

**INTER-AMERICAN COURT OF HUMAN RIGHTS  
CASE OF OSORIO RIVERA AND FAMILY MEMBERS V. PERU**

**JUDGMENT OF NOVEMBER 20, 2014**

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

In the case of *Osorio Rivera and family members*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) composed of the following judges\*:

Humberto Antonio Sierra Porto, President;  
Roberto F. Caldas, Vice President;  
Manuel E. Ventura Robles, Judge;  
Eduardo Vio Grossi, Judge, and  
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

pursuant to Article 67 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Article 68 of the Court’s Rules of Procedure (hereinafter also “the Rules of Procedure”), decides on the request for interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs issued by this Court in this case on November 26, 2013 (hereinafter also “the judgment”), filed on March 12, 2021, by the victim’s representative (hereinafter also “the representative”) and on March 21, 2014, by the Republic of Peru (hereinafter “the Peruvian state,” “the State,” or “Peru”).

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\* Judge Diego García-Sayán, a Peruvian national, did not take part in the hearing of this case or the deliberation of this Judgment, in accordance with the provisions of Article 19(1) of the Court’s Rules of Procedure. Judge Alberto Pérez Pérez, who was part of the Court’s composition when the decision on preliminary objections, merits, reparations and costs was issued, did not participate, for reasons of force majeure, in the deliberation and signing of this judgment.

## I

**REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT**

1. On November 26, 2013, the Court issued the judgement in this case, which was notified to the parties and the Commission on December 23 of the same year.
2. On March 21, 2014, the Peruvian State submitted a request for interpretation regarding 4 aspects of the judgment: (1) the reparation that ordered a reform of the criminal definition of the crime of enforced disappearance to meet international standards; (2) the considerations about amnesty laws; (3) the reparation ordered regarding training programs for the Armed Forces, and (4) the compensation amounts ordered for pecuniary and non-pecuniary damages.
3. On March 18, 2014, following the instructions of the President of the Court, the Court's Secretariat sent the request for interpretation to the representatives of the victims<sup>1</sup> and the Inter-American Commission on Human Rights (hereinafter "the Commission") and gave them until April 30, 2014, to present the written observations they considered relevant.
4. On April 28 and 30, 2014, the representatives and the Inter-American Commission submitted their respective observations to the State's request for interpretation.

**II  
JURISDICTION**

5. Article 67 of the American 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. Pursuant to said article, the Court has jurisdiction to interpret its judgments. In order to examine the request for interpretation and to decide in respect of this matter, the Court must, whenever possible, be composed of the same judges who delivered the corresponding judgment, in accordance with Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed, mostly, of the same judges who delivered the Judgment whose interpretation has been requested by the State.

**III  
ADMISSIBILITY**

7. The Court must verify if the request submitted by the State meets the requirements established in the applicable rules for requests of interpretation of judgments, namely, Article 67 of the Convention, previously cited, and Article 68 of the Rules of Procedures, which establishes in its pertinent part, 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.

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<sup>1</sup> The organization Asociación Pro Derechos Humanos (APRODEH) is acting as the representatives of the victims in the present case.

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

8. Additionally, Article 31(3) of the Rules of Procedure establishes that "[j]udgments and orders of the Court may not be contested in any way."

9. The Court notes that the State presented its request for interpretation of the judgment within the 90-day period established in Article 67 of the Convention, since the judgement was on December 23, 2013. Therefore, the request for interpretation is admissible as regards its timeliness. Regarding the other requirements, the Inter-American Court will analyze them when examining the merits of the interpretation request in the following chapter.

#### **IV ANALYSIS OF THE VALIDITY OF THE REQUEST FOR INTERPRETATION**

10. This Court will analyze the State's request for interpretation to determine whether, in accordance with the regulations (*supra* paras. 5 y 7) and standards developed in its case law, it is appropriate to clarify the meaning or scope of any point of the judgment.

11. In order to examine the State's request for interpretation, the Court considers its jurisprudence, based in the relevant regulations, whereby it has been indicated that a request for interpretation of a judgment cannot be used as a means of challenging the decision for which an interpretation has been requested. A request for interpretation must have the sole purpose of determining the meaning of the decision when one of the parties asserts that the text of its operative paragraphs or of its reasonings are unclear or imprecise, provided those reasonings affect the operative part of the judgment.<sup>2</sup> Hence, a request for interpretation may not be used to seek an amendment or nullification of the judgment in question.<sup>3</sup>

12. Additionally, the Court has indicated that it is inadmissible to use a request for interpretation to submit considerations on factual and legal matters that were already submitted at the proper procedural moment and on which the Court has already decided,<sup>4</sup> or to seek that the Court reassess issues that have already been decided upon in the judgment.<sup>5</sup> Similarly, an interpretation request cannot be used to try to broaden the scope of a measure of reparation duly ordered at the proper procedural moment.<sup>6</sup> Moreover, the Court has also indicated that the submission of abstract or

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<sup>2</sup> Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment of merits*. Order of the Court of March 8, 1998. Series C No. 47, para. 16, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 21, 2014. Series C No. 280, para. 17.

<sup>3</sup> Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment of merits*, *supra* para. 16, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra*, para. 17.

<sup>4</sup> Cf. *Case of Loayza Tamayo v. Peru Interpretation of the judgment on reparations and costs*. Judgment dated June 03, 1999. Series C No. 53, para. 15, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra*, para. 18.

<sup>5</sup> Cf. *Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*. Judgment dated August 29, 2011. Series C No. 230, para. 30, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra*, para. 18.

<sup>6</sup> Cf. *Case of Escher et al. v. Brazil. Interpretation of the Judgment on preliminary objections, merits, reparations and costs*. Judgment dated November 20, 2009. Series C No. 208, para. 11, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, *supra*, para. 18.

hypothetical situations is not consistent with the purpose of a request for interpretation of a Judgment.<sup>7</sup>

13. With this in mind, the Court will examine the issues presented by the State as well as the observations submitted by the representatives and the Commission, respectively, and will determine their validity. If the Court finds the Interpretation request valid, it will make the proper clarifications and specifications to assist in the effective implementation of the reparations ordered in the judgment, without broadening their scope. Similarly, it is proper to recall that if that were the case, the Court would be simply clarifying the text of its reasonings and considerations in the judgment, which is final and not subject to appeal (*supra* para. **iError! No se encuentra el origen de la referencia.**), as well as eliminating any doubts about its original scope.

14. The Court will consider each of the four issues raised by the State separately, in the following order: (A) the reparation that ordered reforms to the criminal definition of the crime of enforced disappearance to meet international standards; (B) the considerations about amnesty laws; (C) the reparation ordered regarding training programs for the Armed Forces, and (D) the compensation amounts ordered for pecuniary and non-pecuniary damages.

**A. The reparation that ordered reforms to the criminal definition of the crime of enforced disappearance to meet international standards**

*Arguments of the parties and the Commission*

15. The **State** indicated that, in paragraph 211 of the judgment, the Court established that the lack of an adequate definition of the crime of enforced disappearance was not a specific element that hindered the effective investigations or proceedings opened for the enforced disappearance of Mr. Jeremías Osorio Rivera. It added that, however, in paragraph 271 and in the twelfth operative paragraph of the judgment, the Court reiterated the obligation to adapt the pertinent domestic legislation, an issue that had been ordered in the judgment in the case of *Gómez Palomino v. Peru*.

16. The State highlighted that the Inter-American Court has indicated "in repeated jurisprudence that 'the contentious jurisdiction of the Court is not intended to review national legislation in the abstract, but must be exercised to hear specific cases where it is alleged that an act of the State, executed against individuals, violates the provisions of the Convention'". In this sense, the State indicated that "in its considerations on the merits of the dispute, the Inter-American Court did not find that the provision of Article 320 of the Criminal Code generated a violation of the American Convention in the specific case. Therefore, it could not have generated a duty for the State to repair the alleged harm. However, [...] the reform of the pertinent legislation was included in the section corresponding to reparations." For this reason, the Peruvian State asked the Court to interpret this specific point of the Judgment, submitting the following question: "is the reparation that ordered the adaptation of the criminal definition of enforced disappearance directly related to the facts identified by the Court that caused the violations in the case of *Jeremías Osorio Rivera et al. v Peru*, or is it a reiteration made by the Court on the basis of previous cases decided in regard to the Peruvian State in which it has ordered a similar measure of reparation?"

17. The **representatives** indicated that the request for interpretation on this issue should be declared inadmissible. They maintained that, although it is true that the Court indicated in paragraph 211 of the judgment that the definition of the crime of enforced disappearance did not have direct repercussions in the specific case, in paragraph 212 of the same judgment, the Court concluded that, while the definition of the aforementioned crime is not adapted to international standards, the State

<sup>7</sup> Cf. *Case of Cesti Hurtado v. Peru. Interpretation of the judgment on merits*. Judgment of November 19, 1999. Series C No. 62, para. 27, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 18.

will continue to fail to comply with its international obligations. Likewise, they recalled the Court's analysis in the cases of *Gómez Palomino v. Peru* and *Anzualdo Castro v. Peru*, in which they alleged that "it was not considered whether or not the inadequate definition of enforced disappearance had a direct impact on the facts of [the] previously cited cases," but rather, "once it considered proven the enforced disappearance of the victim, it proceeded to examine the case in light of the obligations contained in Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons". Consequently, the representatives maintained that the Court did not review the national legislation in abstract, as the State alleges, but that it was the result of a specific violation, that is, the enforced disappearance of Jeremías Osorio Rivera. Obligations arise from this violation and the State must comply in accordance with articles 2 of the Convention and III of the Inter-American Convention on Forced Disappearance of Persons, which are the same "the Peruvian State has been failed to comply" since the aforementioned cases of *Gómez Palomino* and *Anzualdo Castro*. Therefore, the representatives observed that the implementation of reparations, such as the adaptation of the criminal definition of enforced disappearance to international standards, constitutes a reparation "that seeks to ensure that similar acts do not occur in the future, so its scope is not limited to the specific case, but to other cases that may occur in the future, as a result of the aforementioned breach of the obligations [...] outlined."

18. On this same issue, the **Commission** noted that the requirement established in article 320 of the Criminal Code that the disappearance be "duly proven" could constitute "a source of impunity in all cases of enforced disappearance of persons, since it is the rule upon which the evidence is assessed and the criminal responsibility of those possibly involved is determined." Likewise, the Commission clarified that "the fact that in the specific case the way in which this rule affected the results is not explicit in the minutes of the case file or in the judicial decisions issued, does not rule out that the existence of the norm could have had a general effect on the evaluation of the judicial authorities and, particularly, may have a future effect with respect to the investigations that must be carried out in compliance with the judgment." Based on the foregoing, the Commission found no contradiction between the Court's determination in paragraph 211 of the judgment and the order to adapt the national legislation as a guarantee of non-repetition for the future.

#### *Considerations of the Court*

19. In section "B.4. Failure to define the crime of enforced disappearance appropriately" of the judgment, the Court determined the following:

204. The Court has already referred to the general obligation of the States to adapt their domestic laws to the American Convention. This is also applicable in the case of the signature of the Inter-American Convention on Forced Disappearance of Persons, because it is derived from the customary norm according to which a State that has acceded to an international treaty must amend its domestic law as necessary in order to ensure the execution of the obligations assumed.

205. The above means that States must define enforced disappearance as an autonomous offense and also define the wrongful conducts of which it is composed. This legal definition must be made taking into consideration Article II of the said Convention, which outlines the elements that the definition of this offense in domestic law should contain. The article in question stipulates that enforced disappearance is considered to be:

the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of liberty or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

206. In the *Gómez Palomino* case, this Court referred to the failure to adapt article 320 of the Peruvian Criminal Code to international standards because: (a) article 320 of the Peruvian Criminal Code restricted the authorship of enforced disappearance to "public officials or servants." This definition does not contain all the

forms of criminal participation that are included in Article II of the Inter-American Convention on Forced Disappearance of Persons, and is thus incomplete; (b) the refusal to acknowledge the deprivation of liberty and to provide information on the fate or whereabouts of the person in order not leave traces or evidence should be included in the definition of the offense, because this allows it to be distinguished from other offenses, with which it is usually related; however, article 320 of the Peruvian Criminal Code does not include this; (c) the wording of article 320 of the Criminal Code indicates that the disappearance must be "duly proven," and this gives rise to serious difficulties in its interpretation. First, it is not possible to know whether it should be duly proved before the offense is reported and, second, it is not clear who should execute the verification. The latter "does not allow the State to comply fully with its international obligations."

207. Regarding the allegations concerning plenary decision 09-2009/CJ-116 of the Supreme Court of Justice of the Republic of Peru of November 13, 2009, the Inter-American Court has already had the occasion to rule on this in the order on monitoring compliance with the judgment of July 5, 2011, in the case of Gómez Palomino, when it indicated that this decision does not comply with the obligation to amend domestic criminal law. The Court recalls that "the enforced disappearance remains unchanged until the victim's fate or whereabouts has been established, regardless of the modifications in the author's status as a 'public servant.'" In cases such as this one in which the victim has been disappeared for 22 years, it is reasonable to suppose that the status required of the perpetrator may vary with the passage of time. In this regard, if the interpretation contained in the said plenary decision is accepted, it would contribute to impunity. Thus, in order to meet the minimum requirements of the correct definition of the offense, the condition of "agent of the State" must be established as broadly as possible.

208. Indeed, the intention of the said plenary decision that, "even though the disappearance of the victim subsists when the law defining the offense of enforced disappearance of persons enters into force, because it refers to a special and specific offense – it can only be committed by public officials or servants – it is essential that this official status is present when the criminal law enters into force," runs counter to what this Court has indicated. The Court agrees with the representatives' argument that the plenary decision created a loophole for impunity with regard to events that had occurred before the date on which the crime of enforced disappearance was incorporated into Peruvian law because, according to this decision, it was essential that, at that time, the accused was still a public official.

209. In addition, the plenary decision being examined sought to correct the limitation in the definition of the offense contained in article 320 of the Criminal Code consisting in requiring that the disappearance be "duly proven." To this end, it proposed that this expression should be understood as: "not providing information on a person who cannot be found in the places that he normally or reasonably should be – unawareness of where he is; which is constituted when this element is present: namely, the information is not provided which the law indicates is compulsory on the whereabouts or legal status of the victim, and this must have, as a presumption or as an initial action incorporated into the legal definition, the deprivation of liberty of the individual who is a victim of the action defined by law." In principle, this is a positive measure; nevertheless, the State has noted that the plenary decision provides parameters for judicial interpretation. This signifies, according to article 22 of the Organic Law of the Peruvian Judiciary that the judge may diverge from this case law by a reasoned decision. The introduction of jurisdictional discretionality regarding the meaning of the expression "duly proven" is incompatible with the Convention, which has indicated with extreme clarity that "enforced disappearance is characterized by its clandestine nature, which requires the State, in good faith compliance with its international obligations, to provide the necessary information, because it is the State that controls the means of clarifying events that occurred on its territory. Therefore, any attempt to place the burden of proof on the victims or their next of kin deviates from the State's obligation indicated in Article 2 of the American Convention and Articles I(b) and II of the Inter-American Convention on Forced Disappearance [of Persons]."

210. Another element that could represent a problem in the said plenary decision is the assertion that "since the offense of enforced disappearance is a permanent offense, it has special characteristics in relation to the application of criminal law over time. Its start is not the deprivation of liberty, but rather the moment at which there is non-compliance with the mandate to provide information." This assertion does not make it clear whether this means that there is no offense until the moment when a request for information is presented with regard to the person who is presumed to be detained and this is refused. In the case of Heliodoro Portugal, this Court considered that article 150 of the Panamanian Criminal Code was contrary to the Convention, because "it appears to be applicable only when there is a 'refusal to provide' information on the whereabouts of someone whose deprivation of liberty is already a fact and it is known with certainty that someone has truly been deprived of their liberty." In this regard, the Court considered that "[t]his definition of the offense does not contemplate the possibility of a situation in which it is not known with certainty whether the disappeared person is or was detained: in other words, it does not include situations in which it is not acknowledged that someone has been deprived of their liberty, even when the whereabouts of the said persons is unknown. It is precisely that failure to acknowledge the deprivation of liberty which, on many occasions, endangers other fundamental rights of the disappeared person."

211. Regarding the applicability of article 320 of the Criminal Code to the specific case, the Court notes that this was one of the definitions of an offense that was considered by the Fourth Supraprovincial Court and by the National Criminal Chamber during the criminal proceedings held in the ordinary criminal jurisdiction starting in 2004, and the definition of the offense for which Lieutenant Tello Delgado was prosecuted and of which he was acquitted in the judgment of December 17, 2008 (*supra* para. 95). The latter was annulled based on inappropriate assessment of the evidence on June 24, 2010 (*supra* para. 96). During the new trial that culminated in the judgment delivered in 2011, the accused was also acquitted of the offense defined in article 320 of the Criminal Code (*supra* para. 97). However, the Court considers that no specific relationship has been revealed between the lack of effectiveness, diligence and thoroughness in the investigations and the failure to adapt the definition of the offense of enforced disappearance to the parameters of the Convention. Moreover, the representatives, in their motions and arguments brief, indicated that "the failure to adapt article 320 of the Peruvian Criminal Code to international standards has not had consequences in the processing of the investigation." In addition, none of the rulings reveal that the prosecutors reversed the burden of proof onto the complainants owing to this incorrect definition. Thus, the Court does not observe, and the representative do not maintain, that in the case sub judice this incorrect definition of the offense has been a specific factor in obstructing the implementation of the investigations and the proceedings opened into the enforced disappearance of Jeremías Osorio Rivera.

212. Nevertheless, the Court recalls that, while article 320 of the Criminal Code is not adapted correctly to international standards, the State continues to fail to comply with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.

20. Likewise, in the conclusions, the Court stated:

221. Lastly, with regard to the existing normative framework, the Court concludes that [...], while article 320 of the Peruvian Criminal Code is not adapted to the proper definition of the offense in keeping with the international parameters, the State continues to be in non-compliance with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.

21. In the chapter on reparations, section "a) Adaptation of the definition of the offense of enforced disappearance to international standards", the Court considered the following:

269. The *representatives* asked the Court to order Peru to adapt the definition of the offense of enforced disappearance to international standards, in particular Article II of the Inter-American Convention on Forced Disappearance of Persons, by the amendment, as soon as possible, of article 320 of the Criminal Code. They also requested the amendment of plenary decision No. 9/2009 which establishes a temporal limitation on the criminal prosecution of offenses of enforced disappearance of persons.

270. The *State* reiterated its observations in the chapter on the obligation to adopt provisions of domestic law (*supra* para. 175).

271. The Court appreciates the information provided by the State, but recalls that, in the judgment delivered in the case of *Gómez Palomino*, it had already ordered the said adaptation of domestic law. Thus, the Court reiterates that the State must take the necessary steps to amend, within a reasonable time, its criminal legislation in order to make the definition of the offense of enforced disappearance compatible with the international parameters for the enforced disappearance of persons, paying special attention to the provisions of the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

22. Accordingly, in the twelfth operative paragraph of the judgment, the Court ordered that: "The State must adopt the necessary measures to reform its criminal laws, within a reasonable time, in order to define the offense of enforced disappearance of persons in a way that is compatible with the relevant international parameters, as established in paragraph 271 of [the] judgment."

23. The Court considers that in the question formulated by the State underlie doubts about the meaning or scope of the ruling in terms of the link between the violations declared and the reparation ordered. Taking into consideration that one of the admissibility requirements of a request for interpretation is that it must seek clarity or precision of the operative paragraphs of the judgment or of considerations that affect the operative part of the judgment (*supra* para. 11), the Court considers pertinent to proceed to examine the considerations submitted by the State that are related to the reparation ordered about an adequate definition of the crime of enforced disappearance.

24. In paragraph 211 of the judgment, referenced by the State, the Court clearly indicated that the crime defined in Article 320 of the Criminal Code “was one of the definitions of an offense that was considered by the Fourth Supraprovincial Court and by the National Criminal Chamber during the criminal proceedings held in the ordinary criminal jurisdiction starting in 2004, and the definition of the offense for which Lieutenant Tello Delgado was prosecuted and of which he was acquitted in the judgment of December 17, 2008.” Similarly, the Court noted that, in “the new trial that culminated in the judgment delivered in 2011, the accused was also acquitted of the offense defined in article 320 of the Criminal Code [...].” Therefore, according to what emerges from the judgment itself, the Court did not carry out a review of the national legislation in abstract, but the analysis is directly related to the facts of the case, since it deals with the criminal definition under which the criminal investigations were carried out. It constitutes the norm under which the configuration of the crime and the criminal responsibility of the possible perpetrators and participants are determined, all in light of the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

25. Even when the Court concluded in its analysis that “no specific relationship has been revealed between the lack of effectiveness, diligence and thoroughness in the investigations and the failure to adapt the definition of the offense of enforced disappearance to the parameters of the Convention,” that determination was based on the actions of the officials from the Public Prosecutor's Office and the judicial authorities in the specific case.<sup>8</sup> The determination for the specific case does not overcome or invalidate the fact that the definition of the crime of enforced disappearance of persons in article 320 of the Penal Code continues to be in force, it was the crime under which Lieutenant Tello Delgado was investigated and tried, and it does not meet international standards.<sup>9</sup> In addition to the foregoing, the Court reiterated that the plenary decision 09-2009/CJ-116 of November 13, 2009 “does not comply with the obligation to amend domestic criminal law,”<sup>10</sup> and held that it may constitute a source of impunity in cases of enforced disappearance of persons, especially those such as the present one in which the victim has been missing for 22 years.<sup>11</sup>

26. In this context, the Court emphasizes that the inadequate definition of the crime of enforced disappearance, as well as the interpretation emanating from the aforementioned plenary decision, could have an effect in future investigations of cases of enforced disappearances. Thus, the Court considered it necessary to order the twelfth operative paragraph of the judgment, in which it reiterated the need to adapt the criminal definition as a guarantee of non-repetition with a general scope that has a specific objective that responds to the need for prevention towards future.<sup>12</sup>

## **B. Considerations about amnesty laws**

### *Arguments of the parties and the Commission*

27. The **State** pointed out that, in paragraphs 216 and 217 of the judgment, the Court used the phrase “the assertion is correct” after having declared that the parties and the Commission stated that the archiving of the proceedings before the military jurisdiction in this specific case was not a

<sup>8</sup> Cf. *Case of Osorio Rivera and family members v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 26, 2013. Series C No. 274, para. 211.

<sup>9</sup> Cf. *Case of Osorio Rivera and family members v. Peru, supra*, para. 206.

<sup>10</sup> *Case of Osorio Rivera and family members v. Peru, supra*, para 207.

<sup>11</sup> Cf. *Case of Osorio Rivera and family members v. Peru, supra*, paras. 207 a 210.

<sup>12</sup> “Guarantees of non-repetition [...] contribute to prevention”. Principle 23 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. UN Doc. A/Res/60/147. Resolution approved by the General Assembly of the United Nations on December 16, 2005, Principle 23.



result of the entry into force and application of the amnesty laws and that the Court recalled that in the context in which the events occurred, these laws “constituted a general obstacle to investigations of gross human rights violations,” as stated in previous cases. It also indicated that, in paragraph 221 of the judgment, the Court concluded that during the period in which the amnesty laws were applied, the State failed to comply with its obligation to adapt its domestic law to the Convention.

28. In this regard, the State argued that, although this provision is not related to a specific measure of reparation, like the previous point on the lack of adequate definition of the crime of enforced disappearance, it is necessary to remember that the Inter-American Court has stated in repeated jurisprudence that “the contentious jurisdiction of the Court is not intended to review national legislation in the abstract, but must be exercised to hear specific cases where it is alleged that an act of the State, executed against individuals, violates the provisions of the Convention”. Therefore, it asked the Court to interpret this point of the judgment, by answering the following question: “[w]hen the Court uses the expression ‘the assertion is correct,’ is it indicating that in the specific case such norms did not generate violations of the American Convention? It added that, “if the answer is positive, the State requests that this be stated clearly and precisely by the [...] Court.”

29. The **representatives** considered that the request for interpretation on the second issue should be declared inadmissible because “it was clearly defined in the judgment that the State was internationally responsible for the violation of Articles 8(1) and 25(1), during the time period when the amnesty laws were applied, in the context of the facts of the Osorio Rivera case.” In this regard, they pointed out that, although the State raises the question whether the Court meant, with the expression “the assertion is correct” in paragraph 216 of the judgment, that such norms “did not generate violations of the Convention”, paragraph 217 of the judgment, also referenced by the State, “clearly” indicated that during the period in which the amnesty laws were applied the State failed to comply with its obligation to adapt its domestic legislation to the Convention, according to article 2 of said treaty.

30. Therefore, they considered the third operative paragraph of the judgment to be relevant, since “it clearly flows that the breach of said obligation constituted an infringement of Articles 8(1) and 25(1) of the Convention, to the detriment of Jeremías Osorio Rivera and his family members.” Likewise, they highlighted that in the sixth operative paragraph of the judgment, the Court ordered the State to “open and conduct the necessary investigations and proceedings, within a reasonable time,” a measure that includes an obligation to “abstain from using mechanisms to benefit the authors such as amnesty, [...] to exempt responsibility, and to release itself from this obligation.”

31. Regarding this request, the **Commission** indicated that “the Court’s determination that the archiving of the investigation before the military jurisdiction was not due to the application of the amnesty laws, is not inconsistent with the conclusion that said norm constituted a general obstacle for the investigations of gross human rights violations.” In this regard, the Commission highlighted that, after the investigation was archived in the military jurisdiction in 1996, the investigations were reopened in the ordinary justice system in 2004. It considered that “[t]his omission, at least between 1996 and 2001, was due to the full effects that said laws had.

#### *Considerations of the Court*

32. In section “B.5. *The Amnesty Laws*” of the judgment, the Court determined the following:

213. With regard to the general obligation of the States to adapt their domestic law to the Convention, contained in Article 2 of the American Convention, for the effects of this dispute, it should be recalled that the Court has already analyzed the content and scope of amnesty laws Nos. 26,479 and No. 26,492 in the case of *Barrios Altos v. Peru* and, in the judgment on merits in that case of March 14, 2001, it declared that they were incompatible with the American Convention and, consequently, they lacked legal effects. The Court interpreted that judgment on merits in the sense that “[t]he promulgation of a law that is manifestly contrary to the obligations assumed by a State Party to the Convention constitutes per se a violation of the

latter and gives rise to the international responsibility of the State [and] that, given the nature of the violation constituted by amnesty laws Nos. 26,479 and No. 26,492, the decisions in the judgment on merits in the Barrios Altos case have general effects." In the judgment on reparations in the case of Barrios Altos, of November 30, 2001, the Court ordered the State to apply the decision of the Court in the judgment on interpretation of the judgment on merits "with regard to the meaning and scope of the declaration of the ineffectiveness of Laws Nos. 26,479 and 26,492"; in other words, to accord general effects to the decisions in the judgment on merits.

214. The incompatibility *ab initio* of the amnesty laws with the Convention has been accepted in general in Peru since the Court declared this in the judgment in the case of Barrios Altos; that is, since March 14, 2001. In addition, in some cases the State has eliminated the effects that these laws might have had at one time.

215. In the Order on monitoring compliance with judgment of September 22, 2005, this Court declared that, pursuant to the ninth considering paragraph of this order, the State had complied fully with "the application of the decisions taken by the Court in its judgment on interpretation of the judgment on merits in this case of September 2, 2001, in relation to the meaning and scope of the declaration of the ineffectiveness of Laws Nos. 26,479 and 26,492 (operative paragraph 5(a)) of the judgment on reparations of November 30, 2001." To this end, it took into account that, on April 8, 2005, the judgment of March 14, 2001, had been published in the official gazette "El Peruano," and also the decision of the Prosecutor General of April 18, 2005.

216. Bearing in mind the above and based on the period of time over which the said laws were applied, it can be inferred that, of the investigations analyzed, the only one on which the said laws could have had an impact would be the one conducted by the Third Permanent Military Court of Lima in which the archiving of the case was decided on February 7, 1996 (*supra* para. 89). The case was archived on October 15, 1996, with the favorable opinion of the Judge-Advocate of the Permanent War Council of the Army's Second Judicial Zone (*supra* para. 89). In this regard, both the representatives and the Commission stated that the archiving of the proceedings before the military jurisdiction was not a result of the entry into force and application of Laws Nos. 26,479 and 26,492. This assertion is correct.

217. Despite the foregoing, it should be recalled that, in the context in which the facts occurred, those laws constituted a general obstacle to the investigations of gross human rights violations in Peru. Thus, this Court has already declared in the cases of *La Cantuta v. Peru* and *Anzualdo Castro v. Peru* that, during the period in which the amnesty laws were applied, the State failed to comply with its obligation to adapt its domestic law to the Convention contained in Article 2 of this instrument, so that, since they were *ab initio* and in general incompatible with the Convention, the said "laws" could not generate effects, do not have any effect currently, and cannot have effects in the future.

33. Likewise, in the conclusions, the Court stated:

221. Lastly, with regard to the existing normative framework, the Court concludes that during the period in which the amnesty laws were applied, the State failed to comply with its obligation to adapt its domestic law to the Convention [...].

34. From the judgment itself it can be deduced that the phrase "the assertion is correct" in paragraph 216 refers to the immediately preceding sentence, meaning that the archiving of the proceedings before the military jurisdiction was not a consequence of the entry into force and application of Laws No. 26479 and 26492. Notwithstanding the foregoing, in paragraph 217 the Court determined that this norm constituted a general obstacle to investigations of gross human rights violations in Peru during the period in which they were applied. Therefore, as established in the judgment itself, in this case the Court declared a breach of Article 2 of the Convention for a limited period of time, without ordering any corresponding measure of reparation, due to what had already been determined in the Order to monitor compliance with the judgment of September 22, 2005, issued in the case of *Barrios Altos v. Peru*.

35. Therefore, the Court considers that the request for interpretation on this point is inadmissible since, under the guise of a request for interpretation, what is being presented is a discrepancy with what was decided by the Court and an assessment of issues that have already been raised in their procedural opportunity and on which this Court has already made a decision. In addition to the foregoing, the Court notes that, as recognized by the State itself, the issue that it requested be

clarified does not directly impact the operative part of the Judgment (*supra* para. 11). This also makes the request for interpretation inadmissible.

36. For the reasons stated, the request for interpretation is declared inadmissible on this issue, since there is no possibility for the decision to be modified or expanded (*supra* paras. 11 and 12), according to Articles 67 of the American Convention and 31(3) and 68 of the Court's Rules of Procedure.

### C. The reparation ordered regarding training programs for the Armed Forces

#### *Arguments of the parties and the Commission*

37. The **State** asked the Court to clarify the specific aspects that must be presented to comply with the reparation measure related to the training programs for the Armed Forces. In this regard, the State mentioned that paragraph 273 of the judgment indicates that the State had presented information regarding various training courses in international human rights law and international humanitarian law that had been conducted. Likewise, it indicated that, in paragraph 274 of the judgment and in the thirteenth operative paragraph, the Court ordered the State to implement permanent human rights and international humanitarian law programs in the training schools for the Armed Forces that specifically include the topics of enforced disappearances of persons and conventionality control. Therefore, taking into account the "extensive information presented by the Peruvian State in its answering brief of February 20, 2013", the State requested that the Court clarify: "what specific aspects does the Court consider must be presented to comply with this measure of reparation?"

38. The **representatives** contended that the request to interpret this point of the judgment is "manifestly inadmissible, since there is no obscurity or lack of clarity in the aforementioned judgment." In this regard, they stated that the question posed by the State "is related to the execution of the judgment itself, and not to an aspect of it that requires clarification or interpretation, since, as the Court has indicated, to date there is no evidence that the State has fully complied with the training measures for members of the armed forces" ordered in the cases of *La Cantuta v. Peru* and *Anzualdo Castro v. Peru*. Likewise, they considered that the orders to monitor compliance with the judgments issued in the aforementioned cases "should clarify the State's questions on this point."

39. The **Commission** did not submit observations on this point.

#### *Considerations of the Court*

40. In the chapter on reparations, section "b) Training programs for the Armed Forces", the Court considered the following:

272. The Commission indicated the need to implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces to avoid the repetition of similar acts in future.

273. The State presented information on the different training courses on international human rights law and international humanitarian law implemented in the jurisdiction of the Military Police, the Ministry of Defense, and the National Commission for the Study and Application of International Humanitarian Law, and considered that it had taken measures relating to permanent training and dissemination on these subjects "that are in keeping with the[ir] study and dissemination."

274. Although the Court has already ordered the Peruvian State to provide permanent training courses on human rights to members of the Police and the Armed Forces in the cases of *La Cantuta* and *Anzualdo Castro*, there is no record that, to date, these measures have been complied with fully. Given that education on human rights within the Armed Forces is crucial in order to guarantee the non-repetition of facts such as those of the instant case, the Court finds it pertinent to order the State to implement, within a reasonable time,

permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces, including, specifically, issues relating to the enforced disappearance of persons and control of conformity with the Convention.

41. Accordingly, in the thirteenth operative paragraph of the judgment, the Court ordered that: “[t]he State must implement, within a reasonable time, permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces, as established in paragraph 274 of th[e] judgment.”

42. Therefore, the Court considers that the request for interpretation on this point is inadmissible since, under the guise of a request for interpretation, what is being presented is a discrepancy with the grounds of the decision, that is, with the decision adopted by the Court on issues that were already raised at the proper procedural opportunity (*supra* para. 12). In addition to this, the parameters expressed in the judgment regarding this measure of reparation are clear and sufficient and its satisfaction will be examined during the phase of monitoring compliance with the judgment.

#### **D. The compensation amounts ordered for pecuniary and non-pecuniary damages**

##### *Arguments of the parties and the Commission*

43. The Peruvian **State** asked the Court to “please specify the criteria and the methodology used to determine the amounts set as reparations.” It argued that “such clarification is relevant because it relates to the amount that must be paid within [one] year according to paragraph 300 of the judgment.” The State clarified that “it is not questioning the amounts, or the term set for their payment, but in view of the fact that the amount of monetary reparations and the way in which they are calculated constitutes an issue of special importance in the proceedings before the Inter-American Commission and Court”, it thought it important that the decisions of the Court, “have clear and uniform criteria in this regard”.

44. The **representatives** argued that the State's request for interpretation of this point is “manifestly inadmissible, since there is no obscurity or lack of clarity in the aforementioned judgment.” Firstly, they indicated that the State “alludes to the methodology”, however, “clearly [the] Court starts from a criterion of equity, based on which it has been setting amounts for compensation for the harm caused due to violations of the human rights of the victims and their family members, focusing [...] on establishing whether or not there is a proven link between the harm claimed and the violation suffered.” They added that the “quantification of damages based on equity is part of the Court’s practice,” and “responds to the evidentiary difficulties that exist around gross human rights violations, such as those that have been subject of a decision in [this case], as well as others that have been brought to the attention of the Inter-American Court, which pursues the greatest possible protection for victims, within the framework of their right to have the harm caused fully repaired.”

45. The **Commission** did not submit observations on this point.

##### *Considerations of the Court*

46. In the chapter on monetary compensation, the Court held the following:

#### **1. Pecuniary damage**

##### *a) Loss of earnings*

277. The representatives indicated that Jeremías Osorio Rivera was 28 years old at the time of his disappearance and, based on available data, in 1991 male life expectancy in rural areas was 58.91 years.

Therefore, if he had not disappeared, he could have lived another 31 years. Given that he worked as a farmer, and raised and sold animals, the representatives made their calculation on the basis of the minimum wage in Peru, and requested the sum of US\$57,020.73 for loss of earnings.

278. The State affirmed that none of the rights recognized in the American Convention had been violated and indicated its profound disagreement with the large sums requested by the representatives arguing that, "[t]his type of claim seeks to convert the [...] Court into a financial entity, which is not in keeping with the object and purpose of its functions." In its final written arguments, the State reiterated that "since the State is not internationally responsible for the alleged disappearance of Jeremías Osorio Rivera, it is not required to provide reparation for the presumed harm caused."

279. Regarding the earnings that Jeremías Osorio Rivera failed to receive, the representatives made the respective calculation on the basis of the minimum living wage which, up until 2012, would represent the sum of US\$42,237.58 using the exchange rate of 2.60. From this amount, 25% was subtracted for personal expenses and, then, annual interest of 6% of the loss of earnings was applied from 2012, until 2022, the date on which the life expectancy of Mr. Osorio Rivera would culminate.

280. The Court considers, as it has in other cases of enforced disappearance, that, in this case in which the victim's whereabouts are unknown, it is possible to apply criteria of compensation for his loss of earnings consisting of the income he would have received during his probable lifetime. Taking into account the victim's age at the time of his disappearance, the evidence in the file, and based on criteria of equity, the Court decides to establish the sum of US\$57,500.00 (fifty-seven thousand five hundred United States dollars) for the loss of earnings of Jeremías Osorio Rivera. Half this amount must be delivered to Santa Fe Gaitán Calderón, and the other half must be distributed in equal shares among the children of Jeremías Osorio Rivera, namely: Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán.

*b) Consequential damage*

281. The representatives indicated that, since the expenses they have incurred were disbursed over almost 21 years, the family members have not kept the corresponding vouchers. The representatives therefore asked the Court to establish, in equity, the amount that the State should pay to reimburse the expenses incurred.

282. The State affirmed that none of the rights recognized in the American Convention had been violated and indicated its profound disagreement with the large sums requested by the representatives arguing that, "[t]his type of claim seeks to convert the [...] Court into a financial entity, which is not in keeping with the object and purpose of its functions." In its final written arguments, the State reiterated that "since the State is not internationally responsible for the alleged disappearance of Jeremías Osorio Rivera, it is not required to provide reparation for the presumed harm caused."

283. In order to discover the fate and whereabouts of Mr. Osorio Rivera, his family took numerous steps before the State authorities; in particular they visited courts, police stations and detention centers. The Court finds that the State should compensate them for these expenses, because they have a direct causal nexus with the violations in this case. The Court observes that the file does not contain any appropriate vouchers to determine the precise amount of the expenditure that the said steps must have represented for the members of Jeremías Osorio Rivera's family. However, based on the specific circumstances of the case, the Court finds it pertinent to establish, in equity, the sum of US\$10,000.00 (ten thousand United States dollars), as compensation for this concept. Half this amount must be delivered to Santa Fe Gaitán Calderón, and the other half to Porfirio Osorio Rivera.

**2. Non-pecuniary damage**

284. The representatives asked the Court to establish that the State must pay Jeremías Osorio Rivera for non-pecuniary damage the sum of US\$100,000.00, to be distributed among his heirs. In addition, it asked the Court to establish that the State was obliged to pay US\$50,000.00 to the permanent companion and children of Jeremías Osorio Rivera, US\$20,000.00 to the victim's mother and siblings, and US\$30,000.00 to Porfirio Osorio Rivera, who has been the main promoter in the search for justice for the disappearance of his brother.

285. The State affirmed that none of the rights recognized in the American Convention had been violated and indicated its profound disagreement with the large sums requested by the representatives arguing that, "[t]his type of claim seeks to convert the [...] Court into a financial entity, which is not in keeping with the object and purpose of its functions." In its final written arguments, the State reiterated that "since the State is not internationally responsible for the alleged disappearance of Jeremías Osorio Rivera, it is not required to provide reparation for the presumed harm caused."

286. International case law has established repeatedly that the judgment may constitute per se a form of reparation. Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damage and has established that this "may include the suffering and afflictions caused to the direct victim and his next of kin, the impairment of values that are of great significance to the individual, and also the changes of a non-pecuniary nature in the living conditions of the victim or his family."

287. Bearing in mind the circumstances of this case, the violations committed, the different degrees of suffering caused and experienced, the time that has elapsed, the denial of justice, and also the changes in the living conditions of some family members, the proven violations of the personal integrity of the victim's family, and the other consequences of a non-pecuniary nature they suffered, the Court will now establish, in equity, the compensation for non-pecuniary damage in favor of the victims.

288. First, the Court considers that the circumstances that surrounded the detention and subsequent disappearance of Jeremías Osorio Rivera were such that they caused profound fear and suffering. In previous cases, the Inter-American Court has found that similar circumstances had caused the victim serious non-pecuniary harm that had to be assessed in its full dimension when establishing compensation for this concept. In light of these criteria, the Court considers that Jeremías Osorio Rivera should be compensated for non-pecuniary damage and orders, in equity, the payment of US\$80,000.00 (eighty thousand United States dollars). Half this amount must be delivered to Santa Fe Gaitán Calderón, and the other half must be shared equally among the children of Jeremías Osorio Rivera, namely: Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán.

289. Second, the Court finds that Santa Fe Gaitán Calderón, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán have experienced great suffering or their life projects were affected as a result of the enforced disappearance of Jeremías Osorio Rivera. Consequently, the Court establishes, in equity, the sum of US\$45,000.00 (forty-five thousand United States dollars), for non-pecuniary damage, in favor of Santa Fe Gaitán Calderón, and of each child of Jeremías Osorio Rivera, namely: Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán.

290. Lastly, considering the effects on their personal integrity suffered to different degrees as a result of the facts of this case, the Court establishes, in equity, the sum of US\$20,000.00 (twenty thousand United States dollars) for Juana Rivera Lozano, and US\$10,000.00 (ten thousand United States dollars) for each of the following siblings of Jeremías Osorio Rivera: Epifanía Alejandrina, Elena Máxima, Adelaida, Silvia, Mario and Efraín, all with the surnames Osorio Rivera. In addition, the Court establishes, in equity, the sum of US\$45,000.00 (forty-five thousand United States dollars) for Porfirio Osorio Rivera, who has been the main promoter of the search for justice for the disappearance of his brother, Jeremías Osorio Rivera.

47. First, the Court notes that, as indicated by the State, its request is not related to a disagreement on the meaning or scope of the ruling ordered in the judgment regarding the specific case (*supra* paras. 5 and 43). Moreover, this Court considers that the preceding paragraphs, and in particular paragraphs 280, 283 and 287, clearly refer to the criteria used by the Court to determine the different concepts related to compensatory damages, based on the evidence provided, other similar precedents related to cases of enforced disappearance of persons, equity and reasonableness. Therefore, the Court does not deem it appropriate or necessary to make additional clarifications in this regard.

## V OPERATIVE PARAGRAPHS

48. Therefore,

### **THE COURT,**

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

### **DECIDES:**

Unanimously,

1. To declare admissible the request for interpretation of the judgment on preliminary objections, merits, reparations, and costs in the case of *Osorio Rivera and family members v. Peru*, submitted by the State, pursuant to the terms of paragraph 9 of this interpretation judgment.
2. To declare admissible the request for interpretation related to the reparation ordered by the Court to reform the criminal definition of the crime of enforced disappearance and, consequently, to clarify, through interpretation, on the basis of paragraphs 211, 212 and 271 and the twelfth operative paragraph of the judgment on preliminary objections, merits, reparations, and costs issued on November 26, 2013, the meaning and scope of the State's obligation to adopt the necessary measures to reform, within a reasonable time, its criminal legislation in order to make its definition of enforced disappearance of persons compatible with international parameters, according to the terms of paragraphs 23 to 26 of this judgment of interpretation.
3. To dismiss as inadmissible the three remaining issues of the request for interpretation submitted by the State regarding the judgment on preliminary objections, merits, reparations, and costs issued on November 26, 2013, related to the Court's considerations on the amnesty laws, the training programs for the Armed Forces, y the amounts for pecuniary and non-pecuniary damages, for the reasons indicated in paragraphs 32 to 36, 40 to 42 and 46 to 47 of this interpretation judgment.
4. To order that the Secretariat of the Court notify this interpretation judgment to the State of Peru, the representatives of the victims, and the Inter-American Commission on Human Rights of this judgment of interpretation.

Done in Spanish in San José, Costa Rica, on November 20, 2014.

Humberto Antonio Sierra Porto  
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Humberto Antonio Sierra Porto  
President

Pablo Saavedra Alessandri  
Secretary