



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Mexico files a Request for interpretation of the Judgment of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)* and asks for the urgent indication of provisional measures

THE HAGUE, 5 June 2008. Today Mexico filed a Request for interpretation of the Judgment delivered on 31 March 2004 by the International Court of Justice (ICJ) in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*.

Mexico invokes Article 60 of the Statute of the Court, which provides that: “In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.” A request for interpretation opens a new case. Mexico notes that in previous cases, the Court ruled that its jurisdiction to provide an interpretation of one of its own judgments “[was] a special jurisdiction deriving directly from Article 60 of the Statute”.

In its Request Mexico recalls that, in the above-mentioned *Avena* Judgment, the Court inter alia found “that the United States had breached Article 36 of the Vienna Convention on Consular Relations in the cases of 51 Mexican nationals by failing to inform them . . . of their rights to consular access and assistance”; and that the Court determined, in paragraph 153 (9) of the Judgment, the remedial obligations incumbent upon the United States. Mexico contends that “a fundamental dispute” has arisen “between the parties as to the scope and meaning” of paragraph 153 (9) and that the Court needs “to provide guidance to the parties”. It therefore seeks the interpretation of said paragraph, which reads as follows:

“153. For these reasons,

The Court, . . .

(9) By fourteen votes to one,

Finds that the appropriate reparation in this case consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals referred to in subparagraphs (4), (5), (6) and (7) above, by taking account both of the violation of the rights set forth in Article 36 of the Convention and of paragraphs 138 to 141 of this Judgment.”

In its Request for interpretation, Mexico states that it “understands the operative language . . . of the *Avena* Judgment to establish an obligation of result incumbent upon the United States” while “it is clear that the United States understands the Judgment to constitute merely an obligation of means”. Mexico explains that “while the United States may use ‘means of its own choosing’ under paragraph 153 (9) [of the Court’s Judgment], the obligation to provide review and reconsideration is not contingent on a success of any one means. As a result, the United States cannot rest on a single means chosen; it must provide the requisite review and reconsideration and prevent the execution of any Mexican national named in the Judgment unless and until that review

and reconsideration is completed and it is determined that no prejudice resulted from the violation”. Mexico further asserts that “requests by the Mexican nationals for the review and reconsideration mandated in their cases by the Avena Judgment have repeatedly been denied”. It also states that “on 25 March 2008, the Supreme Court of the United States determined in the case of José Ernesto Medellín Rojas . . . that the Judgment itself did not directly require U.S. courts to provide review and reconsideration under domestic law” and that “while expressly recognizing the United States obligation to comply with the Judgment under international law, [it] further held that the means chosen by the President of the United States to comply were unavailable under the U.S. Constitution and indicated alternate means involving legislation by the U.S. Congress or voluntary compliance by the State of Texas”. Mexico adds that “it understands the United States obligation under paragraph 153 (9) to extend to taking the steps set forth by the Supreme Court, including legislative action at the federal or state levels or compliance by state courts or the state legislatures”.

In its Request for interpretation, Mexico goes on to explain that, since the decision of the Supreme Court was issued, “Texas . . . has scheduled Mr. Medellín for execution on 5 August 2008”. It insists that “the actions of Texas, a political subdivision of the United States, engage the international responsibility of the United States” and that “the United States cannot invoke its municipal law as justification for failure to perform its international legal obligation under the Avena Judgment”. It also observes that “at least four more Mexican nationals are also in imminent danger of having execution dates set by the State of Texas”.

Accordingly, Mexico asks the Court “to adjudge and declare that the obligation incumbent upon the United States under paragraph 153 (9) of the Avena Judgment constitutes an obligation of result as it is clearly stated in the Judgment by the indication that the United States must provide ‘review and reconsideration of the convictions and sentences’ but leaving it the ‘means of its own choosing’;

and that, pursuant to the foregoing obligation of result,

- (1) the United States must take any and all steps necessary to provide the reparation of review and reconsideration mandated by the Avena Judgment; and
- (2) the United States must take any and all steps necessary to ensure that no Mexican national entitled to review and reconsideration under the Avena Judgment is executed unless and until that review and reconsideration is completed and it is determined that no prejudice resulted from the violation.”

Today Mexico also filed in the Registry an urgent Request for the indication of provisional measures in accordance with Article 41 of the Statute. This article provides that “the Court shall have the power to indicate, if it considers that circumstances so require, any provision or measures which ought to be taken to preserve the respective rights of either Party”. Mexico explains that “provisional measures are clearly justified in order both to protect Mexico’s paramount interest in the life of its nationals and to ensure the Court’s ability to order the relief Mexico seeks”.

Contrary to a request for interpretation, a request for the indication of provisional measures does not open a new case but opens an incidental phase within an existing case.

Mexico requests the Court to indicate the following measures:

“(a)that the Government of the United States take all measures necessary to ensure that José Ernesto Medellín, César Roberto Fierro Reyna, Rubén Ramírez Cárdenas, Humberto Leal García, and Roberto Moreno Ramos are not executed pending the conclusion of the proceedings instituted this day;

- (b) that the Government of the United States inform the Court of all measures taken in implementation of subparagraph (a); and
- (c) that the Government of the United States ensure that no action is taken that might prejudice the rights of Mexico or its nationals with respect to any interpretation this Court may render with respect to paragraph 153 (9) of its Avena Judgment.”

The full text of Mexico’s Application for interpretation and of its request for the indication of Provisional Measures will shortly be available on the Court’s website (**www.icj-cij.org**).

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