

Inter-American Court of Human Rights
Case of Acevedo-Buendía *et al.*
(“Discharged and Retired Employees of the
Office of the Comptroller”) v. Peru
Judgment of November 24, 2009
(Interpretation of the Judgment on the
Preliminary Objection, Merits, Reparations, and Costs)

In the case *Acevedo Buendía et al. (“Discharged and Retired Employees of the Office of the Comptroller”)*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court,” “the Court,” or “the Tribunal”), composed of the following judges:¹

Cecilia Medina Quiroga, President;
Sergio García Ramírez, Judge;
Manuel E. Ventura Robles, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu Blondet, Judge, and
Víctor Oscar Shiyín García Toma, *ad hoc* Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary;

in accordance with Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”) and Article 59 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”),² decides the following request for interpretation of the Judgment on the preliminary objection, merits, reparations, and costs issued by the Tribunal on July 1, 2009, in the present case (hereinafter “the Judgment”), submitted by the State of Peru (hereinafter “the State” or “Peru”) on November 3, 2009.

¹ Judge Leonardo A. Franco informed the Court that, for reasons of force majeure, he would not be able to participate in the deliberation and signing of the present Judgment. The judge *ad hoc* Víctor Oscar Shiyín García Toma did not participate in the deliberation and signing of the present Judgment, but when consulted on the matter, he expressed his conformity on what was decided by the Court. The Judge Diego García-Sayán, of Peruvian nationality, excused himself from hearing the present case, in conformity with Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court.

² In accordance with Article 72(2) of the Court’s Rules of Procedure currently in force, whose last reforms entered into force on March 24, 2009, “[c]ases pending resolution shall be processed according to the provisions of these Rules of Procedure, except for those cases in which a hearing has already been convened upon the entry into force of these Rules of Procedure; such cases shall be governed by the provisions of the previous Rules of Procedure.” Thus, the Rules of Procedure mentioned in the present Judgment of Interpretation are those approved by the Tribunal during its XLIX Ordinary Period of Sessions, held November 16 to 25, 2000, and partially reformed by the Court during its LXI Ordinary Period of Sessions, held from November 20 to December 4, 2003.

I INTRODUCTION OF THE REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On July 1, 2009, the Court issued the Judgment, which was notified to the parties on August 5, 2009.

2. On November 3, 2009, the State submitted a request for interpretation of the Judgment, in accordance with Articles 67 of the Convention and 59 of the Rules of Procedure. The State requested the Court to interpret Operative Paragraph Five of the Judgment and, specifically, to clarify whether the reimbursement of costs and expenses ordered “should be paid to the legal person called the [']Association of Discharged and Retired Employees['] or [to] the natural persons that have been declared victims [in] the [J]udgment[.] [In] the latter case, [the State asked the Court] to indicate the appropriate form of payment.”

3. On November 6, 2009, in accordance with Article 59(2) of the Rules of Procedure and following the instructions of the President of the Court (hereinafter “the President”), the Secretariat of the Court (hereinafter “the Secretariat”) transmitted a copy of the request for interpretation to the representative of the victims (hereinafter “the representative”) and the Inter-American Commission (hereinafter “the Inter-American Commission” or “the Commission”). Likewise, the Secretariat informed the parties that “given the nature and tenor of the request for interpretation,” the representative and the Commission could submit the written arguments they deemed pertinent until November 16, 2009.

4. On November 16, 2009, the representative submitted his written allegations and asked the Tribunal, “despite that there is no contradiction in the order of the [...] Court,” to “[c]larify” the orders contained in paragraphs 150 and 151 of the Judgment with respect to the reimbursement of costs and expenses, to which Operative Paragraph Five of the Judgment refers. According to the representative, “[the Judgment] orders that ‘the State pay to the Association of Discharged and Retired Employees [...] – of which the victims form a part as members – the sum indicated in paragraph 150 of the [Judgment]. In turn, the victims shall pay, through the Association of Discharged and Retired Employees, the amount they deem appropriate to those who represented them at the domestic level and in proceedings before the Inter-American System.’”

5. On November 20, 2009, the Commission submitted its written arguments and observed that, “in effect, paragraphs 150 and 151 of the Judgment could provide for different interpretations.” Therefore, it “considered relevant that the [...] Court clarify this issue in the corresponding interpretation judgment, so that the State may proceed to make the payments [for reimbursement of costs and expenses].”

II COMPETENCE AND COMPOSITION OF THE COURT

6. Article 67 of the Convention establishes that:

[T]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

7. In accordance with cited Article, the Court is competent to interpret its judgments. In order to examine the request for interpretation and make corresponding decisions, the Tribunal should have, if it is possible, the same composition as it had when it issued the pertinent Judgment, in accordance with Article 59(3) of the Rules of Procedure. On this occasion, the Court is composed of the judges that issued the Judgment whose interpretation has been sought by the representatives, with the abovementioned modification.³

III ADMISSIBILITY

8. The Court must verify whether the request for interpretation compiles with the requirements established in the applicable norms, that is, with Article 67 of the Convention and Article 59 of the Rules of Procedure, which establishes in pertinent part that:

1. [T]he request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on the merits or on reparations, and shall be filed with the Secretariat. It shall state with precision the questions relating to the meaning or scope of the judgment of which interpretation is requested.

[...]

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

9. Additionally, Article 29(3) of the Rules of Procedure establishes that “[j]udgments and orders of the Court may not be contested in any way.”

10. The Court observes that the State presented the request for interpretation within the time limit established in Article 67 of the Convention, given that it was submitted on November 3, 2009 and the Judgment was notified to the parties on August 5, 2009.

11. Additionally, as this Tribunal has held in its constant jurisprudence, a request for interpretation of a judgment has as its purpose, exclusively, the clarification of the meaning of a judgment when one of the parties maintains that the text of its operative paragraphs or its considering clauses lacks clarity or precision, as long as those considering clauses are relevant to the operative paragraphs.⁴

12. The Court shall proceed to analyze the request for interpretation submitted by the State and, if applicable, clarify the scope of Operative Paragraph Five of the Judgment. For that purpose, it shall examine the question raised by the State, as well as the observations of the representative.

IV SCOPE OF OPERATIVE PARAGRAPH FIVE OF THE JUDGMENT

³ Cf. *supra* note 1.

⁴ Cf. *Case of Loayza Tamayo v. Peru*. Interpretation of the Judgment on Merits. Order of the Court of March 8, 1998. Series C No. 47, para. 16; *Case of Valle Jaramillo et al. v. Colombia*. Interpretation of the Judgment on Merits, Reparations, and Costs. Judgment of July 7, 2009. Series C No. 201, para. 8; *Case of García Prieto et al. v. El Salvador*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2008. Series C No. 188, para. 7.

13. The State requested that the Court clarify Operative Paragraph Five of the Judgment, which establishes that “[t]he State must pay the amounts set in [the] Judgment as compensation for [pecuniary] damages, [non-pecuniary] damages, and reimbursement of costs and expenses within one year as of notice of [the] Judgment, under the terms of paragraphs 134, 150, 151, 152, 153, 154 and 155 thereof.” It requested that the Court “specify whether [the costs and expenses should be reimbursed] to the legal persona called the [‘]Association of Discharged and Retired Employees,[‘] or to [the] natural persons declared victims [in] the [J]udgment[.] [In] the latter case, [the State asked the Court] to indicate the appropriate form of payment.” The question arises because although “paragraph 150 of the Judgment [...] orders the payment of USD \$20,000.00 (twenty thousand United States dollars[]) for costs and expenses directly to the [‘]Association of Discharged and Retired Employees,[‘]” “paragraph 151 [of the Judgment] indicates that the payment shall be made directly to the victims.”

14. The representative indicated that in the present case, the costs and expenses “refer to the expenditures made and [the] professional fees paid and/or owed by the Association of Discharged and Retired Employees [...] to the law firm Carlos Blancas Bustamante Abogados E.I.R.L., as well as [to] the expenses incurred by CEDAL due to its provision of legal services in the proceedings before the Inter-American System”. Thus, the representative concluded that “there is no contradiction in the order of the [...] Court contained in paragraphs 150 and 151 of its [J]udgment, as it determines that the State must pay the Association of Discharged and Retired Employees [...] – of which the victims form a part as members – the amount indicated in paragraph 150 [thereof]. In turn, the victims shall pay, through the Association of Discharged and Retired Employees, the amount they deem appropriate to those who represented them at the domestic level and in proceedings before the Inter-American System.”

15. The Commission observed that, “in effect, paragraphs 150 and 151 of the Judgment could provide for different interpretations.” Therefore, it “considered relevant that the [...] Court clarify this issue in the corresponding interpretation judgment, so that the State may proceed to make the payments [for reimbursement of costs and expenses].”

16. The Tribunal considers that the scope and content of Operative Paragraph Five of the Judgment is clear. Nevertheless, in order to clarify any doubt that may arise in that regard, it will answer the question posed by the State and interpret said Operative Paragraph and the corresponding considering clauses, in accordance with Article 67 of the American Convention and Article 59 of the Rules of Procedure.

17. First, the Inter-American Court recalls that in its decision of July 1, 2009, it found violations of the rights to judicial protection and private property recognized in Articles 25(1), 25(2)(c), 21(1), and 21(2), respectively, of the American Convention, due to the prolonged and unjustified lack of compliance with the judgments of the Constitutional Tribunal of Peru of October 21, 1997, and January 26, 2001, to the detriment of the two hundred and seventy-three members of the Association of Discharged and Retired Employees of the Office of the Comptroller indicated in paragraph 113 of the Judgment. Therefore, the Tribunal ordered reparations in favor of the victims, as well as the reimbursement of costs and expenses.

18. Operative Paragraph Five of the Judgment establishes that “[t]he State must pay the amounts set in [the] Judgment as compensation for [pecuniary] damages, [non-pecuniary] damages, and reimbursement of costs and expenses within one year as of notice of [the] Judgment, under the terms of paragraphs 134, 150, 151, 152, 153, 154 and 155 thereof.”

In paragraph 150 of the Judgment, under the title “Costs and Expenses” of Chapter VIII on “Reparations,” the Tribunal ordered:

150. [...] in equity, the payment of US\$ 20,000.00 (twenty thousand dollars of the United States of America) to the Association of Discharged and Retired Employees, as costs and expenses incurred during the processing of the instant case before the domestic level and the organs of the Inter-American system. The amount shall be delivered directly to the Association within the term of one year as of notice of this Judgment. The victims shall deliver, in turn, the amount they deem appropriate to the persons who acted as their representatives at the domestic level and in the processing of the case before the Inter-American system. [...]

19. Subsequently, under the title “Method of Compliance with the payments ordered,” the Tribunal specified that:

151. The payment of compensation and reimbursement of costs and expenses shall be made directly to the victims. Should any of these persons die before the pertinent above compensatory amounts are paid thereto, such amounts shall inure to the benefit of their heirs, pursuant to the provisions of the applicable domestic legislation.

20. This Tribunal considers that paragraph 150 of the Judgment states who should receive the amount to be reimbursed for costs and expenses, as it indicates that the corresponding amount is to “be delivered directly to the Association.” Though paragraph 151 refers to “the victims” as beneficiaries of the indemnifications and of the reimbursement of costs and expenses, the Tribunal recalls that in paragraph 113 of the Judgment, it established that the victims were the “273 members of the Association.”

21. Thus, a reading of the Judgment as a whole demonstrates that the Association of Discharged and Retired Employees, wholly made up of the two hundred and seventy-three victims in the present case, is the direct beneficiary of the reimbursement of costs and expenses.

22. Any other allegation related to the obligations that derive from the Judgment may be submitted to the Tribunal in the proceeding for monitoring of compliance.

V OPERATIVE PARAGRAPHS

23. Therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

in accordance with Article 67 of the American Convention on Human Rights and Article 62 of the Rules of Procedure,

DECIDES:

unanimously,

1. To declare the request for interpretation of the Judgment on the preliminary objection, merits, reparations, and costs in the present case, submitted by the State, admissible, in accordance with paragraphs 10 to 12 of this Judgment of Interpretation.

2. To determine the meaning and scope of that ordered in the Judgment on preliminary objection, merits, reparations, and costs, in accordance with paragraph 18 to 21 of this Judgment of Interpretation.

3. To request the Secretariat of the Inter-American Court of Human Rights to notify the present Judgment to the State, the Inter-American Commission on Human Rights, and the representative of the victims.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on November 24, 2009.

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Manuel E. Ventura-Robles

Margarette May-Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary