

Inter-American Court of Human Rights

Case of Acevedo-Jaramillo *et al.* v. Peru

Judgment of November 24, 2006 (*Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*)

In the case of *Acevedo-Jaramillo et al. v. Peru*,

The Inter-American Court of Human Rights (hereinafter, "the Court", or "the Inter-American Court" or "the Tribunal"), composed of the following judges**:

Sergio García-Ramírez, President;
Alirio Abreu-Burelli, Vice-President;
Antônio A. Cançado-Trindade, Judge;
Cecilia Medina-Quiroga, Judge;
Manuel E. Ventura-Robles, Judge; and
Javier de Belaunde-López de Romaña, Judge *ad hoc*;

also present,

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

pursuant to 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"), delivers the following judgment on the requests for interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs issued by the Court on February 7, 2006 in the case of *Acevedo-Jaramillo, et al.* (hereinafter "the Judgment of the Court") filed on May 29 and 30, 2006 by Saavedra-Rivera, Héctor Paredes-Márquez, Pablo Gonza Tito and Marcelino Isidro Huere, who are the victims' representatives other than the common intervener for the representatives.

** Judge Diego García-Sayán, a Peruvian national, was not part of the Court in this case because at the time he was sworn in, the State of Peru had already appointed a judge *ad hoc* pursuant to the provisions of Article 10 of the Statute of the Inter-American Court of Human Rights. Furthermore, Judge Oliver Jackman did not participate in the deliberations and signing of the instant Judgment because, as he informed, due to reasons beyond his control, he would be unable to attend the 73rd Regular Session of the Court.

I**INTRODUCTION OF THE REQUESTS FOR INTERPRETATION AND THEIR PURPOSE**

1. On February 7, 2006, the Court delivered the Judgment of Preliminary Objections, Merits, Reparations and Costs in the instant case.
2. The Judgment of the Court was notified to the parties on March 1, 2006.
3. On May 29, 2006, Manuel Saavedra-Rivera and Héctor Paredes-Márquez, who are representatives other than the common intervener, filed two requests for interpretation of the Judgment of the Court, according to Articles 67 of the Convention and 59 of the Rules of Procedure.
4. On May 30, 2006, Pablo Gonza Tito and Marcelino Isidro Huere, who are representatives other than the common intervener, filed a request for interpretation of the Judgment of the Court, according to Articles 67 and 59 of the Rules of Procedure.
5. In the above mentioned requests for interpretation, the petitioners addressed several issues and made inquiries on the following matters: a) persons who are victims in the case of Acevedo-Jaramillo et al. according to the Judgment of the Court and requests for inclusion of victims; and b) terms to make payment of non pecuniary damages and reimburse costs and expenses according to the Judgment of the Court.

II**JURISDICTION AND COMPOSITION OF THE COURT**

6. Under Article 67 of the Convention,

[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. Pursuant to the above-cited provision, the Court has jurisdiction to interpret its judgments and, when considering a request for interpretation, it must, whenever possible, be composed of the same judges who delivered the judgment of which the interpretation is being sought (see Article 59(3) of the Rules of Procedure). On this occasion, the Court is composed of the same judges¹ who delivered the judgment of which the interpretation is being sought.

III**PROCEEDINGS BEFORE THE COURT**

¹ With the exception of Judge Oliver Jackman who, due to reasons beyond his control, was unable to attend the meeting.

8. On June 1, 2006, the term to file requests for interpretation set forth in Article 67 of the Convention expired.
9. On June 24, 2006, Robin Elguera-Cancho filed a brief requiring clarification of operative paragraphs 6 and 7 of the Judgment of Preliminary Objections, Merits and Reparations issued by the Court on February 7, 2006.
10. On July 24, 2006, according to the provisions of Article 59(2) of the Rules of Procedure and following instruction of the President of the Court, the Secretariat of the Court served a copy of the requests for interpretation filed on May 29 and 30, 2006 (*supra paras.* 3 and 4) on the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), the State of Peru (hereinafter "the State" or "Peru") and the common intervener for the victims' representatives and notified them that they may file written arguments until September 20, 2006. Likewise, the Secretariat sent a note to the State reminding it that, pursuant to Article 59(4) of the Rules of Procedure, "[a] request for interpretation shall not suspend the effect of the judgment."
11. On September 19, 2006 the common intervener for the victims' representatives requested a time extension to file written arguments to the requests for interpretation of the Judgment delivered by the Court on February 7, 2006.
12. On September 20, 2006, following the instructions of the President of the Court, the Inter-American Commission, the State and the common intervener for the victims' representatives were granted a time extension up to October 4, 2006 to file their written arguments on the requests for interpretation.
13. On September 20, 2006, the Inter-American Commission submitted written arguments on the requests for interpretation filed on May 29 and 30, 2006.
14. On September 20, 2006, César Passalacqua-Pereyra and Michael Lores-Góngora² filed their "arguments on the Request for Interpretation of the Judgment of February 7, 2006" whereby they stated their position as to who should be considered a victim in the case. Furthermore, they made requests for interpretation in relation to other issues of the Judgment of the Court which had not been included in the original requests for interpretation (*supra para.* 5).
15. On September 25 and October 2, 2006, the State filed written arguments on the requests for interpretation together with "complementary documents" in support of said arguments. Said briefs were at first filed on September 20 and 28, 2006, without their exhibits.
16. On September 28 and October 2, 2006, Pablo Gonza Tito and Marcelino Isidro Huere filed written "arguments" on the request for interpretation (*supra para.* 4) whereby they asserted new requests.
17. On October 4, 2006, the common intervener for the victims' representatives filed written arguments on the requests for interpretation. The exhibits to that brief were filed on November 3, 2006.

² These people were included as alleged victims in the application of the Commission, but were not declared victims in the Judgment of the Court of February 7, 2006.

18. On August 13, September 20 and October 19, 2006, Manuel Saavedra-Rivera and Héctor Paredes-Márquez filed written arguments on the request for interpretation (*supra* para. 3), whereby they asserted new requests.

19. On October 31, 2006, César Passalacqua-Pereyra and Michael Lores-Gongora filed "arguments on the Request for Interpretation" of the Judgment of February 7, 2006 whereby they stated their position as to who should be considered a victim in the case and submitted several dismissal orders. Said brief was at first filed on September 20 and 28, 2006, without their exhibits.

IV ADMISSIBILITY

20. The Court must now verify whether the form and terms of the requests for interpretation comply with the applicable rules.

21. Under Article 67 of the Convention,

[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.

22. The relevant provisions of Article 59 of the Rules of Procedure read:

1. The 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 issues relating to the meaning or scope of the judgment of which the interpretation is requested.

[...]

2. The Secretary shall transmit the request for interpretation to the parties to the case and shall invite them to submit any written comments they deem relevant, within the time limit established by the President.

[...]

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.

23. Under Article 29(3) of the Rules of Procedure, "Judgments and orders of the Court may not be contested in any way."

A) Requests filed out of the time limit established in Article 67 of the Convention

24. According to the provisions of Article 67, owing to the fact that the ninety-day term expired on June 1, 2006, the Court deems inadmissible the requests filed after the expiration of said term in relation to the interpretation or clarification of the Judgment of Preliminary Objections, Merits and Reparations issued by the Court on February 7, 2006 (*supra* paras. 9, 14, 16 and 18).

25. Furthermore, the Court notes that the right to file, at the appropriate procedural moment, written arguments on the requests for interpretation of the above-referred Judgment, does not entail the right of those who filed requests for interpretation to file additional requests (*supra* paras. 16 and 18). Moreover, the

Court will not take into account those arguments filed out of the stipulated time limit (*supra* para. 19).

B) Requests filed within the time limit established in Article 67 of the Convention

26. The Court has verified that Manuel Saavedra-Rivera and Héctor Paredes-Márquez; and Pablo Gonza Tito and Marcelino Isidro Huere filed requests for interpretation on May 29 and 30, 2006, within the time limit set forth in Article 67 of the Convention (*supra* para. 21), as the Judgment of the Court was notified on March 1, 2006.

27. In addition, as previously decided by this Court, a request for interpretation must not be used as a means for challenging a judgment, for it can only be used to request the Court to clarify the meaning of a judgment when it is argued that the language of its operative paragraphs or its considerations lacks clarity or precision, provided that such considerations have a bearing on the operative paragraphs; hence, no party may seek to alter or annul the judgment through a request for interpretation.³

28. In addition, the Court has held that a request for interpretation of a judgment cannot be used to raise issues of fact or of law already asserted at the appropriate stage of the proceedings and on which the Court has delivered a decision.⁴

29. In order to assess the validity of the request for interpretation and, in turn, to clarify the meaning and scope of the Judgment of February 7, 2006, delivered by the Court (*supra* para. 1), the Court will now consider the issues in the instant case according to the subject-matter thereof under the following subtitles, to wit: a) the persons who are victims in the case of Acevedo-Jaramillo, et al., and the requests for inclusion of additional victims (Chapter V of the instant Judgment); and payment terms applicable to non pecuniary damages and reimbursement of costs, according to the Judgment of the Court (Chapter VI of the instant Judgment).

V

VICTIMS IN THE CASE OF ACEVEDO-JARAMILLO ET AL., ACCORDING TO THE JUDGMENT OF THE COURT AND REQUESTS FOR INCLUSION OF ADDITIONAL VICTIMS

³ Cf. *Case of the Serrano Cruz Sisters*. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations. (Article 67 of the American Convention on Human Rights). Judgment of September 9, 2005. Series C No. 131, para. 14; *Case of Lori Berenson-Mejía*. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations. (Article 67 of the American Convention on Human Rights). Judgment of June 23, 2005. Series C No. 128, para. 12, and *Case of Juan Humberto Sánchez*. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations. (Article 67 of the American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 14.

⁴ Cf. *Case of the Serrano Cruz Sisters*. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations, *supra* note 3, para. 15; *Case of Lori Berenson-Mejía*. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations, *supra* note 3, para. 11, and *Case of Juan Humberto Sánchez*. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations, *supra* note 3, para. 40.

Questions and requests asserted in the requests for interpretation

30. In the applications filed on May 29, 2006 (*supra* para. 3) Manuel Saavedra Rivera and Héctor Paredes-Márquez requested the Court:

a) To include Calixta Sánchez-Cabello as beneficiary of the Judgment delivered by the *Sala Especializada de Derecho Público* (Public Law Specialized Chamber) on February 6, 1997. They stated that: by Resolution No. 2432 she was dismissed as a result of an assessment made under Resolution No. 33-A-96; therefore, she should be considered a beneficiary of said judgment; in paragraph 35 of the application, when expressly referring to the workers dismissed under Resolution No. 33-A-96, the Commission failed to include 38 workers, including the above-named worker; and Sánchez-Cabello is also a beneficiary of the final judgment of the *Sala Especializada de Derecho Público* (Public Law Specialized Chamber) rendered on December 18, 1998, ordering that things be reinstated to the conditions prior to the violation. They attached a copy of the order dismissing the above-named worker;

b) To include Thomas Ccahuancama-Ccerhuayo as beneficiary of the judgment of the *Sala Especializada de Derecho Público* (Public Law Specialized Chamber) rendered on September 23, 1998. They stated that in said judgment, Ccahuancama-Ccerhuayo was wrongfully omitted as beneficiary. However, by Order of October 13, 1998, the *Sala Especializada de Derecho Público* (Public Law Specialized Chamber) redressed the mistake including the above-named worker in the judgment of September 23, 1998 as one of the plaintiff-beneficiaries thereof. They attached a copy of the order of October 13, 1998;

c) To include, as beneficiaries of the Judgment of the Court, 11 workers who were dismissed on grounds of redundancy or resulting from their assessment by Resolution No. 3775 of December 5, 1999, who filed an application against said dismissal Resolution No. 3776, and who were awarded a final judgment by the Constitutional Court on March 30, 2004 ordering reinstatement to their job positions. They attached a copy of the judgment delivered by the Constitutional Court;

d) To include 56 workers as beneficiaries of the judgment rendered by the *Sala Especializada de Derecho Público* (Public Law Specialized Chamber) on November 16, 1998. They stated that said workers were dismissed under Resolution No. 575, and filed copy of the 43 dismissal orders. They further asserted that the Commission considered them as alleged victims in the application.

e) To extend the effects of the acknowledgment made by the State to the persons who request to be recognized as victims under the doctrine of *estoppel*; and

f) To "clarify and specify the scope of the provisions of the Judgment" regarding to the total number of beneficiaries of the Judgment of the Court.

31. In the application filed on May 30, 2006, (*supra* para. 4) Pablo Gonza Tito and Marcelino Isidro Huere referred to Judgment of November 16, 1998 "rendering legally ineffective Resolution No. 575 of April 1, 1996 [...] that declared the strike illegal" and to which respect they enquired:

- a) Whether the Court, in its determination of the 45 victims out of the 288 persons considered by the Commission, excludes the remaining 243 victims from the Judgment of the Court despite they were able to prove the existence of dismissal orders evidencing that they were dismissed under Resolution No. 575. Moreover, they stated that "the above-mentioned judgment includes a general order that should be fulfilled regarding to all those SITRAMUN members who were dismissed under Mayoral Resolution No. 575, and that the beneficiaries thereof are individuals that can be determined." To this respect, they attached copy of the orders of dismissal of Pablo Gonza Tito and Marcelino Isidro Huere and further stated that they were dismissed under Resolution No. 575;
- b) Whether "the request for execution of the judgment by the Peruvian State [...] is limited to those 45 persons determined by the Court in Paragraph 249 or to all the victims affected by Municipality Resolution No. 575 according to paragraph 248 of the Judgment of the Court of February 7, 2006"; and
- c) Whether according to paragraph 227 of the Judgment of the Court "the Peruvian State should set aside the rights protected by the judgments awarded to [those persons] whose names are not included in the judgment delivered by the Court on February 7, 2006."

Arguments of the Inter-American Commission

32. The Commission argued that:

- a) Regarding to the workers who were dismissed for striking declared illegal to which judgment of November 16, 1998 refer and who were not declared victims by the Court, a similar principle to that used in the case of *Montero-Aranguren et al.* should be applied so that "any ruling made in connection with the violations committed against them and any pertinent compensation at this international stage does not eliminate or hinder the effective protection of their individual interests in the domestic venue;"
- b) Two different judicial adjudication processes may be distinguished in the paragraphs of the Judgment; on the one hand, the issue of whether the failure by the State to comply with local rulings violates the provisions of the Convention, based on generic standards regarding the declaration of the victims of said violation; and, on the other hand, the specific identity of those who have proven before the Court their capacity as victims of said violation;
- c) For the case of the victims of the judgment delivered on November 16, 1998, the Court sets the standard of evidence adopted according to paragraph 249 of the Judgment, i.e. submission of a dismissal order. In its report on the merits "based on the allegations presented by the parties in the proceedings and impliedly accepted by means of the acknowledgement of international responsibility" made by the State, the Commission considered as victims those 288 persons "who had declared to have been adversely affected as a result of the failure to comply with the judgment of November 16, 1998", regardless of whether they had filed the related dismissal orders;

d) The concept of "victim" may be understood as an "injured person as a result of a state act in violation of the Convention" and as a "person who has been declared a victim by the Court". It is likely that a person falls into one or both categories. The former is the case of the 243 persons who have not been individualized by the Court for they have not been declared victims in the Judgment of the Court; consequently, no reparations have been awarded to them in the Inter-American system and no follow-up measures regarding to state obligations have been ordered; however, this does not mean that the injuries sustained by those persons do not persist;

e) Although the Judgment of the Court fails to recognize the rights of those 243 persons who have not been declared victims and to order reparations in their favor, it has not declared that the injuries sustained by them have not existed or still exist. The Judgment is not aimed at denying rights to those workers who have been dismissed on illegally recognized grounds or discharged under a domestic order; and

f) The Court, in its ruling on the illegal nature of certain state acts, like the failure to comply with the judgments delivered in favor of the workers, should give notice of the state acts affecting the whole group of injured persons for said violation. Even though in the Inter-American system follow-up measures of compliance have only been adopted regarding to 45 of the victims, the obligations of the State towards the remaining 243 victims prevails, for they have been awarded relief under the judgments delivered in the domestic system and, therefore, they are still entitled to enforce their rights as long as they prove that those judgments remain unfulfilled.

33. *Arguments by the common intervener and César Passalacqua-Pereyra and Michael Lores-Góngora*

In their arguments on the requests for interpretation:

a) The common intervener (*supra* para. 17) argued that:

i. "The Judgment of the Court has set a way of determining the beneficiaries of the judgment who have not been identified therein so as they may be considered victims within the scope of said judgment with right to the reparations awarded thereby;"

ii. Two of the obligations assigned by the Court to the State consist in the full and definite identification of the victims by the Peruvian Courts; and the enforcement of the right to the reparations awarded by the Judgment of those persons identified as and declared beneficiaries in the domestic system;

iii. Paragraph 227 of the Judgment of the Court sets out the classification of the victims in the instant case in three groups. The first group gathers the victims named in the Judgment. The second group includes the victims who are not named in the Judgment but are listed in the application. The third group refers to the victims who are beneficiaries under a judgment but have not acted as applicants; this category groups the beneficiaries of the judgment of November 16, 1998, who acted through union representatives, as stated in the

Judgment of the Court, and whose rights are protected by said Judgment;

iv. Consistent with paragraph 248, whereby the Court stated that the beneficiaries of the Judgment are individuals that can be determined, in paragraph 259, the Court states that the domestic courts have jurisdiction to enforce the judgment and determine who are the workers regarding to whom the partial or total compliance with the judgments is still pending, including the Judgment of November 16, 1998. For those reasons, in paragraph 298, the Court declares the victims taking into account that domestic courts must make certain determinations as established in paragraph 259; and

v. In the proceedings before the Commission, they filed copies of several dismissal orders, but the Commission did not submit said orders to the Court; and

b) César Passalacqua-Pereyra and Michael Lores-Góngora (*supra* para. 14) argued that:

i. The vacuums in the Judgment of the Court have been used to adopt arbitrary orders. Owing to the fact that "the list of beneficiaries has not been completed," domestic authorities are willing to restrict the rights of approximately 290 individuals;

ii. The Court should now explain its implicit statements. The Court has expressly stated that the exhibit containing the list of victims is incomplete and that in Peru, in compliance with judicial decisions, the missing names should be reconsidered. Several domestic authorities are unwilling to accept said fact; and

iii. There are other persons that consider themselves as "individuals that can be determined" as victims of the non-compliance with two domestic judgments.

Arguments of the State

34. The State argued that

a) The lists of victims attached to the Judgment of the Court are accurate, for the Court has already determined who the beneficiaries are. However, there are some evident cases of persons who, in spite of being expressly named in the lists, have not been declared victims on grounds of objectively provable reasons, such as: workers who were not dismissed or who were reinstated by the Municipality of Lima and maintained their status of active workers at all times; dismissed workers who retired in 1996 and have been receiving a pension ever since; workers who executed settlement agreements with the Municipality of Lima whereby they expressly accepted the dismissal and agreed to a compensation; workers who collected social benefits upon or after dismissal in acceptance thereof; and deceased workers who stand by their successors. To that respect, the State presented arguments and

submitted documents on the “evident cases of persons who have not been declared victims” on grounds of any of the above-mentioned reasons;

b) According to the explanation above, the list of 714 individuals attached to the Judgment of the Court, revised to avoid name repetitions, includes 378 active workers, pension beneficiaries, deceased workers, and workers who executed settlement agreements or were paid social benefits. After having been revised, the list of beneficiaries attached to the Judgment names 336 individuals, 280 of SITRAMUN and 56 of ESMLL. The State understands that only 336 workers should be declared beneficiaries under the Judgment of the Court; and

c) Paragraphs 227, 248 and 249 of the Judgment of the Court should be interpreted taking into account their order of appearance. Thus, paragraph 227 includes a general view of those who might be declared victims and paragraphs 248 and 249 exclusively refer to the workers dismissed for striking. Paragraph 249 clearly sets forth that the Court considers that only 45 out of the 288 persons named in the application can be declared victims. The Court itself has excluded the remaining 243 persons, so they cannot be deemed as beneficiaries by the State.

Considerations of the Court

35. The Court finds it necessary to divide this chapter as follows: (1) Considerations regarding the victims in the Case of Acevedo-Jaramillo et al., according to the judgment of the Court; and (2) the requests for inclusion of additional victims.

1) *Victims in the Case of Acevedo-Jaramillo et al., according to the judgment of the Court*

36. This Court notes that the requests for interpretation refer to the victims of the non-compliance with the orders of *amparo* [protection of constitutional guarantees and rights] issued by the domestic courts on February 6, 1997⁵ and on November 16, 1998⁶ Furthermore, the Court was requested to clarify and specify the scope of the provisions of the Judgment regarding to the total number of beneficiaries under the Judgment of February 7, 2006 (*supra* para. 30.f).

37. To this respect, the Court finds that the scope of the provisions of the Judgment is clear as regards the victims in the instant case. However, the Court deems it appropriate to refine the scope of paragraphs 232, 235, 245, 249, 253, 259, 265, 270, 275 and operative paragraph 3 of the Judgment of February 7, 2006, whereby the victims in the instant case for non-compliance with the above-mentioned domestic judgments were declared.

38. The aforementioned orders of *amparo* [protection of constitutional guarantees and rights] issued on February 6, 1997 and November 16, 1998 (*supra* para. 36)

⁵ Issued by the *Sala Especializada de Derecho Público* (Chamber Specializing in Public Law).

⁶ Issued by the *Sala Corporativa Transitoria Especializada de Derecho Público* (Corporate Provisional Chamber Specializing in Public Law).

resolved the writs of *amparo* [protection of constitutional guarantees and rights] filed by the Union on behalf of its members; that is to say, they differ from other judgments referring to beneficiaries whose names were not listed in the writs or in the domestic judgments issued in connection therewith. As regards those judgments, in paragraphs 235 and 248 of the Judgment of February 7, 2006, the Court stated that the same "include[...] a general order that should be fulfilled regarding to all those SITRAMUN members who were dismissed under Resolution" No. 033-A-96 in one case, and under Resolution No. 575 in the other. Moreover, this Court noted that the beneficiaries of said judgments are individuals that can be "determined".

39. In paragraphs 236 and 249 of the Judgment, the Court then proceeded to identify the victims based on the evidence submitted in the proceedings, in relation to the aforementioned domestic rulings.

40. As regards the above-mentioned Judgment of February 6, 1997, the Commission, in its application, identified 355 workers as alleged victims; nonetheless, copies of the orders of dismissal of 354 of those workers have been submitted to the Court. In order to make the list of victims, the Court took into account the above-referred orders submitted to the Court evidencing that those workers were dismissed under Resolution No. 033-A-96. The names of those 354 individuals are listed in the schedule of victims attached to the Judgment of the Court of February 7, 2006.

41. As regards the above-mentioned Judgment of November 16, 1998, the Commission, in its application, identified 288 workers as alleged victims; nonetheless, copies of the orders of dismissal of 45 of those workers have been submitted to the Court. In order to make the list of victims, the Court took into account the above-referred orders submitted to the Court evidencing that those workers were dismissed under Resolution No. 525. 033-A-96. The names of those 45 individuals are listed in the schedule of victims attached to the Judgment of the Court of February 7, 2006.

42. The Court also deems it appropriate to highlight that, although there may be more beneficiaries of the domestic orders of *amparo* [protection of constitutional guarantees and rights] of February 6, 1997 and November 16, 1998, in the Inter-American proceedings pending before this Court it could only be proven that the victims of the first judgment are the 354 individuals named in the schedule of victims attached to the Judgment of the Court of February 7, 2006, and that the victims of the second judgment are the 45 individuals named in said Exhibit. Said determination is final in the case of Acevedo-Jaramillo et al.

43. The Court belatedly observes that, after rendering the Judgment, other dismissal orders were submitted. According to the provisions of Article 67 of the Convention, the Judgment of the Court is final and the Court lacks powers to make amendments regarding the victims based on the dismissal orders that did not form part of the body of evidence weighted at the time the Judgment was delivered.

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44. Furthermore, the Court was requested to "clarify and specify the scope of the provisions of the Judgment" regarding to the total number of beneficiaries of the Judgment of the Court (*supra* para. 30.f).

45. In the Judgment, the Court analyzed the non-compliance with the different domestic judgments; therefore, in order to clarify this issue, the Court deems it appropriate to note that several criteria were applied in the determination of the victims of the non-compliance with the domestic judgments considered in the instant case, according to the specific type of judgment, to wit: a) victims whose names are listed in the domestic judgment; b) victims whose names are listed in the writ of *amparo* [protection of constitutional guarantees and right] that gave rise to the domestic judgment; c) victims whose names are listed in the evidence submitted to this Court, and whose names were not listed in the writ of *amparo* [protection of constitutional guarantees and right] or in the domestic judgment because the applications were filed by the Union on behalf of its members; and d) victims who must be determined by the domestic courts with jurisdiction to enforce domestic judgments.

a) *Victims whose names are listed in the domestic judgment*

46. This category includes 15 domestic judgments.⁷ In paragraphs 232, 245 and 253 of the Judgment, the Court stated that the victims of those judgments are the individuals whose names are listed in those judgments in their capacity as plaintiffs and joint plaintiffs. The names of those individuals are listed in the schedule of victims attached to the Judgment of the Court of February 7, 2006.

47. At this point, it is worth noticing that regarding to this group of 15 judgments, in paragraph 259 of the Judgment under the title "Arguments on exclusion of alleged victims from the scope of the judgments on dismissals due to job assessments or redundancy, administrative misconduct and participation in demonstrations and in strikes declared illegal", the Court noted that:

documents have been submitted in order to prove that, after the judgments were issued, various measures have been adopted to comply with said judgments in connection with some persons. As regards this issue, the opinion of the Court is that the domestic courts having jurisdiction to enforce the judgments on dismissals must adopt a final decision on the matter of who are the workers regarding to whom the partial or total compliance with the judgments is still pending.

48. It is to be inferred that, at the time the Judgment was delivered, this Court considered that it was probable that the 15 judgments were partially or totally executed regarding to some of the persons identified as victims therein, and whose names are listed in the schedule of victims attached to the Judgment of February 7, 2006. Therefore, in paragraph 259, the Court established that the domestic courts with jurisdiction to enforce judgments must adopt a final decision on the matter of who are the workers regarding to whom the partial or total compliance with the judgments is still pending. In other words, said individuals are victims of the non-compliance with the domestic judgments, but in the above-mentioned determinations, the domestic courts might find that there are fewer persons regarding to whom the compliance with the domestic judgment is pending and, therefore, not all of them would benefit from the compensations provided for by this Court in the Judgment.

⁷ Judgments of April 3, May 13, July 14, September 23, October 16, November 11, November 18 and December 21, 1998; and March 31, two of April 9, June 23, two of August 20 and December 22, 1999.

49. The Court considers that it is clear that the final decision on the matter of who are the workers regarding to whom the partial or total compliance with the judgments is still pending must be exclusively adopted by the aforementioned domestic courts. Therefore, it is not incumbent upon this Court to render a decision on the allegations of Peru on the "evident cases of persons who have not been declared victims" and the supporting documents (*supra* para. 34.a).

50. Furthermore, this category of domestic judgments includes the judgment rendered on July 8, 1998 referring to the dissolution of the *Empresa de Servicios Municipales de Limpieza de Lima* (Lima Municipal Cleaning Services Corporation) - *ESMLL*. The domestic court with jurisdiction to enforce said judgment determined that it should be executed regarding to 56 workers. Such determination served as basis for the Court to declare in paragraph 275 of its Judgment that those individuals are the victims in the instant case of the non-compliance with the judgment of July 8, 1998. The names of those persons are listed in the schedule of victims attached to the Judgment of the Court. The Court then provided for the way in which the State must proceed regarding to the resolution of the motion of appeal that, at the date of the Judgment of February 7, 2006, was still pending.

b) *Victims whose names are listed in the writ of amparo [protection of constitutional guarantees and right] that gave rise to the domestic judgment*

51. This category includes the judgment of June 6, 1997.⁸ As stated by the Court in paragraph 232 of the Judgment, in the domestic judgment the victims were not named, instead, they were referred to as "the claimants". Thus, in order to determine the names of the victims of the non-compliance with the above-mentioned judgment, the Court took into account the writs of *amparo [protection of constitutional guarantees and rights]* that gave rise to it. The names of those individuals are listed in the schedule of victims attached to the Judgment of the Court of February 7, 2006.

52. It is necessary to highlight that the provisions of paragraphs 47 to 49 of the instant Judgment, regarding the decisions to be adopted by the domestic courts with jurisdiction to enforce the judgments, are also applicable to judgment of June 6, 1997, according to paragraphs 254 to 259 of the Judgment of the Court of February 7, 2006.

53. According to what has been explained in paragraph 49 of the instant Judgment, it is to be inferred that, at the time of the Judgment of February 7, 2006, this Court considered that it was probable that the judgment of June 6, 1997 was partially or totally executed regarding to the 30 persons identified as victims therein, and whose names are listed in the schedule of victims attached to the Judgment of February 7, 2006. Therefore, in paragraph 259 of the Judgment of February 7, 2006, the Court established that the domestic courts with jurisdiction to enforce the judgments must adopt a final decision on the matter of who are the workers regarding to whom the partial or total compliance with the judgments is still pending. In other words, said individuals are victims of the non-compliance with the domestic judgments, but in the above-mentioned determinations, the domestic courts might find that there are fewer persons regarding to whom the compliance with the

⁸ Issued by the *Sala Especializada de Derecho Público* (Chamber Specializing in Public Law).

domestic judgment of June 6, 1997, is pending and, therefore, not all of them would benefit from the compensations provided for by this Court in the Judgment.

c) Victims whose names are listed in the evidence submitted to this Court

54. This category includes the domestic judgments referring to beneficiaries whose names were not listed in the writ of *amparo* [protection of constitutional guarantees and right] or in the domestic judgment because the applications were filed by the Union on behalf of its members.

55. This group includes the judgments of February 6, 1997 and November 16, 1998, which have been considered by the Court in paragraphs 36 to 43 of the instant Judgment and to which it hereby refers.

56. As indicated above (*supra* paras. 38 to 41), in order to make the list of victims of the judgments of February 6, 1997 and November 16, 1998, the Court took into account the above-mentioned dismissal orders submitted to the Court evidencing that those workers were dismissed under Resolutions No. 033-A-96 and No. 525 (which were declared inapplicable under the domestic judgments). The names of those individuals are listed in the schedule of victims attached to the Judgment of the Court of February 7, 2006.

57. It is necessary to highlight that the provisions of paragraphs 47 to 49 of the instant Judgment, regarding the decisions to be adopted by the domestic courts with jurisdiction to enforce judgments, are also applicable to the judgments of February 6, 1997 and November 16, 1998, according to paragraphs 254 to 259 of the Judgment of the Court of February 7, 2006.

58. According to what has been explained in paragraph 48 of the instant Judgment, it is to be inferred that, at the time of the Judgment of February 7, 2006, this Court considered that it was probable that the judgments of February 06, 1997 and November 16, 1998, were partially or totally executed regarding to the 399 persons identified as victims therein, and whose names are listed in the schedule of victims attached to the Judgment of February 7, 2006. Therefore, in paragraph 259 of the Judgment of February 7, 2006, the Court established that the domestic courts with jurisdiction to enforce the judgments must adopt a final decision on the matter of who are the workers regarding to whom the partial or total compliance with the judgments is still pending. In other words, said individuals are victims of the non-compliance with the domestic judgments, but in the above-mentioned determinations, the domestic courts might find that there are fewer persons regarding to whom the compliance with the domestic judgments of February 06, 1997 and November 16, 1998, is pending and, therefore, not all of them would benefit from the compensations provided for by this Court in the Judgment.

d) Victims who must be determined by the domestic courts with jurisdiction to enforce domestic judgments

59. This group includes the judgment of December 10, 1997⁹ and November 18, 1998,¹⁰ referring to the enforcement of collective bargaining agreements. Regarding to these two judgments, in paragraphs 265 and 270 of the Judgment of February 7, 2006, the Court adopted similar solutions regarding the determination of the victims when it established that, due to the lack of sufficient and adequate evidence necessary to determine who are the SITRAMUN members-beneficiaries of said judgments, the domestic judicial authorities with jurisdiction to enforce said judgments must adopt a final decision to that respect. Thus, the schedule of victims attached to the Judgment of the Court does not list the name of any person related to those judgments, as the domestic decision is still pending.

60. Based on the foregoing, the Court concludes that the list of victims included in the Judgment of February 7, 2006, is not a closed list because, according to the provisions of paragraphs 265, 270 and 259 of the instant Judgment and the language of the paragraphs above, the judicial determinations of the victims referred to in paragraphs 48, 49, 52, 53, 57, 58 and 59 of the instant Judgment are still pending.

2) Request for inclusion of victims

61. The Court has verified that the requests for interpretation seek the inclusion of certain persons as victims of the Judgment of the Court of February 7, 2006 and, in support of such request, copies of several dismissal orders have been attached (*supra* paras. 30 and 31). The Court finds that the request for inclusion of victims is related to the enquiries on the scope of the issues concerning the determination of victims, which were analyzed in previous paragraphs and to which it hereby refers.

62. Furthermore, in one of the requests for interpretation, petitioners request the inclusion of Thomas Ccahuancama-Ccerhuayo as beneficiary of the judgment issued by the *Sala de Derecho Público* (Public Law Chamber) on September 23, 1998. In this regard, the Court has proven the arguments asserted by the representatives in their request for interpretation, in the sense that said judgment of September 23, 1998 mistakenly failed to include the above-named worker as beneficiary and that said failure was cured by Order of October 13, 1998 issued by the *Sala de Derecho Público* (Public Law Chamber) establishing that said individual is a plaintiff-beneficiary of the judgment of September 23, 1998.

63. At the time of its Judgment of February 7, 2006, the Court was not acquainted with the above-referred mistake and the amending order, despite said order was issued on October 13, 1998. In relation to the request for inclusion of Ccahuancama-Ccerhuayo as beneficiary filed with the Court, according to the provisions of Article 67 of the Convention, the Judgment of the Court is final and the Court lacks powers to make amendments regarding the victims based on said order of October 13, 1998, that did not form part of the body of evidence weighted at the time the Judgment was delivered.

64. Based on the foregoing, the Court concludes that the above-mentioned requests for inclusion of victims implicitly include a claim for amendment of facts deemed proven in the Judgment of the Court, which is, in turn, incompatible with the

⁹ Issued by the Constitutional Court of Peru.

¹⁰ Issued by the *Sala Corporativa Transitoria Especializada de Derecho Público* (Corporate Provisional Chamber Specializing in Public Law).

objective of the Judgments of Interpretation, the sole aim of which is to clarify the meaning or scope of the Judgment at any of the parties' request.

65. Based on the foregoing considerations, the Court decides to dismiss the request for interpretation with regard to the request for inclusion of victims because it fails to conform to the provisions of Article 67 of the Convention and Articles 29(3) and 59 of the Rules of Procedure.

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* *

66. However, the Court makes clear that the State is the principal guarantor of the human rights and that, as a consequence, if a violation of said rights occurs, the State must resolve the issue in the domestic system and redress the victim before resorting to international forums such as the Inter-American System for the Protection of Human Rights; as it derives from the ancillary nature of the international system in relation to local systems for the protection of human rights. Domestic courts and state authorities have the duty to guarantee the implementation of the American Convention at the domestic level.

67. Moreover, Court's precedents must serve as a guide for the States in the decision-making process. Highest courts from different States have consistently taken this Court's precedents and advisory opinions, either issued in relation to them or to other States, as a parameter to resolve cases under their jurisdiction.¹¹

68. Based on the foregoing and in relation to the persons whose capacity as victims this Court was unable to evidence, but who are entitled to be deemed beneficiaries of the orders of *amparo* [protection of constitutional guarantees and rights] of February 6, 1997, November 16, 1998 and September 23, 1998, this Court finds that the State must act in compliance with the obligation established in Article 1(1) of the American Convention to respect and secure the rights protected under said treaty and take into account the Judgment rendered by the Court in the case of *Acevedo-Jaramillo et al.* Mention must be made that, in the instant case, Peru acknowledged its international responsibility for having failed to comply with said orders of *amparo* [protection of constitutional guarantees and rights].

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¹¹ Cf. *Inter alia*, "Simón, Julio Héctor y otros s/ privación ilegítima de la libertad, etc.- (Case of Simón, Julio Héctor et al. on illegal deprivation of freedom, etc.) Case N° 17.768-." Judgment 1767 issued by the Supreme Court of Justice of Argentina on June 14, 2005; *Ekmekdjian, Miguel A. c/ Sofovich, Gerardo y otros* (Case of Ekmekdjian, Miguel A. v. Sofovich, Gerardo et al.) Judgment issued by the Supreme Court of Argentina on July 7, 1992, more than 5,000 Judgment issued by the Constitutional Court of Peru on September 27, 2004; Genaro Villegas Judgment issued by the Constitutional Court of Peru on March 18, 2004; Judgment 0664/2004-R issued by the Constitutional Court of Bolivia on May 6, 2004. Case file: 2004-08469-17-RAC; Case file D-4041. Judgment C-004 of 2003 issued by the Constitutional Court of Colombia on January 30, 2003 with regard to a constitutional motion relative to Article 220, item 3 partial of Law No. 600 of the year 2000 of the Code of Criminal Procedure; Judgment T-1319/01 issued by the Seventh Chamber of the Constitutional Court of the Republic of Colombia on December 7, 2001 with regard to an action seeking protection of "freedom of speech, good name and right to life"; Case No. 002-2002-CC. Ordinary courts, military courts and judiciary unit. Order N° 002-2002-CC issued by the Constitutional Court of Ecuador on February 11, 2003; Agreement and Judgment N° 939 issued by the Supreme Court of Justice of Paraguay on September 18, 2002 with regard to a constitutional motion relative to Article 5 of Law No. 1444/99 "*Ley de Transición*" (Law of Transition); and Judgment No. 2313-95 issued by the Constitutional Chamber of the Supreme Court of Costa Rica on May 9, 1995.

* *

69. In turn, in one of the requests for interpretation, the inclusion of individuals as victims in the case of Acevedo-Jaramillo et al. in relation to a domestic judgment issued on March 30, 2004 (*supra* para. 30.c) was requested. The Court points out that said domestic judgment has not been considered in the international proceedings before the Commission and the Court in the instant case, because the application was filed by the Commission on July 25, 2003, that is to say, prior to the date of said domestic judgment. Therefore, the Court will not consider said request.

VI TERMS TO MAKE PAYMENT OF NON PECUNIARY DAMAGES AND REIMBURSE COSTS AND EXPENSES

Questions and requests asserted in the requests for interpretation

70. In the applications filed on May 29, 2006 (*supra* para. 3), Manuel Saavedra-Rivera and Héctor Paredes-Márquez requested the Court to "clarify and specify the scope of the provisions of the Judgment" regarding to:

- a) Whether payment of non pecuniary damages amounting to US\$3,000 to each beneficiary and reimbursement of costs and expenses amounting to US\$16,000 will be made after 12 and 15 months respectively, as from service of the Judgment; and
- b) "The provisions of Law No. 27,775 governing the enforcement of judgments issued by supranational courts, [...] which order payment of monies due within the term of 10 days a from service of the Judgment." They noted that "the State intends to pay the amounts due after the expiration of the terms established by the Court."

Arguments of the Inter-American Commission

71. The Commission argued that:

- a) The Judgment of the Court is clear when it orders that the State must pay the amounts due within 15 and 12 months, as stated in operative paragraphs 12 and 13 therein. Owing to the fact that the Judgment was notified on March 1, 2006, said terms expire on June 1 and March 1, 2007, respectively. However, the victims in the instant case have waited six to eight years to obtain reparation, and they are confident that the State will comply with the obligations declared by the Court as soon as practicable.
- b) It is beyond question that, in judgment interpretation proceedings, the Court must not abide by a domestic piece of legislation, such as Law No. 27,775.

72. The common intervener for the representatives of the alleged victims did not refer to this issue.

Arguments by the State

73. The State argued that

a) The terms granted by the Court in the Judgment are maximum time limits; and

b) With regard to the 10-day term established in Law No. 27,775, it is worth mentioning that said time frame is only applicable if, once the term granted by the Court has expired, the State fails to comply with the Judgment and the beneficiaries resort to the Judiciary to enforce their collection rights.

Considerations by the Court

74. This Court considers that the scope of the provisions of the Judgment of February 7, 2006 is clear as regards the terms of compliance therewith. Nevertheless, in order to clear any doubts, the Court will now refer to the terms within which the State must pay non pecuniary damages and reimburse costs and expenses.

75. In this regard, in its Judgment of February 7, 2006, under the title "Method of Compliance", the Court stated that:

321. The State must pay the victims or their successors the compensation for non pecuniary damage, within fifteen months, as from the date notice of this Judgment be served, as provided [...] herein.

322. The State must reimburse costs and expenses within one year, as from the date notice of this Judgment be served, as provided in paragraph 316 herein. [...].

76. The Court states that the terms asserted in its Judgment for compliance by the State with the reparations ordered therein are time periods intended to serve as deadlines for compliance by the State with the pertinent reparations. In other words, the State must comply with its obligations within the established terms, and not after them, to avoid falling in arrears.

77. Due to the fact that the Judgment of the Court was notified by the State on March 1, 2006, the 15-month term to pay non pecuniary damages expires on June 2, 2007; and the 12-month term to reimburse costs and expenses expires on March 2, 2007.

78. The Court further notes that the State, according to its arguments, has properly understood that "the terms granted by the Court in its Judgment are maximum time limits."

79. With regard to the inquiry referred to "the provisions of Law No. 27,775 governing the enforcement of judgments issued by supranational courts," (*supra* para. 70.b), the Court reiterates the provisions of its Judgment of February 7, 2006 in that the obligation to make the reparations ordered in said ruling is governed in all aspects (scope, nature, method and declaration of beneficiaries) by the International Law and must not be modified or unfulfilled by the State by resorting to its domestic laws.

80. Consequently, the terms established for compliance with the Judgment of the Court are exclusively fixed in said ruling and no provision of the domestic laws may modify them.

81. By virtue of the foregoing, the Court has clarified the meaning and scope of the provisions of paragraphs 321 and 322, and operative paragraphs 12 and 13 of its Judgment of February 7, 2006 on Preliminary Objections, Merits, Reparations and Costs.

VII OPERATIVE PARAGRAPHS

82. Therefore,

THE INTER-AMERICAN COURT ON HUMAN RIGHTS

Pursuant to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Rules of Procedure

DECIDES:

Unanimously

1. To declare inadmissible the requests for interpretation or clarification of the Judgment of Preliminary Objections, Merits and Reparations issued by the Court on February 7, 2006 filed after expiration of the term established in Article 67 of the American Convention on Human Rights, as set forth in paragraph 24 herein.

2. To determine the meaning and scope of the provisions of paragraphs 232, 235, 236, 245, 248, 249, 253, 259, 270, 275 and operative paragraph 3 of the Judgment of Preliminary Objections, Merits and Reparations issued by the Court on February 7, 2006 in the case of Acevedo-Jaramillo et al., referred to the victims in the instant case, as set forth in paragraphs 36 to 60 herein.

3. To dismiss the requests for interpretation of the Judgment of Preliminary Objections, Merits and Reparations issued by the Court on February 7, 2006 in the case of Acevedo-Jaramillo et al., referring to the requests for inclusion of victims, for they do not conform to the terms set out in Articles 67 of the Convention and 29(3) and 59 of the Rules of Procedure.

4. To determine the meaning and scope of the provisions of paragraphs 321 and 322 and operative paragraphs 12 and 13 of the Judgment of Preliminary Objections, Merits and Reparations issued by the Court on February 7, 2006 in the case of Acevedo-Jaramillo et al., referred to the terms within which the State must pay non pecuniary damages and reimburse costs and expenses, as set forth in paragraphs 74 to 81 herein.

Done in Spanish and English, the Spanish deserving full faith, in San Jose, Costa Rica, on November 24, 2006.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Javier de Belaunde-López de Romaña
Judge *ad hoc*

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary