

# Escué Zapata v. Colombia

## ABSTRACT<sup>1</sup>

*In this case, Colombian Military Forces murdered Germán Escué Zapata, a leader in the indigenous Paez or Nasa community in 1988. Interestingly, the State acknowledged international responsibility for violating Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights. In the Court's decision, it discussed whether violations of Article 1(1) (Obligation to Respect Rights) may be invoked separately from violations of other Articles of the Convention, and found that killing a community leader is not, per se, a violation of Article 23 (Right to Participate in Government).*

## I. FACTS

Beginning in 1947, violence involving State armed forces, private militias, narco-traffickers and various leftist insurgent groups is widespread in Colombia.<sup>2</sup> Violent conflict often takes place in rural areas where illegal crops (mostly coca leaves) are grown,<sup>3</sup> which profoundly affects local indigenous populations.<sup>4</sup> Attacks displace indigenous communities and undermine their culture and social integrity.<sup>5</sup> Indigenous people who declare neutrality in the conflict are often victims of violent reprisals.<sup>6</sup>

Within this context, indigenous groups in Colombia struggle for communal control over their ancestral lands.<sup>7</sup> For many indigenous

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1. Jenna Eyrich, Author; Elise Cossart-Daly, Grace Kim, and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Third Report on the Human Rights Situation in Colombia*. Inter-Am. Comm'n H.R., Report No. OAE/Ser.L/V/II.102, doc. 9 rev. ch. I, ¶¶ 26-51 (Feb. 26, 1999) [hereinafter *Third Report*].

3. *Id.* ch. X, ¶ 53.

4. *Id.* ¶ 36.

5. *Id.* ¶ 37.

6. *Id.*

7. *Second Report on the Situation of Human Rights in Colombia*. Inter-Am. Comm'n H.R., Report No. OEA/Ser.L/V/II.84, doc. 39 rev. ch. XI, section E (Oct. 14, 1993)

groups, communal land ownership is central to their political, social, and cultural survival.<sup>8</sup> Indigenous communities' efforts to reclaim their ancestral territories often breed land disputes with guerilla groups who oppose indigenous autonomy because they believe it will undermine class solidarity, seasonal farm workers' associations, private landowners, and paramilitary groups employed by landowners.<sup>9</sup> As a result, paramilitary groups frequently assassinate indigenous leaders in order to appropriate indigenous lands.<sup>10</sup> Between 1974 and 1999, more than 500 indigenous political leaders are killed in Colombia for political reasons.<sup>11</sup>

#### A. Chronology of Events

**Before February 1, 1988:** Germán Escué Zapata is a farmer and Council member for the Paez or Nasa indigenous community of Jambaló in the district of Cauca, Colombia.<sup>12</sup> Mr. Escué Zapata has a life companion, Bertha Escué Coicue, and a young daughter, Myriam Zapata Escué.<sup>13</sup>

As a Council Governor, Mr. Escué Zapata advocates for the protection of Paez communal lands.<sup>14</sup>

**February 1, 1988:** An indigenous informant seeks out a unit of the National Army of Colombia that is camping in Loma Redonda near Resguardo de Jambaló in the district of Cauca.<sup>15</sup> The informant tells the unit's leader, Sergeant Roberto Camacho Riaño, that Mr. Escué Zapata has firearms in his home.<sup>16</sup> Sergeant Camacho Riaño is also a member of the Pelotón de Contraguerrilla, a counterinsurgency commanded by Lieutenant Jorge Alberto Navarro Devia.<sup>17</sup> Sergeant Camacho Riaño tells Sergeant Ospina Martinez that Lieutenant Navarro Devia has issued an order to capture Mr. Escué Zapata.<sup>18</sup>

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8. *Id.*

9. *Id.*

10. *Third Report*, ¶ 38.

11. *Id.* ¶ 36.

12. *Escué Zapata v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 165 ¶¶ 3, 43 (July 4, 2007).

13. *Escué Zapata v. Colombia*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.171, ¶ 42 (May 16, 2006).

14. *Escué Zapata v. Colombia*, Merits, Reparations and Costs, ¶¶ 3, 23(c), 59.

15. *Id.* ¶ 34.

16. *Id.*

17. *Id.*

18. *Id.* ¶ 35.

That evening, Colombian military officials knock down the door to Mr. Escué Zapata's home and enter.<sup>19</sup> They accuse him of being a *guerrillero* and urge him to confess that he possesses firearms.<sup>20</sup> They beat and bind him while his mother, Mrs. Etelvina Zapata Escué, watches from behind the kitchen door.<sup>21</sup> She recognizes the offenders as Army personnel from two nearby encampments.<sup>22</sup> Mrs. Zapata Escué remains hidden as her other sons flee from the house.<sup>23</sup>

The men take Mr. Escué Zapata, bound, barefoot and shirtless, from the house and into the mountains.<sup>24</sup> Mr. Escué Zapata is told to run, but he remains still for fear of being executed.<sup>25</sup> Sergeant Camacho Riaño hits Mr. Escué Zapata in the stomach with the butt of his gun, and Mr. Escué Zapata doubles over in pain.<sup>26</sup> Mr. Escué Zapata begs for his life.<sup>27</sup> Sergeant Camacho Riaño shoots Mr. Escué Zapata several times.<sup>28</sup>

About thirty minutes after the men leave her house, Mrs. Zapata Escué leaves her hiding spot and seeks the aid of relatives living nearby.<sup>29</sup> There, she hears gunshots.<sup>30</sup> She immediately follows the sound and finds her son's body, his face destroyed, his body beaten and broken.<sup>31</sup>

Following the incident, Court Thirty-Four in Military Criminal Proceedings commences a preliminary investigation into the death of Mr. Escué Zapata.<sup>32</sup> The investigation produces no results.<sup>33</sup>

**June 1998:** Court Thirty-Four, a Military Criminal Court, refers the case to the Municipal Court of Jambaló, a civilian criminal justice court in Cauca.<sup>34</sup> None of the prosecutors assigned to the Cauca branch of the Attorney General's Office, however, take steps to forward the

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19. Escué Zapata v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.171, ¶ 43 (May 16, 2006).

20. Escué Zapata v. Colombia, Merits, Reparations and Costs, ¶ 69.

21. Escué Zapata v. Colombia, Petition to the Court, ¶ 43.

22. *Id.*

23. *Id.* ¶ 44.

24. Escué Zapata v. Colombia, Merits, Reparations and Costs, ¶ 37.

25. *Id.* ¶ 69.

26. *Id.* ¶ 38.

27. *Id.*

28. *Id.*

29. Escué Zapata v. Colombia, Petition to the Court, ¶ 45.

30. *Id.*

31. *Id.*

32. *Id.* ¶ 46.

33. *Id.*

34. *Id.* ¶ 47.

investigation of Mr. Escué Zapata's death.<sup>35</sup>

**Late 2002:** Mr. Escué Zapata's case is referred to the Human Rights and International Humanitarian Law Unit of the Attorney General's Office.<sup>36</sup> Information that the State provides to the Commission indicates that the criminal record is lost, but that the State takes measures to reconstruct the record.<sup>37</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**February 26, 1988:** Mrs. Etelvina Zapata Escué presents a petition on behalf of her son, Mr. Escué Zapata, to the Inter-American Commission on Human Rights ("Commission").<sup>38</sup>

**1989-2001:** The Commission periodically asks the State to provide updates on investigations into the events surrounding Mr. Escué Zapata's death.<sup>39</sup> The State submits a series of inconclusive investigation reports to the Commission.<sup>40</sup>

**July 6, 2001:** The Commission offers to assist the parties in reaching a friendly settlement agreement.<sup>41</sup> The State initially refrains from entering into an agreement on the grounds that domestic judicial proceedings were still pending and, therefore, it had not been established that State agents were responsible for the death of Mr. Escué Zapata.<sup>42</sup>

**August 30, 2002:** The State changes its position and expresses its

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35. *Id.* ¶ 48.

36. *Id.* ¶ 49.

37. *Id.*

38. *Id.* ¶ 10.

39. *Id.* ¶¶ 11-12.

40. *Id.*

41. *Id.* ¶ 13.

42. *Id.*

intention to reach an agreement with Mrs. Zapata Escué.<sup>43</sup> The Commission forwards the communication from the State to the José Alvear Restrepo Lawyers Collective, which agrees to represent Mrs. Zapata Escué.<sup>44</sup>

**October 17, 2002:** The Commission holds a hearing, during which Mrs. Zapata Escué recounts her son's capture and killing.<sup>45</sup> The State refutes the credibility of Mrs. Zapata Escué's testimony, arguing that it is not possible to contest the facts if there are no firm conclusions reached by the competent domestic judicial authorities.<sup>46</sup> Nevertheless, the State admits partial responsibility for the lack of results in its investigation and asks the Commission to mediate a settlement.<sup>47</sup>

**August 2003:** After failing to receive a formal proposal for a friendly settlement agreement from the State, the victim's representatives alert the Commission of the need to terminate the process of finding an amicable solution.<sup>48</sup>

**October 24, 2005:** The Commission adopts Report on Admissibility and Merits No. 96/05.<sup>49</sup> The Commission finds that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), all in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights.<sup>50</sup> The Commission recommends that the State effectively investigate the detention, torture, and execution of Mr. Escué Zapata in order to prosecute and punish those responsible.<sup>51</sup> The Commission also recommends that the State honor the memory of the victim, and compensate the family of the victim for harm suffered.<sup>52</sup> Finally, the Court urges the State to take necessary steps to ensure that similar events do not happen again.<sup>53</sup>

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43. *Id.*

44. *Id.*

45. *Id.* ¶¶ 14, 30.

46. *Id.* ¶ 31.

47. *Id.* ¶ 14.

48. *Id.* ¶ 15.

49. *Id.* ¶ 17.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

*B. Before the Court*

**May 16, 2006:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>54</sup>

1. Violations Alleged by Commission<sup>55</sup>

To the detriment of Mr. Escué Zapata:

Article 4 (Right to Life)  
 Article 5 (Right to Humane Treatment)  
 Article 7 (Right to Personal Liberty)  
 Article 8 (Right to a Fair Trial)  
 Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Escué Zapata's next of kin:<sup>56</sup>

Article 5 (Right to Humane Treatment)  
 Article 8 (Right to a Fair Trial)  
 Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims<sup>57</sup>

Same violations alleged by Commission, plus:

To the detriment of Mr. Escué Zapata:

54. *Id.* ¶ 27.

55. *Escué Zapata v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 165, ¶ 4 (July 4, 2007).*

56. The next of kin of Mr. Escué Zapata include: Etelvina Zapata Escué (mother), Mario Pasú (father), Bertha Escué Coicue (companion), Myriam Zapata Escué (daughter), Ayéandar Escué Zapata (brother), Omar Zapata (brother), Francya Doli Escué Zapata (sister), Albeiro Escué Zapata (brother), Aldemar Escué Zapata (brother), and Jonson Escué Zapata (brother). *Id.* ¶ 156.

57. *Id.* ¶ 5. José Alvear Restrepo Lawyers' Collective Association represented Mr. Escué Zapata and his next of kin.

Article 23 (Right to Participate in Government)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Escué Zapata and his next of kin:

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity)

*in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of the Paez or Nasa Community:

Article 21 (Right to Property)

Article 23 (Right to Participate in Government)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

**January 29-30, 2007:** The State acknowledges international responsibility for the violation of Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) all in relation to Article 1(1) to the detriment of Mr. Escué Zapata, and Articles 5 (Right to Humane Treatment), 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), in relation to Article 1(1) to the detriment of Mr. Escué Zapata's next of kin.<sup>58</sup> However, the State does not agree that Mr. Escué Zapata held the position of *Cabildo* Governor at the time of his death, and therefore does not acknowledge responsibility for violating Articles 11 (Right to Privacy), 21 (Right to Property), and 23 (Right to Participate in Government).<sup>59</sup>

### III. MERITS

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58. *Id.* ¶ 11.

59. *Id.*

*A. Composition of the Court*

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

Pablo Saavedra-Alessandri, Secretary  
Emilia Segares-Rodríguez, Deputy Secretary

*B. Decision on the Merits*

**July 4, 2007:** The Court issues its Judgment on the Merits, Reparations and Costs.<sup>60</sup>

The Court found unanimously that Colombia had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata,<sup>61</sup> because:

*Members of the National Army of Colombia arbitrarily killed Mr. Escué Zapata.<sup>62</sup> Under Article 4 (Right to Life) states must adopt measures not merely to prevent, prosecute and punish the deprivation of life, but also to prevent State security forces from arbitrarily depriving individuals of their lives.<sup>63</sup>*

*The Court pointed out that Article 4 is the essential corollary for realizing all the other rights embodied in the Convention.<sup>64</sup> The duty to guarantee the right to life implies both a positive and a negative duty –*

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60. Escué Zapata v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 165, ¶¶ 3, 43 (July 4, 2007).

61. *Id.* ¶ 41.

62. *Id.* ¶ 34.

63. *Id.* ¶ 40.

64. *Id.*



*the duty to adopt measures to protect and preserve life (positive duty), and the presupposition that no person may be arbitrarily deprived of life (negative duty).*<sup>65</sup>

*The Court acknowledged that the State took the initiative to investigate the death of Mr. Escué Zapata.*<sup>66</sup> *However, the right enshrined in Article 4 demands a complete and effective investigation, which was absent from this case.*<sup>67</sup>

*Lastly, the Court discussed whether Mr. Escué Zapata had been executed due to the leadership position he held within the Paez community.*<sup>68</sup> *The Commission and representatives alleged that Mr. Escué Zapata's execution was related to his role as a leader in recovering the ancestral lands of the Paez people, and occurred as part of a pattern of State violence against indigenous peoples.*<sup>69</sup> *The State refuted this with evidence that Mr. Escué Zapata did not actually hold a leadership position in his community at the time of his death.*<sup>70</sup> *The Court concluded that there were insufficient facts to show that Mr. Escué Zapata's execution was related to his position as a community leader.*<sup>71</sup>

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata and his next of kin, as well as Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata,<sup>72</sup> because:

*The Court discussed whether the State violated Article 5 (Right to Humane Treatment) to the detriment of Mr. Escué Zapata, his relatives, and the Paez Community.*<sup>73</sup>

*The State detained, tortured, and executed Mr. Escué Zapata, then*

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65. *Id.*

66. *Id.* ¶ 42.

67. *Id.*

68. *Id.* ¶¶ 43-64.

69. *Id.* ¶¶ 49-54.

70. *Id.* ¶ 54.

71. *Id.* ¶ 64.

72. *Id.* ¶¶ 76, 80-81, "Declares" ¶¶ 1, 2.

74. *Id.* ¶ 68.

failed to conduct a thorough investigation of his death.<sup>74</sup> The Court determined that these actions violated Mr. Escué Zapata's right to humane treatment enshrined in Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1).<sup>75</sup>

The Court also found that the suffering of Mr. Escué Zapata's next of kin, by virtue of their witnessing his detention and maltreatment, discovering his remains, and enduring the investigative and prosecutorial delays, also amounted to a violation of their Article 5 Right to Humane Treatment.<sup>76</sup> The Court discussed certain factors it considers when deciding whether relatives of the victim are also victims of human rights violations.<sup>77</sup> Factors include the closeness of the family relationship and the details of that relationship; the extent to which the victim's relatives witnessed the event; and the involvement of the victim's relatives in the search for justice.<sup>78</sup> Based on these factors and the facts of the case, the Court found that the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) to the detriment of the victim's relatives.<sup>79</sup>

Although the representatives alleged that the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) to the detriment of the Paez indigenous community, the Court found that the Paez community was not a victim of human rights violations and did not discuss these facts.<sup>80</sup>

Articles 7(1) (Right to Personal Liberty and Security) and 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata,<sup>81</sup> because:

*State agents did not inform Mr. Escué Zapata of the reasons for his detention.*<sup>82</sup> Furthermore, a competent judicial authority did not order

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74. *Id.* ¶¶ 69-71, 76.

76. *Id.* ¶ 72.

76. *Id.* ¶¶ 77-80.

78. *Id.* ¶ 77.

79. *Id.*

80. *Id.* ¶80.

81. *Id.* ¶ 81.

81. *Id.* ¶ 86.

82. *Id.*

*his detention, and he was captured in order to be executed.*<sup>83</sup> *The Court concluded the State violated Articles 7(1) (Right to Personal Liberty and Security) and 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law).*<sup>84</sup>

*The Court also noted that in cases involving illegal and arbitrary detention of individuals, the State is responsible for performing a complete and effective investigation in accordance with the rights established in Article 1(1) (Obligation to Respect Rights) in relation to Article 7 (Right to Personal Liberty).*<sup>85</sup>

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata and his next of kin living in his house on the night of February 1, 1988,<sup>86</sup> because:

*The Court explained that protection to privacy includes protection of the home, private life, and family.*<sup>87</sup> *The unauthorized, arbitrary, and abusive entrance of State agents into the private home of Mr. Escué Zapata and his family thus constituted a violation of their right to privacy.*<sup>88</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata and his next of kin,<sup>89</sup> because:

*The State must afford its citizens the right to a hearing within a reasonable time by a competent, impartial, and independent tribunal, and the right of access to justice, truth, and reparation.*<sup>90</sup>

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83. *Id.*

84. *Id.* ¶ 82.

85. *Id.* ¶ 87.

86. *Id.* ¶ 96. Mr. Escué Zapata's next of kin living in his house on the night of February 1, 1988 include: Bertha Escué Coicue (companion), Myriam Zapata Escué (daughter), Etelevina Zapata Escué (mother), Mario Pasú (father), and Aldemar Escué Zapata (brother).

87. *Id.* ¶ 95.

88. *Id.* ¶ 96.

89. *Id.* ¶ 111.

89. *Id.* ¶ 101.

First, the Court considered the complexity of the case, the procedural activities undertaken by the family, and the conduct of judicial authorities and concluded that the nineteen-year period taken by the State to investigate the case was unreasonable and a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) to the detriment of Mr. Escué Zapata and his next of kin.<sup>91</sup>

Next, the Court discussed the competence, impartiality, and independence of the tribunal.<sup>92</sup> For more than ten years, Mr. Escué Zapata's case was under the jurisdiction of a military criminal court.<sup>93</sup> Military criminal courts only have jurisdiction over military personnel who have committed a crime that affects the legal interests of the military order.<sup>94</sup> Because of the nature of the crime against Mr. Escué Zapata, military criminal jurisdiction was not the appropriate venue in which to carry out an investigation or punish those responsible for the crime.<sup>95</sup> For that reason, the Court concluded that the State violated Mr. Escué Zapata's rights enshrined in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>96</sup>

Furthermore, though the State remedied the violation by transferring the case to a court of ordinary jurisdiction, the Court found that the State must still take measures aimed at compliance with its international obligations to investigate, prosecute, and punish the perpetrators.<sup>97</sup>

Lastly, the Court found that the procedure conducted by the military court and domestic courts was ineffective.<sup>98</sup> In military court, only five statements were taken from witnesses during the first year of the investigation, the scene of the crime was not investigated, and no autopsy was performed on the body.<sup>99</sup> The case file was lost in military courts, and domestic courts were not able to reconstruct major aspects

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91. *Id.* ¶¶ 102-103.

91. *Id.* ¶¶ 104-106.

93. *Id.* ¶ 104.

94. *Id.* ¶ 105.

95. *Id.*

96. *Id.* ¶ 111.

97. *Id.* ¶ 106.

98. *Id.* ¶ 111.

99. *Id.* ¶ 107.

of the case.<sup>100</sup> In addition, no steps were taken to investigate the disappearance of the case file.<sup>101</sup> Finally, the State investigated only the murder of Mr. Escué Zapata, and neglected to examine his illegal detention, bodily injuries, illegal search of his residence, the involvement of other soldiers, or the participation of other indigenous landowners in the crime.<sup>102</sup>

Based on the foregoing facts, the Court concluded that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) to the detriment of Mr. Escué Zapata and his next of kin.<sup>103</sup>

The Court found unanimously that Colombia had not violated:

Article 23(1) (Right to Participate in Government), in relation to Article 1(1) of the Convention, to the detriment of Mr. Escué Zapata,<sup>104</sup> because:

*While the Commission alleged that Mr. Escué Zapata was deprived of his position and authority within the indigenous government as a result of his death, Article 23 (Right to Participate in Government) cannot be violated by an extrajudicial execution alone.<sup>105</sup> Thus, there must be another act by which an individual is deprived of his or her right to participate in government before the Court will find a violation of Article 23 (Right to Participate in Government).<sup>106</sup> The Court, however, promised to take note of the effect of Mr. Escué Zapata's death on the community in calculating reparations.<sup>107</sup>*

The Court did not rule on:

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of the Paez Community,<sup>108</sup> because:

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100. *Id.* ¶¶ 107-108.

101. *Id.* ¶ 108.

102. *Id.* ¶ 109.

103. *Id.* ¶ 111.

104. *Id.* ¶ 123.

105. *Id.* ¶ 122.

106. *Id.*

107. *Id.* ¶ 125.

108. *Id.* ¶ 81.

*Members of the Paez Community were not included as victims in the Commission's application to the Court.<sup>109</sup> The Court, therefore, declined to consider facts pertaining to the violation of the right to humane treatment of the members of the Paez Indigenous Community.<sup>110</sup>*

Article 21 (Right to Property) of the Convention, in relation to Article 1(1) of the Convention, to the detriment of the Paez Community,<sup>111</sup> because:

*Though the victims' representatives alleged that members of the Army broke and stole tools that belonged to the Community from Mr. Escué Zapata's house, the Commission did not include these facts or legal arguments in its application to the Court.<sup>112</sup> Principles of procedural equity prevented the Court from analyzing these facts because they changed the factual framework of the case and were not related to supervening facts.<sup>113</sup>*

Article 23(1) (Right to Participate in Government), in relation to Article 1(1) of the Convention, to the detriment of the Paez Community,<sup>114</sup> because:

*Though Mr. Escué Zapata's representatives introduced this issue in their initial brief to the Court, the Commission did not find that the State violated the political rights of the Paez Community in the Report on the Merits, nor did they allege this violation in the application to the Court.<sup>115</sup> Since the alleged violation included new victims that were not introduced in at the proper procedural time, the Court declined to analyze the issue.<sup>116</sup>*

### C. Dissenting and Concurring Opinions

Although not mentioned in the discussion on the merits of the case, both Judge Sergio García Ramírez and Judge Manuel E. Ventura Robles

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109. *Id.*

110. *Id.*

111. *Id.* ¶¶ 113, 115.

112. *Id.* ¶¶ 112-113.

113. *Id.* ¶ 117.

114. *Id.* ¶ 121.

115. *Id.* ¶¶ 118, 119.

116. *Id.* ¶ 121.

in their respective separate and concurring opinions commented on the relationship between Articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 1(1) (Obligation to Respect Rights).<sup>117</sup> Their opinions reflect an ongoing debate between members of the Court.<sup>118</sup> While some believe Articles 8, 25, and 1(1) must maintain their autonomy in operation, others promote a blending of the rights and combine them in analysis.<sup>119</sup> Each of the following opinions, and particularly that of Judge Manual E. Ventura Robles, defends the autonomous nature of these Articles.<sup>120</sup>

### 1. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discussed the connection between the general duty to guarantee rights enshrined in Article 1(1) (Obligation to Respect Rights), substantive rights such as those contained in Articles 4 (Right to Life) and 5 (Right to Humane Treatment), and procedural rights, like those contained in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).<sup>121</sup> Article 1(1) vests the State with a double obligation: first to respect rights and liberties, and second to guarantee the full and free exercise of human rights.<sup>122</sup> States must recognize the rights and liberties established in the Convention, and in the event of a violation, must also investigate and prosecute those responsible.<sup>123</sup> This “obligation of means” serves as a means of redress for the victim as well as a means of ensuring non-repetition of the violation.<sup>124</sup>

To date, the Court had not declared a violation of Article 1(1) (Obligation to Respect Rights) independent of any other violations.<sup>125</sup> The violation of the Article 1(1) obligation to respect rights should be analyzed in connection with the violation of another right established in the Convention.<sup>126</sup> Thus, when a violation of some other right

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117. See Laurence Burgorgue-Larson, Amaya Ubeda de Torres & Rosalind Greenstein, *THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY* 646 (Oxford University Press ed. 2011).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Escué Zapata v. Colombia*, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 165, ¶ 1 (July 4, 2007).

122. *Id.* ¶ 2

123. *Id.* ¶ 3.

124. *Id.*

125. *Id.* ¶ 4.

126. *Id.*

established in the Convention occurs, it necessarily follows that Article 1(1) was also violated.<sup>127</sup> On the other hand, there can be a violation of procedural rights such as those enshrined in Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), and in relation to Article 1(1) (Obligation to Respect Rights), without the finding of a violation of another “material,” or substantive, right.<sup>128</sup>

It is possible for a State to satisfy its obligation to guarantee a right or liberty under Article 1(1) (Obligation to Respect Rights), with respect to Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection), by carrying out the duties required, such as the duty to investigate, to respond to the violation of another material right.<sup>129</sup> Judge García Ramírez maintained that this reasoning, though not always expressed by the Court, aligns with the Court’s jurisprudence.<sup>130</sup>

Judge García Ramírez also addressed the right to a fair trial established in Article 8, and acknowledged that the Court’s case law offers neither a precise definition of the right to access to justice, nor a clear differentiation between the right to access and the right to due process.<sup>131</sup> Yet Judge García Ramírez indicated that it is possible to turn to competent State authorities to assert, claim, or obtain redress of a right and the State is obliged to provide “sufficient, proper, and efficient” access to justice.<sup>132</sup>

When Article 8 (Right to a Fair Trial) and, if applicable, Article 25 (Right to Judicial Protection), are violated, Judge García Ramírez asserted that the Court should mention the infringement of the duty to investigate, as it is an aspect of the State’s Article 1(1) obligation to guarantee.<sup>133</sup> He noted that if the Court does not have jurisdiction to consider the violation of a material right, but the violation derives from an obligation outside of the Convention and is still pending when the Court’s jurisdiction goes into effect, then the Court can refer to the infringement of a procedural right.<sup>134</sup>

Even when the Court’s jurisdiction had not gone into effect or when the Court does not declare a violation of another substantive right, it is still possible for Article 8(1) (Right to a Hearing Within Reasonable

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127. *Id.*

128. *Id.*

129. *Id.* ¶ 5.

130. *Id.*

131. *Id.* ¶ 7.

132. *Id.* ¶ 7(a).

133. *Id.* ¶ 8.

134. *Id.*



Time by a Competent and Independent Tribunal) to be violated.<sup>135</sup> This situation may occur, for example, where the petitioner asserted a right other than one established in the Convention but that was disregarded by the State, or where the Court did not find the elements to satisfy the violation of a substantive right, but did find some facts suggesting that the violation could have been effected by the State and that therefore the State had a duty to investigate.<sup>136</sup>

Judge García Ramírez contemplated the possibility that Article 8 (Right to a Fair Trial) only, or that Article 8 and Article 25 (Right to Judicial Protection) can be violated.<sup>137</sup> He explained that Article 8 comprises ordinary access to justice and elaborates upon its terms.<sup>138</sup> Article 25 deals more broadly with “a crucial aspect” of access to justice.<sup>139</sup> He noted that in this case, the Court did not consider the possibility of different violations of Article 8 and Article 25; rather, the Court analyzed these Articles together.<sup>140</sup> Judge García Ramírez, however, maintained that the Court should pay specific attention to each article so that “the protection of the Convention shall be unfolded over the individual.”<sup>141</sup>

## 2. Separate Concurring Opinion of Judge Manuel E. Ventura Robles

In a concurring opinion, Judge Ventura Robles clarified his position regarding the application of 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 Article 1(1) (Obligation to Respect Rights).<sup>142</sup> He stated that Article 1 (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) “have their own ontological nature,” as do Article 8 and Article 25.<sup>143</sup> He pointed to cases in which the Court found that

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135. *Id.* ¶ 9.

136. *Id.* ¶ 9(a)-(b).

137. *Id.* ¶¶ 9-11.

138. *Id.* ¶ 10(a).

139. *Id.* ¶ 10(b).

140. *Id.* ¶ 10.

141. *Id.* ¶ 11.

142. *Escué Zapata v. Colombia*, Merits, Reparations and Costs, Separate Concurring Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R. (ser. C) No. 165 (July 4, 2007). Judge Ventura Robles’ decision does not include paragraph numbers.

143. *Id.*

Article 1(1) was violated independent of any other articles and in which Articles 8 and 25 were violated without relation to Article 1(1).<sup>144</sup>

Judge Ventura Robles took issue with the Court considering that Article 8(1) and Article 25 could not be violated independently of another substantive right.<sup>145</sup> He contended that holding so would amount to affirming that “the American Convention does not protect the right to Justice.”<sup>146</sup> He asserted that to change jurisprudence after twenty years, apart from being “inappropriate and unnecessary,” was “confusing.”<sup>147</sup>

#### IV. REPARATIONS

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

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

##### 1. Investigate, Prosecute, and Punish Those Responsible

The State must investigate all facts surrounding Mr. Escué Zapata’s death and carry out effective criminal proceedings.<sup>148</sup> The results of the proceedings must be publicly disclosed, so that all Colombian civilians, and especially members of the Paez Indigenous Community, can learn what happened to Mr. Escué Zapata.<sup>149</sup>

##### 2. Create a Community Development Fund in Memory of Mr. Escué Zapata

The State must allocate \$40,000 to a fund named after Mr. Escué Zapata.<sup>150</sup> The fund should be accessible only to members of the Paez Indigenous Community so that they may invest it in a way that reflects

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144. *Id.* The cases he referred to were: *Street Children (Villagrán Morales et al.) v. Guatemala*; *Baena Ricardo et al. v. Panama*; and *Las Palmeras v. Colombia*.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Escué Zapata v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 165, ¶ 166 (July 4, 2007).*

149. *Id.*

150. *Id.* ¶ 168.

their customs and traditions.<sup>151</sup>

3. Provide Myriam Zapata Escué with a Scholarship to Fund Higher Education

The State must grant Myriam Zapata Escué a scholarship to any Colombian public university she chooses.<sup>152</sup> The scholarship must include all expenses for academic materials, lodging, and subsistence, and transportation for the entire extent of her course studies.<sup>153</sup>

4. Provide Mental and Psychological Treatment to Mr. Escué Zapata's Next of Kin

The State must provide Mr. Escué Zapata's next of kin any medical, psychiatric, or psychological treatment to address physical and mental suffering connected to this case.<sup>154</sup>

5. Publish the Judgment

The State must publish certain operative paragraphs of the Court's judgment in the Official Gazette and another nationally circulated daily newspaper.<sup>155</sup> The State must also translate the judgment to Nasa Yute, the language of the Paez people, and publish it in a widely circulated newspaper in an area where Mr. Escué Zapata lived in Cauca.<sup>156</sup>

6. Publically Acknowledge Responsibility

The State must publicly acknowledge liability for damages caused to Mr. Escué Zapata and his next of kin.<sup>157</sup> The acknowledgment must be made in the Resguardo de Jambaló with participation from the State's highest-ranking authorities, leaders of the community, and, if they wish to participate, Mr. Escué Zapata's next of kin.<sup>158</sup> The acknowledgment must be conducted in Spanish and Nasa Yute.<sup>159</sup>

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151. *Id.*

152. *Id.* ¶ 170.

153. *Id.*

154. *Id.* ¶ 172.

155. *Id.* ¶ 174.

156. *Id.*

157. *Id.* ¶ 177.

158. *Id.*

159. *Id.*

*B. Compensation*

The Court awarded the following amounts:

## 1. Pecuniary Damages

For expenses incurred by Mr. Escué Zapata's next of kin due to his death, including his mother's emotionally taxing search for justice, the State must compensate Mr. Escué Zapata's parents and siblings \$7,000 to be divided as Mrs. Zapata Escué sees fit.<sup>160</sup>

The State must make compensatory payments of \$2,500 each to Bertha Escué Coicue and Myriam Zapata Escué for their expenses.<sup>161</sup>

The State must compensate Mr. Escué Zapata \$55,000 for his loss of income, half of which is to be delivered to Myriam Zapata Escué, and the other half to be split evenly between Bertha Escué Coicue and Mr. Escué Zapata's parents.<sup>162</sup>

## 2. Non-Pecuniary Damages

The State must compensate Mr. Escué Zapata \$50,000 for violating his human rights.<sup>163</sup> Myriam Zapata Escué shall receive half of this payment.<sup>164</sup> The remaining half shall be split equally between Bertha Escué Coicue and Mr. Escué Zapata's parents.<sup>165</sup>

The State must compensate Myriam Zapata Escué an additional \$25,000 for suffering caused by the loss of her father, which was aggravated by her status as a minor.<sup>166</sup>

The State must compensate Bertha Escué Coicue an additional \$20,000 for suffering caused as a result of the loss of her life partner.<sup>167</sup>

The State must compensate Mr. Escué Zapata's parents an additional \$20,000 each for suffering caused by the loss of their son, aggravated by their nineteen-year search for justice.<sup>168</sup> For each of Mr. Escué Zapata's six siblings, the State must pay \$5,000 to

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160. *Id.* ¶ 140.

161. *Id.*

162. *Id.* ¶¶ 143-144.

163. *Id.* ¶ 154.

164. *Id.* ¶ 157.

165. *Id.*

166. *Id.* ¶ 155.

167. *Id.*

168. *Id.*

compensate them for their suffering.<sup>169</sup>

### 3. Costs and Expenses

The State must compensate Mrs. Zapata Escué \$12,000 for expenses incurred during these proceedings.<sup>170</sup> The Court ordered Mrs. Zapata Escué to distribute the proper amount to the José Alvear Restrepo Lawyer's Collective, and to relatives who provided services throughout the proceedings.<sup>171</sup>

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

\$ 244,000

### C. Deadlines

The State must grant Ms. Myriam Zapata Escué's scholarship as soon as is practical.<sup>172</sup>

Within six months, the State must publish the pertinent parts of the judgment in the State's official gazette and in newspaper of wide circulation in Cauca.<sup>173</sup>

The State must pay pecuniary and non-pecuniary damages and costs and expenses within one year from notification of the judgment.<sup>174</sup>

Also within one year of the judgment, the State must dedicate the fund for Mr. Escué Zapata and acknowledge international responsibility for the facts of the case.<sup>175</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**November 1, 2007:** The State filed a request for interpretation of the Judgment on the Merits to clarify some of the reparations required.<sup>176</sup>

First, the State asked whether special publication of judgments in the criminal proceedings against Mr. Escué Zapata's captors and killers

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169. *Id.*

170. *Id.* ¶ 188.

171. *Id.*

172. *Id.* ¶ 196(11).

173. *Id.* ¶ 196(13).

174. *Id.* ¶ 195.

175. *Id.* ¶¶ 196(10), 196(14).

176. *Escué Zapata v. Colombia*, Interpretation of the Judgment on the Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 178, ¶ 1 (May 5, 2008).

was necessary, and whether decisions acquitting a defendant should also be published.<sup>177</sup> The Court stated that final judicial opinions in the criminal proceedings must be made public, whether the State acquits or convicts the defendants.<sup>178</sup>

Second, the State inquired whether the community fund to be created in Mr. Escué Zapata's name should be created by means of a trust agreement or inter-administrative agreement.<sup>179</sup> The Court determined that the State should decide the matter, bearing in mind the spirit of the reparation meant to redress the victim's name and that the State should refrain from interfering with the Community's use of the fund.<sup>180</sup>

Third, the State requested clarification regarding the scholarship the State must provide Myriam Zapata Escué to study at a public university.<sup>181</sup> The Court replied that Myriam Zapata Escué's acceptance into a university must comply with the regular selection process.<sup>182</sup> The State must also provide support through other courses or training if necessary to prevent Myriam Zapata Escué from dropping out of the university.<sup>183</sup> If Myriam Zapata Escué decides not to attend a university, the State must offer her the option of technical or technological training.<sup>184</sup> The length of the State's obligation depends on the institutions requirements for completing a degree.<sup>185</sup> The scholarship should cover all expenses, and should be dispersed periodically, not in a single payment.<sup>186</sup>

Finally, the State asked whether costs and expenses should be paid to Mrs. Etelvina Zapata Escué, or to the organization representing the victim's next of kin, as is traditionally done.<sup>187</sup> The Court responded that Mrs. Zapata Escué should receive payment for costs and expenses, as stipulated in the judgment.<sup>188</sup>

#### A. *Dissenting and Concurring Opinions*

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177. *Id.* ¶ 11.

178. *Id.* ¶ 15.

179. *Id.* ¶ 16.

180. *Id.* ¶ 21.

181. *Id.* ¶ 22.

182. *Id.* ¶ 27.

183. *Id.*

184. *Id.*

185. *Id.* ¶ 28.

186. *Id.* ¶ 29.

187. *Id.* ¶ 30.

188. *Id.*

1. Concurring Opinion of Judge *ad hoc* Diego Eduardo López Medina

In a concurring opinion, Judge *ad hoc* López Medina discussed publication of the findings reached in criminal proceedings.<sup>189</sup> He asserted that the purpose of Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) is to protect the victim's search for justice by ensuring that investigations do not extend past a "reasonable time."<sup>190</sup> With that purpose in mind, in addition to publishing the findings, the State should be additionally responsible for adequately informing the community and the victim's next of kin about the progress of the criminal proceedings.<sup>191</sup> This would prevent further victimization by giving context and expectation to the final judgment, whether it is a condemnatory judgment or acquittal.<sup>192</sup>

Judge *ad hoc* López Medina concurred with the Court's interpretation of the measures to ensure higher education for Myriam Zapata Escué.<sup>193</sup> He noted the balance the Court sought to strike between reparation measures designed to enrich Myriam Zapata Escué's life and the amount of individual effort she is expected to exert in return.<sup>194</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**May 18, 2010:** The Court found that the State fully complied with certain obligations stipulated in the Judgment on the Merits, Reparations and Costs.<sup>195</sup> The State paid pecuniary and non-pecuniary damages, and reimbursed costs and expenses.<sup>196</sup> It also created the fund in the name of Mr. Escué Zapata to benefit the Jambaló community.<sup>197</sup> The community used the funds to purchase a "chiva," or open bus, and created a rural transport system to help members of the community who

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189. Escué Zapata v. Colombia, Interpretation of the Judgment on the Merits, Reparations and Costs, Concurring Opinion of Judge *ad hoc* Diego Eduardo López Medina, Inter-Am. Ct. H.R. (ser. C) No. 178 (May 5, 2008).

190. *Id.* ¶ 4.

191. *Id.* ¶ 6.

192. *Id.* ¶ 9.

193. *Id.* ¶ 10.

194. *Id.*

195. See Escué Zapata v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (May 18, 2010).

196. *Id.* "Considering That" ¶ 10.

197. *Id.* "Considering That" ¶ 17.

lacked transportation.<sup>198</sup>

The State also held a public act to acknowledge international responsibility for committing human rights violations.<sup>199</sup> Three thousand indigenous people from different villages in Cuaca attended the public ceremony that honored Mr. Escué Zapata's memory.<sup>200</sup> The Colombian Vice Chancellor acknowledged the State's responsibility for human rights violations committed against Mr. Escué Zapata and his next of kin, and expressed solidarity with the indigenous community.<sup>201</sup>

The Court stated that it would continue monitoring compliance with the remaining obligations.<sup>202</sup>

Regarding the State's obligation to provide Myriam Zapata Escué a scholarship for university studies, the State asserted that it created a fund for Myriam Zapata Escué in the amount of \$104,900.00 to cover all academic, lodging, and transportation expenses for five years.<sup>203</sup> Neither the Commission nor representatives of Mr. Escué Zapata provided observations on this measure.<sup>204</sup> The Court requested their observations before it could assess whether the State had fulfilled its obligations.<sup>205</sup>

The Court also found that the State complied with the Court's order to publish the judgment in a national newspaper.<sup>206</sup> The State translated the judgment into the indigenous language of the Nasa and published a clear and easily accessible summary of the judgment in an indigenous local newspaper.<sup>207</sup> Though the Court stated its appreciation of these efforts, it considered that the State had not fully complied because it had not yet published the judgment in the official gazette.<sup>208</sup>

Regarding the criminal proceedings against Mr. Escué Zapata's captors and murderers, the Court noted that the State has made significant progress regarding its obligation to conduct effective criminal proceedings against those responsible for the murder of Mr. Escué Zapata.<sup>209</sup> Two criminal proceedings were underway: the first initiated by the Human Rights National Unit of the Solicitor

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198. *Id.*

199. *Id.* "Considering That" ¶ 33.

200. *Id.* "Considering That" ¶ 34.

201. *Id.* "Considering That" ¶ 35.

202. *Id.* "Decides" ¶ 4.

203. *Id.* "Considering That" ¶¶ 23-24.

204. *Id.*

205. *Id.* "Considering That" ¶ 25.

206. *Id.*

207. *Id.* "Considering That" ¶¶ 28-29, 31.

208. *Id.* "Considering That" ¶¶ 31-32.

209. *Id.*



General's Office, and the second in the Superior Court of Popayan.<sup>210</sup> With respect to the first proceeding, arrest warrants and preventive detention orders were issued against ten suspects in the kidnapping, torture, and murder of Mr. Escué Zapata.<sup>211</sup> The State indicated that investigations were being seriously and diligently conducted.<sup>212</sup> Regarding the second proceeding, the Second Criminal Trial Court for the Santander Circuit of Quilichao sentenced three law enforcement officers on June 9, 2008 to eighteen years in prison for the murder of Mr. Escué Zapata.<sup>213</sup> The Court found that these activities indicated the State's intent to comply with its obligations.<sup>214</sup> The Court required further information on the proceedings as resolutions continue to be reached.<sup>215</sup>

With respect to the State's provision of specialized medical, psychiatric, and mental treatment to Mr. Escué Zapata's next of kin, the Court determined that it would address the matter in a separate hearing.<sup>216</sup>

The Court also noted that creating a scholarship in the name of Mr. Escué Zapata was not a measure of reparation ordered by the Court.<sup>217</sup> The State had previously attempted to create a scholarship in Mr. Escué Zapata's name as a gesture of good faith.<sup>218</sup> Since this was not an obligation stipulated in the Court's judgment, its compliance was not subject to monitoring.<sup>219</sup>

**February 21, 2011:** The Court found that the State satisfactorily provided Myriam Zapata Escué with a scholarship for university studies.<sup>220</sup> The procedures undertaken by the State to carry out future payments for Myriam Zapata Escué's university education were sufficient.<sup>221</sup>

The State also published the judgment in the official gazette on

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210. *Id.* "Considering That" ¶ 11.

211. *Id.* "Considering That" ¶ 12.

212. *Id.*

213. *Id.* "Considering That" ¶ 13.

214. *Id.* "Considering That" ¶ 16.

215. *Id.*

216. *Id.* "Considering That" ¶¶ 26, 27.

217. *Id.* "Considering That" ¶ 45.

218. *Id.* "Considering That" ¶ 44.

219. *Id.* "Considering That" ¶ 45.

220. *Escué Zapata v. Colombia*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 16 (Feb. 21, 2011).

221. *Id.* "Considering" ¶ 15.

May 10, 2010.<sup>222</sup>

The Court determined that it would continue to monitor compliance with the criminal proceedings against Mr. Escué Zapata's captors and murderers.<sup>223</sup> Since the last monitoring compliance judgment, the three law enforcement officers that were each sentenced to eighteen years in prison in the Second Criminal Trial Court for the Santander Circuit of Quilichao appealed.<sup>224</sup> One perpetrator's sentence was shortened to sixteen years.<sup>225</sup> Another's conviction was overturned.<sup>226</sup> The third is still being held in jail for the same term.<sup>227</sup> The Court awaits further information on the proceedings underway.<sup>228</sup>

The Court also determined that the provision of specialized medical, psychiatric, and mental treatment to Mr. Escué Zapata's next of kin would be evaluated at a separate hearing.<sup>229</sup>

**February 8, 2012:** The Court set a hearing date to obtain information from the State regarding its compliance with measures of reparation concerning medical and psychological attention.<sup>230</sup> It planned also to hear observations of the Commission and representatives of the victims.<sup>231</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

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

### [Escué Zapata v. Colombia, Merits, Reparations and Costs, Judgment,](#)

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222. *Id.* "Considering" ¶ 21.

223. *Id.* "Considering" ¶ 10.

224. *Id.* "Considering" ¶ 6.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* "Considering" ¶ 7.

229. *Id.* "Considering" ¶ 17.

230. *Escué Zapata v. Colombia, Monitoring Compliance with the Measures of Reparation Concerning the Medical and Psychological Attention Ordered in Nine Colombian Cases, Order of the President of the Court, Inter-Am. Ct. H.R. 'Decides' ¶ 1 (Feb. 8, 2012).*

231. *Id.*

[Inter-Am. Ct. H.R., \(ser. C\) No. 165 \(July 4, 2007\).](#)

[Escué Zapata v. Colombia, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 165 \(July 4, 2007\).](#)

[Escué Zapata v. Colombia, Merits, Reparations and Costs, Separate Concurring Opinion of Judge Manuel E. Ventura Robles, Inter-Am. Ct. H.R. \(ser. C\) No. 165 \(July 4, 2007\).](#)

### 3. Provisional Measures

[None]

### 4. Compliance Monitoring

[Concerning the Medical and Psychological Attention Ordered in Nine Colombian Cases, Order of the President of the Court, Inter-Am. Ct. H.R. \(Feb. 8, 2012\).](#)

[Escué Zapata v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 21, 2011\).](#)

[Escué Zapata v. Colombia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 18, 2010\).](#)

### 5. Review and Interpretation of Judgment

[Escué Zapata v. Colombia, Interpretation of the Judgment on the Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 178 \(May 5, 2008\).](#)

[Escué Zapata v. Colombia, Interpretation of the Judgment on the Merits, Reparations and Costs, Concurring Opinion of Judge ad hoc Diego Eduardo López-Medina, Inter-Am. Ct. H.R. \(ser. C\) No. 178 \(May 5, 2008\).](#)

## *B. Inter-American Commission*

### 1. Petition to the Commission

Escué Zapata v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.171 (May 16, 2006).

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

Escué Zapata v. Colombia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.171 (May 16, 2006).

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