge Margarette Macaulay, Inter-Am. Ct. H.R. \(ser. C\) No. 222 \(March 3, 2011\).](#)

3. Provisional Measures

[Salvador Chiriboga v. Ecuador, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(August 6, 2009\).](#)

[Salvador Chiriboga v. Ecuador, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 15, 2011\).](#)

4. Compliance Monitoring

[Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(October 24, 2012\).](#)

[Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(August 22, 2013\).](#)

[Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(November 20, 2014\) \(Available only in Spanish\).](#)

[Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 23, 2015\) \(Available only in Spanish\).](#)

[Salvador Chiriboga v. Ecuador, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 3, 2016\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[Salvador Chiriboga v. Ecuador, Application for Judicial Review of the Judgment of Reparations and Costs, Order of the Court, Inter-Am. Ct. H.R. \(ser. C\) No. 230 \(August 29, 2011\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Salvador Chiriboga v. Ecuador, Petition No. 12.054, Inter-Am. Comm'n H.R., \(December 12, 2006\) \(Available only in Spanish\).](#)

2. Report on Admissibility

[Salvador Chiriboga v. Ecuador, Admissibility Report, Report No. 76/03, Inter-Am. Comm'n H.R., Case No. 12.054, \(Oct. 22, 2003\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Salvador Chiriboga v. Ecuador, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.054, \(December 12, 2006\).](#)

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