

Inter-American Court of Human Rights

Case of Loayza-Tamayo v. Peru

Order of November 17, 1999 (*Compliance with Judgment*)

HAVING SEEN:

1. The judgments on preliminary objections and the merits rendered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court" or "the Tribunal") on January 31, 1996 and September 17, 1997, respectively. In both judgments the Court ruled on the inadmissibility of the objection interposed by the State of Peru (hereinafter "the State" or "Peru") concerning the non-exhaustion of domestic remedies.

2. The September 17, 1997 Judgment on the Merits rendered by the Inter-American Court in the Loayza Tamayo Case, in which it ordered, in the fifth operative paragraph, by six votes to one, that

...the State of Peru release María Elena Loayza-Tamayo within a reasonable time, on the terms set forth in paragraph 84 of [said] judgment.

In the sixth operative paragraph of the Judgment, it ordered, unanimously,

[t]hat the State of Peru is obliged to pay fair compensation to the victim and her next-of-kin and to reimburse them for any expenses they may have incurred in their representations before the Peruvian authorities in connection with this process, for which purpose the corresponding proceeding remains open.

3. The Judgment on Reparations rendered by the Court on November 27, 1998, in which it ordered

AS RESTITUTION MEASURES,

Unanimously

1. that the State of Peru shall take all measures necessary to re-instate Ms. María Elena Loayza-Tamayo in the teaching service in public institutions, on the understanding that the amount of her salaries and other benefits shall be equal to the pay she was receiving for her teaching services in the public and private sectors at the time of her detention, appreciated to reflect its value as of the date of this Judgment.

Unanimously

2. that the State of Peru shall guarantee to Ms. María Elena Loayza-Tamayo her full retirement benefits, including those owed for the period transpired since the time of her detention.

Unanimously

3. that the State shall take all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Ms. María Elena Loayza-Tamayo in the civil courts has any legal effect whatever.

AS COMPENSATORY DAMAGES,

By a vote of six to one

4. that the State of Peru shall pay, under the conditions and in the manner described in paragraphs 183 to 190 of this judgment, a total of US\$167,190.30 (one hundred sixty-seven thousand one hundred ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, distributed as follows:

a. US\$99,190.30 (ninety-nine thousand one hundred ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, to Ms. María Elena Loayza-Tamayo;

b. US\$15,000.00 (fifteen thousand United States dollars) or its equivalent in Peruvian currency to Gisselle Elena Zambrano-Loayza, and US\$15,000.00 (fifteen thousand United States dollars) or its equivalent in Peruvian currency to Paul Abelardo Zambrano-Loayza;

c. US\$ 10,000 (ten thousand United States dollars) or its equivalent in Peruvian currency to Ms. Adelina Tamayo-Trujillo de Loayza, US\$ 10,000 (ten thousand United States dollars) or its equivalent in Peruvian currency to Mr. Julio Loayza-Sudario; and

d. US\$18,000 (eighteen thousand United States dollars) or its equivalent in Peruvian currency, to Carolina Maida Loayza-Tamayo, Delia Haydée Loayza-Tamayo, Olga Adelina Loayza-Tamayo, Giovanna Elizabeth Loayza-Tamayo, Rubén Edilberto Loayza-Tamayo, and Julio William Loayza-Tamayo, with each receiving US\$3,000.00 (three thousand United States dollars) or its equivalent in Peruvian currency.

Judge de Roux-Rengifo partially dissenting.

AS OTHER FORMS OF REPARATION,

Unanimously

5. that the State of Peru shall adopt the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention on Human Rights.

WITH RESPECT TO THE DUTY TO TAKE DOMESTIC MEASURES

Unanimously

6. that the State of Peru shall investigate the facts in the instant Case, identify and punish those responsible for those acts, and adopt all necessary domestic legal measures to ensure that this obligation is discharged.

CONCERNING FEES AND COSTS,

Unanimously

7. that the State of Peru shall pay, in the form of fees and costs and under the terms and in the manner described in paragraphs 183 to 190 of this Judgment, the sum of US\$20,000 (twenty thousand United States dollars) or its equivalent in Peruvian currency, to Ms. Carolina Maida Loayza-Tamayo.

FURTHER, THE COURT,

DECIDE[D]

Unanimously

8. that the restitution measures ordered in operative paragraphs 1, 2, and 3, the payment of compensatory damages ordered under operative paragraph 4, the reimbursement of fees and costs ordered in operative paragraph 7, the adoption of other forms of reparation ordered under operative paragraph 5, and the measures to fulfill the duty to take domestic measures, ordered under operative paragraph 6, shall be executed within six months of the date of notification of this Judgment.

Unanimously

9. that any payment ordered in the present Judgment shall be exempt from existing or future taxes or levies.

Unanimously

10. that it shall oversee fulfillment of this judgment.

4. The writing of Ms. Carolina Loayza Tamayo, representative of Ms. María Elena Loayza Tamayo, dated December 18, 1998, submitted to the Secretariat of the Court (hereinafter "the Secretariat") on January 13, 1999, in which she communicated that she had carried out the respective actions before the domestic jurisdiction to begin the execution of the judgment on reparations.

5. The June 3, 1999 Judgment rendered by the Court on the Interpretation of the November 27, 1998 Judgment on Reparations.

6. The June 11, 1999 note of the Secretariat in which it requested from the State the submission of a report on compliance with the Judgment on Reparations rendered by this Court in the present case.

7. The June 16, 1999 communication from Ms. María Elena Loayza Tamayo (hereinafter "the victim"), in which she stated that on June 14, 1999 Criminal Court "C" of the Supreme Court of Justice of the Republic of Peru issued an order that declared the judgment on reparations rendered in this case to be "unenforceable," for which reason she requested that the Court adopt measures to assure compliance with its judgment.

8. The June 25, 1999 note from the State, with which it remitted a certified copy of the following documents: the June 14, 1999 Order of the Second Transitional Criminal Court of the Supreme Court of Peru; the June 16, 1999 Order of Criminal Court "C" and a second order of Criminal Court "C" of June 16, 1999. It also remitted a copy of the following documents: official letter number 357-99-P-CS-SG/PJ of June 23, 1999; official letter number 868-P-IISPT-CSJ-ETID of June 16, 1999, and official letter 4-YY/004c.a. of December 18, 1998. It also returned the original text of the Judgment on Reparations and the December 2, 1998 letter from the Secretariat (CDH-11.154/592), which notified Peru of that judgment.

9. The June 14, 1999 Order of the Second Transitional Criminal Court of the Supreme Court of Peru, by means of which it declared:

"Without effect" the Supreme Order dated April 15, 1999, in which it ordered that the rulings in the judgment of the Inter-American Court of Human Rights concerning the case of the Peruvian citizen Maria Elena Loayza Tamayo be sent to the Specialized Court

for the Crime of Terrorism so as to proceed with conformance of the law; consequently they declared the above-cited judgment to be UNENFORCEABLE; ORDERED that Peru's withdrawal from the Inter-American Court of Human Rights proceed by the corresponding diplomatic means, with the knowledge of the Public Legal Representative of Judicial Affairs of the Department of the Interior and the Terrorism Court respectively; and they returned them.

That order also stated that "the petitioners did not fulfill the requirement of exhaustion of domestic jurisdiction so as to resort to the Inter-American jurisdiction."

10. The June 28, 1999 notes sent by the Secretariat to the victim and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") by means of which it remitted the documents referred to in the preceding paragraph and requested observations with respect to them.

11. The July 9, 1999 note in which the Commission requested an extension of the deadline granted for the submission of observations. By means of a note dated 12 of the same month and year the Court granted until July 26, 1999.

12. The July 21, 1999 communication from Mr. César Gaviria, Secretary General of the Organization of American States (hereinafter "the OAS"), to which he attached note number 7-5-M/276 of July 1, 1999, which was presented to him by Ms. Beatriz M. Ramacciotti, Permanent Representative of Peru before the OAS. This note expressed, as Peru's position, the following:

a. the Judgment on the Merits rendered by the Court in the present case declared that there was a violation of the principle *non bis in idem*, established as a judicial guarantee in Article 8(4) of the American Convention on Human Rights, based on the full importance given to the proceedings in the military court and that court's final judgment;

b. in relation to the Commission's argument that the military tribunals that tried Ms. Loayza Tamayo lacked independence and impartiality in accordance with Article 8(1) of the American Convention on Human Rights, the Court deemed that it was "unnecessary to rule ... inasmuch as Ms. María Elena Loayza-Tamayo was acquitted by that military court and, therefore, the possible failure to meet those requirements did not cause her injury in that regard, irrespective of the other violations which will be examined in the following paragraphs of this Judgment";

c. the Court questioned due process both in the military court as well as in the civil court, as can be found in paragraph 62 of the Judgment on the Merits in the present case. Moreover, the Court attached importance to the judgment rendered in the military court even though it refers to that court as "lack[ing] jurisdiction" to hear the case and despite that in that court "the fundamental rights embodied in the concept of due process were greatly restricted";

d. in the Judgment on the Merits the Court held that Decree-Laws No. 25.475 and No. 25.659 were incompatible with the American Convention on Human Rights. The Commission and the victim requested the reform of the cited Decree-Laws in the reparations stage, which had not been requested in the application to the Court, requests which the State opposed. Nonetheless, the Court incurred in "radical incompetence" by ordering in paragraph 5 of

the Judgment on Reparations in the Loayza Tamayo Case that “the State of Peru should take the measures necessary so that Decree-Laws No. 25.475 and No. 25.659 conform to the American Convention”; and

e. the Court also passed judgment beyond that requested, because while the application of the Commission referred to a just compensation for Ms. Loayza Tamayo, the Court included compensation for her family members, even though they did not appear in the proceedings.

13. The writing of the victim dated July 23, 1999, submitted to the Secretariat on the twenty-sixth of the same month and year, which made observations about the June 14, 1999 Order of the Second Transitional Criminal Court of the Supreme Court of Peru. In that respect, the victim stated that

a. the State has not complied with the reparations set in the respective order. Peru’s decision not to comply with the judgment of the Court constitutes open defiance of its human rights commitments to the international community;

b. Peru’s noncompliance does not only constitute a violation of its international and legal obligations in itself, but also evidences a lack of volition and bad faith in the fulfillment of the basic and fundamental principles of humanity and of international law (*pacta sunt servanda and bona fide*).

c. the Court already adopted a final judgment that, by reason of Article 67 of the American Convention on Human Rights, is not subject to appeal;

d. the Court has the authority to set reparations in a concrete case under Article 63 of the American Convention on Human Rights;

e. the Court can rule on the obligation of Peru to comply with judgments of the Court in accordance with Article 68(1) of the American Convention on Human Rights, which sets forth the obligation of States to respect the rights and freedoms provided for in said Convention, in accordance with Article 1(1) of the same;

f. the Court has ruled that the results of its judgments are obligatory, final, and enforceable in accordance with Articles 63, 67, and 68 of the American Convention on Human Rights;

g. the Court has the authority to submit for the consideration of the General Assembly those recommendations that it considers pertinent to the purpose of ensuring compliance with its judgments, as well as providing recommendations for the improvement of the system in relation to the work of the Tribunal, in accordance with Articles 65 of the American Convention on Human Rights and 30 of the Statute of the Inter-American Court; and

h. the Judgment on Reparations was rendered nine months before Peru submitted to the Secretary General of the OAS, the document through which it withdrew its recognition of the contentious jurisdiction of the Court. Even if the Court were to accept with immediate effect its withdrawal from the Court, it would not affect the decided cases, as Peru’s decision cannot be retroactive.

For the above-stated reasons, the victim requested that the Court:

- a. declare the total non compliance of Peru and reiterate that it continues to be obligated, in accordance with Article 68 of the American Convention on Human Rights, to comply with the judgments of the Court, in particular in this case, independent of the withdrawal of the recognition of the contentious jurisdiction of the Court;
 - b. adopt urgent measures that ensure the freedom of Ms. María Elena Loayza Tamayo and the internal measures necessary for compliance with the other points of the Judgment on Reparations;
 - c. call the attention of the States of the region, collective guarantors of the system, and of the States Parties in accordance with Article 65 of the American Convention on Human Rights to the non-compliance with the judgment;
 - d. request that the General Assembly of the OAS consider the suspension of Peru from the organization until it complies with the judgment rendered in this case; and
 - e. inform the various international organizations of Peru's decision.
14. The July 26, 1999 writing of the Inter-American Commission in which it submitted its observations to the June 14, 1999 Order of the Second Transitional Criminal Court of the Supreme Court of Peru. In that writing, the Commission stated that:
- a. the State has not executed in a full and complete manner the November 27, 1998 Judgment.
 - b. Article 67 of the American Convention on Human Rights establishes in an unequivocal manner that the judgments rendered as a result of a contentious proceeding before the Court can not be impugned;
 - c. the noncompliance of Peru constitutes defiance of Article 68(1) of the American Convention on Human Rights, which establishes the obligatory nature of the judgments of the Court and, categorically and unequivocally, the obligation of the States Parties to that Convention to comply with that which is ordered in the judgments of the Court. The alleged unenforceability of the Judgment on Reparations has its origin in Peru's interpretation of its internal law;
 - d. it is the duty of the State to comply in good faith with its conventional obligations; a principle that is referenced in Article 31 of the 1969 Vienna Convention on the Law of Treaties;
 - e. on ratifying the American Convention on Human Rights, States Parties undertake obligations of protection with respect to all individuals under their respective jurisdictions. From there derives the duty to comply and to oblige to comply in good faith with the decisions of the judicial organ established by this Convention;

f. “the object and purpose of the Convention is to establish an Inter-American system of protection wherein the rights and freedoms enumerated are made fully effective, as is suggested in its preamble. Therefore, the organs of the State are obligated to respect them and ensure them in accordance with Article 1(1) of the Convention”;

g. the judgments of the Court should be observed in an immediate and integral manner; if they had to conform to the internal legislation of the States Parties to be enforceable, the protection of the International Law of Human Rights would become illusory and would be left to the sole discretion of the State and not to the supranational organ whose judgments should be fulfilled in good faith by the States;

h. the supremacy of the international obligations of the State over internal law constitutes one of the pillars of general Public International Law, as set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties;

i. the principle *pacta sunt servanda*, codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties, establishes that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” The State should observe the judgments adopted in accordance with the norms of the Inter-American system and the principles of International Law;

j. Article 68(2) of the American Convention on Human Rights establishes that the part of the judgment that stipulates compensatory damages may be executed in the country concerned in accordance with the domestic procedure governing the execution of judgments against the State; and

k. Law 23.506 on Habeas Corpus and Amparo and the Law of the Judicial Power, both in force in Peru, “suggest” that the judgments of this Court have complete legal validity and effectiveness in the internal jurisdiction of the State and are enforceable without the need to review their compatibility with domestic law.

For the above reasons, the Commission requested that the Court:

- a. reject as inadmissible the submission of the State and require the execution of the operative paragraphs of the November 27, 1998 Judgment; and
- b. proceed to inform the Secretary General of the OAS and the States Parties to the American Convention on Human Rights about this matter.

Moreover, adopt the request of the victim that measures be adopted that assure compliance with the Judgment on Reparations.

15. The writing of the victim, received in the Secretariat of the Court on September 23, 1999, in which reference is made to the final decisions adopted by Peru concerning the judgments rendered by the Inter-American Court, and the declarations made by the high authorities of the Government with respect to her situation. She adds that, as a consequence of these facts, there is a latent threat

against her security and physical and emotional stability, for which reason she solicits that the Court

take relevant measures to end the hostilities and defamation campaigns and threats against [her] physical and mental integrity. In the same manner, that it call for adequate actions so that the State of Peru observes the Order emitted by this Honorable Court.

CONSIDERING:

1. That on June 14, 1999, the Second Transitional Criminal Court of the Supreme Court of Peru emitted an order that declared that this Tribunal's November 27, 1998 Judgment on Reparations was "unenforceable." That order stated that "the petitioners did not fulfill the requirement of exhaustion of domestic jurisdiction so as to resort to the Inter-American jurisdiction."
2. That, in reference to the argument contained in the cited order concerning the failure to exhaust internal remedies, this Court decided in the January 31, 1996 Judgment on Preliminary Objections to reject the objection interposed by Peru.
3. That, despite the order in the above referenced Judgment on Preliminary Objections, the State alleged, in the proceeding on the merits of the case, the "inadmissibility of the application due to the lack of the exhaustion of domestic remedies," an argument that was rejected on grounds of "gross impropriety" in the Judgment on the Merits rendered on September 17, 1997.
4. That Peru interposed, on March 2, 1999, an application for interpretation of the Judgment on Reparations, an interpretation that was rendered by the Court in its Judgment of June 3, 1999. This procedural conduct of the State is manifestly contradictory to the subsequent decision of the internal organs to declare the above-cited judgment to be "unenforceable" and, its resulting noncompliance.
5. That Article 67 of the American Convention on Human Rights establishes that "the 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, that 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."
6. That Article 68(1) of the American Convention on Human Rights stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The conventional obligations of the States Parties bind all of the authorities and organs of the State.
7. That this obligation corresponds to a basic principle of the law of international state responsibility, supported by international jurisprudence, according to which States must fulfill their conventional international obligations in good faith (*pacta sunt servanda*) and, as the Court has already stated, can not for reasons of domestic law fail to assume already established international responsibility. (*cf.* *International Responsibility for the Promulgation and Enforcement of laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35).

8. That, in this respect, Article 27 of the 1969 Vienna Convention on the Law of Treaties codifies a basic principle of general international law in observing that

[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

9. That, by virtue of the definite and unappealable nature of the judgments of the Court, they should be promptly fulfilled by the State in an integral manner.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Articles 67 and 68(1) of the American Convention on Human Rights, Article 25 of the Statute of the Court, and Article 29 of the Rules of Procedure of the Court,

DECIDES:

1. To hold, in accordance with the principle of *pacta sunt servanda*, and in conformity with that provided for in Article 68(1) of the American Convention on Human Rights, that the State has a duty to promptly comply with the November 27, 1998 Judgment on Reparations rendered by the Inter-American Court of Human Rights in the Loayza Tamayo Case.

2. To notify the State, the Inter-American Commission on Human Rights, and the victim of the present Order.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary