

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF ABRILL ALOSILLA ET AL. v. PERU

JUDGMENT OF NOVEMBER 21, 2011

(Interpretation of the Judgment on Merits, Reparations and Costs)

In the case of *Abrill Alosilla et al.*,

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

Leonardo A. Franco, acting President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge, and
Eduardo Vio Grossi, 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 also "the American Convention" or "the Convention") and Article 68 of the Rules of Procedure of the Court² (hereinafter "the Rules of Procedure"), decides the request for interpretation of the judgment on merits, reparations and costs in the instant case delivered by the Court on March 4, 2011 (hereinafter also "the judgment" or "the ruling"), filed on May 13, 2011, by the representative of the victims (hereinafter "the representative").

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

1. On March 4, 2011, the Court delivered the judgment, which was notified to the parties on March 29, 2011.

¹ The President of the Court, Judge Diego García-Sayán, a Peruvian national, did not take part in the instant case pursuant to Article 19(1) of the Rules of Procedure of the Court, according to which "[i]n the cases referred to in Article 44 of the Convention, a judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case."

² Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

2. On May 13, 2011, the representative submitted a request for interpretation of the judgment on merits, reparations and costs, in accordance with Articles 67 of the Convention and 68 of the Rules of Procedure. Specifically, the representative asked for the interpretation of paragraphs 97, 107, 113, 114 and 115, as well as of the fifth operative paragraph relating to the determination of and the justification for the compensation established by the Court.

3. On May 27, 2011, in accordance with the provisions of Article 68(2) of the Rules of Procedure and on the instruction of the acting President of the Court in this case, the Secretariat of the Court (hereinafter "the Secretariat") forwarded a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") and to the State of Peru (hereinafter "the State" or "Peru") and granted them until June 27, 2011, to present any written arguments they deemed pertinent.

4. On July 25, 2011, the Inter-American Commission indicated that it had no observations to present on the said request for interpretation of judgment submitted by the representative. For its part, on July 27, 2011, the State sent it written arguments and asked the Court to declare inadmissible the request for interpretation considering that the judgments of the Court "are not subject to appeal"; that the Court had already "analyzed [and assessed] the probative elements that were provided to it," and that "the request for interpretation [...] seeks to obtain a change [in] the [operative paragraphs]."

II COMPETENCE AND COMPOSITION OF THE COURT

5. Article 67 of the Convention 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, 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.

6. According to this article, the Court is competent to interpret its decisions. In order to examine the request for interpretation and make the corresponding ruling, the Court must have, if possible, the same composition it had when it delivered the respective judgment, according to Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed of the same judges who delivered the judgment whose interpretation has been requested by the representative.

III ADMISSIBILITY

7. The Court must verify whether the request for interpretation complies with the requirement established in the applicable norms; namely, Article 67 of the Convention, cited above, and Article 68 of the Rules of Procedure, which, in this regard, stipulates that:

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision 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.

8. In addition, Article 31(3) of the Rules of Procedure establishes that “[t]he judgments and orders of the Court may not be contested in any way.”

9. The Court observes that the representative presented his request for interpretation of judgment within the 90-day period established in Article 67 of the Convention, because it was notified on March 29, 2011.

10. As the Court has ruled previously in its consistent case law, clearly supported by the applicable law, a request for interpretation of judgment should not be used as a means of contesting the decision whose interpretation is required. The purpose of this request is exclusively to determine the meaning of a ruling when one of the parties affirms that the text of its operative paragraphs or its considerations lacks clarity or precision, provided that those considerations affect the said operative paragraph.³ Consequently, it is not possible to request the modification or annulment of the respective judgment by means of a request for interpretation.⁴

11. The Court will proceed to analyze the request for interpretation submitted by the representative and, if appropriate, make the clarifications that it deems pertinent. To this end, it will examine the questions raised by the representative and the arguments of the State. As already mentioned (*supra* para. 4), the Commission indicated that it had no observations to make on the request for interpretation of the judgment.

IV INADMISSIBILITY OF THE REQUEST FOR INTERPRETATION

Arguments of the parties

12. The representative indicated that the victims “have the right to express [...] their disagreement concerning the amount [established in the judgment] for pecuniary damage.” In particular, the representative argued that the Court “inverts the juridical principle of the burden of proof so that it is for the victims to contradict the State’s initial argument which asserted that the 1993 salary restructuring absorbs the increases arising from the salary scale system,” “when it is public knowledge that, owing to the strictly confidential nature of the 1993 salary restructuring,” “the victims were not in a position to be aware of or possess the documentation related to the said salary restructuring.” He insisted that the 1993

³ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on merits*. Order of the Inter-American Court of Human Rights of March 8, 1998. Series C No. 47, para. 16; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*. Judgment of May 15, 2011. Series C No. 226, para. 11, and *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*. Judgment of August 29, 2011 Series C No. 230, para. 11.

⁴ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits*, *supra* note 1, para. 16; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs*, *supra* note 1, para. 11, and *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*, *supra* note 1, para. 11.

salary restructuring “was not designed to absorb” the increases owing to application of the salary scale, but “was a response to the rampant inflation at the time.” The representative argued that this was a “factual presumption that had been duly proved during the proceedings, but had been omitted in the consideration and the assessment of the facts of the case, and had not been developed by the Court.” In addition, he repeated that the 1993 salary restructuring “was not implemented as a substitute regime for the salary scale system, but as a need to overcome the situation experienced by the State and SEDAPAL at the time.”

13. On this basis, the representative indicated that he “had submitted specific arguments that disproved the said scope alleged by the State concerning the 1993 salary restructuring.” He argued that the State had not proved that the 1993 salary restructuring had had the effect of absorbing the increases generated by the salary scale system and, to the contrary, “the restructuring had revealed conclusively and reliably that [the State] had attempt[ed] to discredit [...] this consideration definitively. The representative added that the Court, in order to establish the pecuniary damage, “could have based itself on the same criteria of equity, taking into consideration, among other elements, the expert opinion provided by the State; but without the unfounded, non-existent and inadmissible limitation of the calculations to July 1993.” In this regard, he added that the Court could also have assessed the expert opinion presented by the representative “regarding which no observations were made, and it was not contested; hence, the State accepted it.”

14. In summary, the representative indicated that, in paragraphs 107, 113, 114 and 115 of the judgment, the Court “has made an improper finding and assessment of the facts of the case, as well as an improper use of the logical principles of the ruling and, therefore, incurs in an error of judgment and defect of substance.” According to the representative, this alleged error had been “determinant, pivotal and decisive for establishing the insignificant amount ordered to repair the pecuniary damage.” Consequently, the representative argued that the Court “cannot permit the anomalous situation of delivering by error and/or defect of substance a judgment with a manifestly contradictory and controversial meaning that also, as a result of this, is an absolutely unjust judgment,” based on which he asked the Court “to interpret the definitive meaning and scope of paragraph 115 and the fifth operative paragraph of the judgment in this case.”

15. The State indicated that the expert opinion presented as a probative element had not been refuted by the representative. Consequently, it affirmed that the Court had been clear when it indicated that “the representative did not object to the elimination of the salary scale system, but rather to the application of a law that, retroactively, nullified the said system.” The State considered that the Court “had analyzed the probative elements provided to it appropriately [and] had ruled in accordance with its principles and the authority granted to it.”

Considerations of the Court

16. The Court underscores that, according to Article 63(1) of the American Convention, it has inherent authority to order reparations and, specifically, to determine the payment of fair compensation to the injured party.⁵ Thus, the Court

⁵ Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*, *supra* note 1, para. 29.

was clear in establishing in detail the elements of evidence that were assessed and the specific criteria used by the Court in the instant case. In addition, after reviewing the information available in the case file and based on criteria of fairness, it determined the amount of the corresponding pecuniary damage. The Court took into account the particular complexity of this calculation and weighed the evidence thoroughly in order to bring to a final conclusion a dispute between the parties that had lasted more than eight years.

17. In this regard, as the representative mentioned, the Court specified that the State had indicated that the salary restructuring had not had the effect of absorbing the increases arising from the salary scale. However, in addition to this argument, the Court took into account other arguments and other evidence. In addition, the Court did not arbitrarily transfer the burden of proof to the representative. To the contrary, the Court reiterated its consistent case law that each party must argue with precision the scope that it seeks to give to the evidence it presents. In summary, the Court notes that the alleged error that the representative indicated, more than a genuine request for interpretation, relates to his disagreement with the Court's assessment of the evidence, based on what was in the case file and had been argued in that regard, as well as the fact that the Court had not considered the expert opinion offered by the representative a determinant factor. Although the representative indicated that his expert opinion had not been contested, the Court explained the reasons why it considered it insufficient as regards the dispute concerning determination of how to calculate the pecuniary damage. Moreover, the representative's intention is that the Court re-assess issues that have already decided in the judgment to establish the amount of the pecuniary damage. In this regard, the Court has affirmed the inadmissibility of using a request for interpretation to re-evaluate factual and legal issues that were raised at the appropriate procedural opportunity and regarding which the Court has adopted a decision.⁶

18. Based on the above, the request for interpretation is inadmissible because the judgment is clear as regards the elements that were assessed in order to determine the amount of the pecuniary damage, and the Court finds that the representative is trying to re-evaluate issues that have been decided by the Court, even though it is not possible to amend or expand the ruling,⁷ pursuant to Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure.

IV OPERATIVE PARAGRAPHS

19. Therefore,

⁶ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the Judgment on reparations and costs.* Judgment of the Inter-American Court of Human Rights of June 3, 1999. Series C No. 53, para. 15; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs,* supra note 1, para. 12, and *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs,* supra note 1, para. 30.

⁷ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits,* supra note 2, para. 16; *Case of Fernández Ortega et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs,* supra note 2, para. 11, and *Case of Rosendo Cantú et al. v. Mexico. Interpretation of the judgment on preliminary objection, merits, reparations and costs,* supra note 2, para. 11.

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of its Rules of Procedure,

DECIDES:

Unanimously,

1. To reject as inadmissible the representative's questioning of the justification for the compensation determined by the Inter-American Court, in the terms of paragraphs 16 to 18 of this judgment.
2. To require the Secretariat of the Court to notify this judgment to the Peruvian State, the representative of the victims and the Inter-American Commission on Human Rights.

Leonardo A. Franco
Acting President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary