

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF J. v. PERU

JUDGMENT OF NOVEMBER 20, 2014

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

In the case of *J v. Peru*,

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

Humberto Antonio Sierra Porto, President;
Roberto F. Caldas, Vice President;
Manuel E. Ventura Robles, Judge;
Eduardo Vio Grossi, Judge;
Eduardo Ferrer Mac-Gregor Poisot, 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 Court's Rules of Procedure (hereinafter also "the Rules"), resolves the request for interpretation of the judgment on Preliminary Objections, Merits, Reparations, and Costs issued by this Court on November 27, 2013, filed on March 17, 2014 by the victim's representative (hereinafter, "the representative") and March 21, 2014 by the State of Peru (hereinafter, "Peru" or "the State").

¹ Judge Diego García-Sayán, a Peruvian national, did not take part in the hearing and deliberation of this case in accordance with the provisions of Article 19(1) of the Court's

Rules of procedure. Additionally, due to force majeure, Judge Alberto Pérez Pérez did not participate in the deliberation and signing of this judgment.

I
REQUEST FOR INTERPRETATION
AND PROCEDURE BEFORE THE COURT

1. On November 27, 2013, the Inter-American Court issued the judgment, which was notified to the parties and to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on December 23 of the same year.
2. On March 17, 2014, the representative submitted a request for interpretation in relation to two aspects of the judgment: (i) the source of evidence for the reference to "Las Esmeraldas" street in paragraph 87 of the judgment, which he considered a material error, and "its implication in the sense of the analysis that flows into paragraph 147 of the judgment," as well as (ii) what would be the legal consequences, in accordance with Article 63 of the Convention, of the violation of the rights of the victim as provided in paragraph 227 of the judgment.
3. On March 21, 2014, the State submitted a request for interpretation due to having "uncertainties about the meaning or scope of the judgment, with considerations that affect its operative section." In particular, the State requested that the Court: (i) clarify whether the facts of paragraphs 357 to 368 must be classified as torture or cruel, inhuman, or degrading treatment or punishment, or whether said legal classification must be determined in the investigation of the national jurisdictional bodies in compliance with the reparations measure that was ordered by the Court; (ii) specify "the criteria and methodology used to determine the amounts established as expenses and costs" in paragraph 422 of the judgment, and (iii) amend the position of Mr. Federico Javier Llaque Moya² to "lawyer of the Specialized Prosecutor for Crimes of Terrorism."
4. On March 25, 2014, as provided in Article 68.2 of the rules of the Court, and following instructions from the Court's President, the Secretariat sent on the abovementioned requests for interpretation to the representative, the State, and the Commission, granting them a term up to April 25, 2014, to present the written allegations that they deemed fit.
5. On April 25, 2014, the representative, the Commission and the State presented their written arguments regarding the aforementioned requests for interpretation.

II
COMPETENCE

6. Article 67 of the Convention provides:

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.
7. Pursuant to the cited article, the Inter-American Court is competent to interpret its rulings. In order to examine the requests for interpretation and decide as so

² In its request for interpretation, the State referred to this deponent for information purposes as Javier Llaque Moya. For the purposes of this judgment, he will be identified as Federico Javier Llaque Moya, as he was identified in the judgment, which is also how Mr. Llaque Moya identifies himself in his resume.

corresponds, if possible, The should be made up of the same judges as when issuing the respective judgment, in accordance with Article 68.3 of the Rules of Procedure. On this occasion, the Court is made up, for the most part, of the judges who delivered the judgment whose interpretation has been requested by the State and the representative (*supra* note 1).

III ADMISSIBILITY

8. It is the Court's task to verify whether the request filed by the State and the representative meets the requirements established in the norms applicable to a request for interpretation of judgment, namely, Article 67 of the aforementioned Convention, and Article 68 of the Rules of Procedure which provides the following:

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.

9. Likewise, Article 31.3 of the Rules of Procedure establishes that “[j]udgments and orders of the Court may not be contested in any way.”

10. The Court notes that the representative and the State submitted their requests for interpretation, respectively, on March 17 and 21, 2014, within the ninety-day period established in Article 67 of the Convention for submitting a request for interpretation of the judgment (*supra* paras. 2 and 3) since it was notified on December 23, 2013. Therefore, the requests are admissible in what refers to the term of their presentation.

IV ANALYSIS OF THE ORIGIN OF THE REQUEST FOR INTERPRETATION

11. Below, the Court will analyze the requests from the representative and the State to determine whether, in accordance with the regulations and standards developed in its case law, it is appropriate or not to clarify the meaning or scope of the points of the judgment.

12. To analyze the origin of the requests for interpretation submitted in the case at hand, the Court takes into account its consistent case law, clearly supported by the applicable legal system, insofar as a request for interpretation of judgment cannot be used as a means of challenging the decision whose interpretation has been requested. The exclusive purpose of said request is to determine the meaning of a ruling when any of the parties maintains that the text of its operative paragraphs or its considerations lacks clarity or precision, provided that those considerations affect said operative part³. As a result, it is not possible to request amendment or nullification of the judgment in question through a request for interpretation.⁴

³ Cf. *Case of Loayza Tamayo v. Peru Interpretation of the Merits judgment*. Judgment dated March 08, 1998. Series C No. 47, para. 16, and *Case of the Supreme Court of Justice (Quintana Coello et al.) v.*

13. Additionally, the Court has upheld the inadmissibility of using a request for interpretation to submit questions of fact and law that were already raised in their procedural opportunity and on which the Court has already taken a decision,⁵ as well as to seek that the Court re-assess issues that have already been decided in the judgment.⁶ Similarly, it is not possible to try to broaden the reach of a measure for reparation ordered in a timely manner.⁷ Meanwhile, the Court has also indicated that the formulation of abstract or hypothetical situations has nothing to do with the purpose of a request for interpretation of judgment.⁸

14. Under this understanding, the Court will examine the requests for interpretation made (*supra* paras. 2 and 3), as well as the arguments presented in this regard by the parties and the Commission, respectively, and will determine their admissibility. If the respective request is deemed admissible, this Court will make the pertinent clarifications and precisions in order to contribute to the effective implementation of the measures of reparation ordered in the judgment, without expanding their scope. Along these lines, it is pertinent to remember that in this case, the wording of the considerations expressed in the judgment would simply be clarified, given that said judgment is final and unappealable (*supra* para 9), and clearing doubts about its original scope.

15. Next, the Court will proceed to analyze the arguments presented by the representative and the State in their requests for interpretation, in the following order: (A) the legal classification of the mistreatment to which Ms. J. was subjected; (B) the legal effects of the violation of rights mentioned in paragraph 227 of the judgment; (C) the criteria and methodology for determining the amounts set as costs and expenses, and (D) the application of Article 76 of the Court's Rules of Procedure.

A. The legal characterization of the ill-treatment to which Ms. J was subject.

Arguments of the Commission and the parties

16. The **State** pointed out that in paragraphs 357 to 368 of the judgment, the Court did not specify specifically whether the mistreatment that Ms. J suffered

Ecuador. Interpretation of the judgment on preliminary objection, merits, reparations and costs, judgment of August 21, 2014. Series C No. 280, para. 17.

⁴ *Cf. Case of Loayza Tamayo v. Peru Interpretation of the judgment of Merits, para. 16, and Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Interpretation of the judgment of Merits, Reparations and Costs, supra, para. 17.*

⁵ *Cf. Case of Loayza Tamayo v. Peru Interpretation of the judgment of Merits, para. 15, and Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Interpretation of the judgment of Merits, Reparations and Costs, supra, para. 18.*

⁶ *Cf. Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on Reparations and Costs. Judgment of August 29, 2011. Series C No. 230, para. 30, and Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Interpretation of the judgment of Merits, Reparations and Costs, supra, para. 18.*

⁷ *Cf. Case of Escher et al. v. Brazil. Interpretation of the judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of 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.*

⁸ *Cf. Case of Cesti Hurtado v. Peru Interpretation of the judgment of 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.*

"independently constituted torture or another form of cruel, inhuman, or degrading treatment or punishment; or if, on the contrary, the Court so ordered because it considers that their legal classification is a matter that falls under domestic law in compliance with the measure of reparation related to the 'Obligation to investigate.'" It indicated that "the Peruvian State has no doubt, [regarding that] what the victim described as 'inappropriate touching' [...] for the Court constituted an act of sexual violence and not rape," but that it submits the request of interpretation as to whether the facts should be classified as torture." Based on the above, it requested that the Court clarify whether the ill-treatment discussed in paragraphs 357 to 368 "constituted torture or whether it constituted cruel, inhuman or degrading treatment or punishment [or whether] the legal classification of the facts should be determined in the investigation carried out in the national jurisdictional bodies in compliance with the reparation measure ordered by the Court."

17. The **Commission** pointed out that "a legal classification of torture, cruel, inhuman or degrading treatment, on their own, cannot be applied to each one of the physical and psychological abuses that a person could suffer in the same circumstances of time, manner and place," since "It is the accumulation of elements, the sum of effects, and the defenseless context in which they may occur that allow for a specific classification when it comes to torture." The Commission considered that said clarification in the State's request for interpretation "is inadmissible and that it was already made by the Honorable Court in its judgment under the standards of international human rights law."

18. The **representative** mentioned that "the Court did not indicate that such sexual violence did not constitute rape, as indicated by the State, but rather that it was not 'possible to determine whether the said sexual violence also constituted rape.'" Additionally, the representative considered that the Court "did rule on the fact that such treatment applied to J during her detention, including the sexual violence to which she was subjected, constituted torture," to the extent that "it conclude[d] 'taking into account the set of circumstances of the case' [that such treatment] constituted a violation of Article 5 of the Convention in the form of torture, which the Court had specifically defined in paragraph 364" and a violation of Articles 6 and 8 of the American Convention to Prevent and Punish Torture.

Considerations of the Court

19. Based on the State's request, as well as the representative's observations, the Court finds it pertinent to clarify its considerations and conclusions regarding the possible classification of the ill-treatment suffered by Ms. J. at the time of her arrest as torture. In this regard, the judgment considered that:

362. [...] the violation of an individual's right to physical and mental integrity has different levels that range [...] from torture to other types of humiliations or cruel, inhuman or degrading treatment, the physical and mental aftereffects of which vary in intensity according to factors that are endogenous and exogenous to the individual (such as duration of the violation, age, sex, context and vulnerability) that must be analyzed in each specific situation. In other words, the personal characteristics of an alleged victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether personal integrity was violated, since such characteristics can change the individual's perception of reality, and therefore, increase the suffering and the sense of humiliation when they are subjected to certain treatments.

363. The Court has indicated that any use of force that is not strictly necessary due to the detainee's own behavior constitutes an attack on human dignity, in violation of Article 5 of the American Convention. In the case at hand, the State has not shown that the force used at the

time of the arrest was necessary (*supra* paras. 330 and 331). Likewise, the sexual violence of which Ms. J. was a victim also constitutes a violation of her right to personal integrity.

364. In order to define what, in light of Article 5.2 of the American Convention, must be understood as "torture," in accordance with the Court's case law, an act constituting torture is involved when the ill-treatment: a) is intentional; b) causes severe physical or mental suffering, and c) is committed for any purpose or reason. Likewise, it has been recognized that the threats and the real danger of subjecting a person to physical injuries produce, in certain circumstances, such a degree of moral anguish that it can be considered psychological torture.

365. The Court recalls that at the time of the initial arrest, Ms. J. was blindfolded, beaten, and subjected to sexual touching, and that after leaving the building on Las Esmeraldas street she was not taken directly to the DINCOTE, but was instead in a car for an undetermined period of time while other properties were possibly being searched, during which time she was threatened (*supra* paras. 354 to 356). Upon analyzing these facts, it is necessary to take into account that, by having been blindfolded, Ms. J. must have been disoriented, which probably increased her degree of anguish and terror about what could happen. These feelings intensified when Ms. J. was driven for some time to an unknown destination, when she was presumably threatened by police officers (*supra* para 355), without any type of legal guarantee. Within this context, after having been arrested by force, and after having been the victim of sexual violence, for Ms. J. there was a real and immediate risk that these threats would materialize. This is also supported by the existing context at the time of the events.

366. Based on all the circumstances of the case, the Court concludes that the ill-treatment to which Ms. J. was subjected at the time of her arrest constituted a violation of Article 5.2, which prohibits being subjected to torture or cruel, inhuman or degrading treatment or punishment.

20. From the transcribed paragraphs it can be deduced that the Court did not specify whether the ill-treatment suffered by Ms. J. constituted torture or cruel, inhuman and degrading treatment, and therefore, the Court considers that it is the State's responsibility, within the framework of its obligation to investigate,⁹ to determine the specific legal classification that corresponds to these facts, with respect to the behaviors prohibited under article 5.2 of the Convention.

21. Now, based on several statements by the parties and the Commission within this request for interpretation, the Court finds it pertinent to make the following clarifications: (i) this Court concluded that the "inappropriate touching" to which Ms. J. was victim constituted sexual violence, insofar as the statements in the file did not facilitate determining whether there was any form of penetration in said act, however slight;¹⁰ (ii) this conclusion does not exclude the possibility that, within the framework of the domestic investigations, it may be determined that said sexual violence also

⁹ In this respect, in its judgment, the court mentioned that "[the ill-treatment suffered by Mrs. J. on the occasion of her initial arrest] must be investigated effectively in proceedings against those presumably responsible for the attacks on personal integrity and privacy that occurred." To this effect, it ordered that the State "must open and effectively conduct a criminal investigation into the acts that violated Article 5(2) of the Convention and that were committed against Ms. J., in order to determine the eventual criminal responsibilities and, as appropriate, apply the legal penalties and consequences. This obligation must be met within a reasonable time, taking into consideration the criteria indicated for investigations in this type of case (*supra* paras. 341 to 352). In addition, The State must expedite the pertinent disciplinary, administrative or criminal actions in the event that, during the investigation into the said facts, it is revealed that there were procedural or investigative irregularities related to them." *Case of J. v. Peru Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275, para. 392.

¹⁰ In this regard, the Court recalls that "[r]ape should also be understood as acts of vaginal or anal penetration, without the consent of the victim, using other parts of the perpetrator's body or objects, as well as oral penetration by the male organ. [... I]n order for an act to be considered rape, it is sufficient that penetration, however slight, occurs, as described above. In addition, it must be understood that vaginal penetration refers to penetration by any part of the perpetrator's body or by objects of any genital opening, including the *labia majora* and *labia minora*, as well as the vaginal orifice." *Case of J. v. Peru Preliminary Objection, Merits, Reparations and Costs, supra*, para. 359.

constituted rape, in the terms set forth in the judgment;¹¹ (iii) the ill-treatment on which the State must initiate an investigation is not limited to the act of sexual violence, but Peru must take into account all the ill-treatment suffered by Ms. J. at the time of her detention, taking into account what was established in the judgment (*supra* para 19), and (iv) within the domestic investigations, the State must take into account the other considerations and determinations of the Court regarding the ill-treatment suffered by Ms. J., its seriousness and effects.¹²

B. The legal effects of the violation of rights mentioned in paragraph 227 of the judgment

Arguments of the Commission and the parties

22. The **representative** indicated that in paragraph 227, the Court recognized that "the December 27, 1993, decision of the "faceless" Supreme Court did not constitute a conviction, it did impair the rights of Ms. J." The representative asked this Court for "clarification [on the] manner [in which] said violation of the rights of Ms. J. [...] were 'erased' [...], in accordance with the principle contained in Article 63 of the American Convention, restoring their right, as if the violation had not occurred." It requested clarification "if it was the intention of [the] judgment to give legal effect to said December 27, 1993, judgment (which has been declared in violation of the American Convention), during the period from December 27, 1993 to February 19, 2003" when "Legislative Decree 926 [...] annulled said judgement in Peru" and "if this were not the case, what would be the legal consequence that would erase the effects that its existence had on the rights of J."

23. The **State** it argued that the representative's request is inadmissible, insofar as "it is an attempt to obtain a substantial alteration of the content of the judgment and broaden the scope of the reparation measures ordered by the Court." It indicated that the Court "ordered various measures aimed at repairing the damage caused to Ms. J" and that the representative forgets that the full restitution of rights is ordered "whenever possible" because otherwise the Court determines the measures that it considers adequate to repair the damages that the infractions produced.

24. The **Commission** indicated that despite the fact that the Court "established that said decision violated both the guarantee of the presumption of innocence and the guarantee of reasoning," "the reparations section does not state the specific consequence of the legal conclusions of the [...] Court on the December 27, 1993, decision." It indicated that "throughout the proceedings, there has been no clarity as to whether the basis of these proceedings against Ms. J. is said decision," but that it understands that, according to the considerations of this Court, "the act that supports the State's punitive claim at present would be the Supreme Court of Justice-s

¹¹ Regarding the first two points mentioned *supra*, the Court expressly indicated in its judgment that "[t]he Court understands that rape is a form of sexual violence" and "based on the statements of the presumed victim in the file of this case, it is not possible to determine whether the said sexual violence also constituted rape as described above." *Case of J. v. Peru Preliminary Exception, Fund, Repairs and Costs, supra*, paras. 359 and 360.

¹² In this regard, for example, the Court considered that "the sexual violence perpetrated by a State agent of which Ms. J. was a victim and while she was being arrested is a serious and reprehensible act, taking into account the vulnerability of the victim and the abuse of power deployed by the agent. Regarding Article 5 of the Convention, the Court considers that the said act was both physically and emotionally degrading and humiliating, so that it could have had severe psychological consequences for the presumed victim." *Case of J. v. Peru Preliminary Objection, Merits, Reparations and Costs, supra*, para. 361.

December 27, 1993, decision," which violates the Convention. It added that "it could help in the effectiveness of compliance with the judgment if these factual and legal conclusions were reflected more precisely in paragraph 413, since said paragraph could be interpreted in a generic sense, and based on that, the authorities that continue hearing the case have the discretion of determining the effects of decisions by the Inter-American Court." It indicated that due to "the very particular situation generated by the December 27, 1993, decision of the Supreme Court of Justice, without which the criminal proceeding against Ms. J. could not continue, the Commission agrees with the necessity that the consequences of the Court's determinations regarding said judicial decision be clearly established in paragraph 413 of the judgment so that they can be implemented by the domestic authorities."

Considerations of the Court

25. The Court points out that the representative requested clarification on the consequences of paragraph 227 of the judgment. Said paragraph 227, which the representative cites in an isolated manner, forms part of the considerations of the Court regarding the improper motivation and violation of the presumption of innocence by virtue of the judgment of the "faceless" Supreme Court of Justice that annulled the acquittal of Ms. J. Therefore, this Court understands that the representative requested clarification of the consequences, in terms of reparations, of violation of the judicial guarantee of the reasoning and the presumption of innocence derived from said decision.

26. Regarding the representative's request for specific clarification, this Court emphasizes that the considerations contained in paragraph 227 of the judgment respond, in particular, to the State's allegation that the December 27, 1993, decision of had ceased to have any effect. Therefore, no ruling was necessary in this regard. In this sense, the Court recalls that in its judgment, it established that:

225. In the instant case, after Ms. J. had been acquitted by the Lima Higher Court of Justice on June 18, 1993, the "faceless" Supreme Court of Justice declared that the judgment of December 27, 1993, acquitting her was null and void, and ordered that "a new oral hearing be held by another Special Criminal Chamber" (supra paras. 102 and 105). In said decision it only reads that:

Considerations: pursuant to the report of the prosecutor and considering, also, that the judgment that is being appealed does not make a proper evaluation of the facts that are the subject of the indictment and does not assess the evidence provided adequately in order to establish the innocence or guilt of those accused; that, on the other hand, with regard to the accused who have been convicted, it has not been determined specifically for each of them the pertinent article of the law applicable to their case, so that [...] the judgment appealed was declared null and void [...]; and it was ordered that a new oral hearing be held by another Special Criminal Chamber [...].

226. The Court notes that the said judgment of December 1993 contains no other factual or legal elements that provide information on the reasons for the ruling. In this regard, the Court notes that Ms. J. was indicted in proceedings where she was charged together with another 93 persons (*supra*, para. 101). The judgment of the Lima Higher Court of Justice of June 18, 1993, which acquitted Ms. J., convicted 11 of the accused, acquitted 17, and held in reserve the proceedings against another 65 persons (*supra* para. 102). However, the ruling that declared this judgment null and void in December that year, did not specify with regard to whom the evidence had been assessed improperly or an undue evaluation had been made of the facts that were the subject of the indictment; it did not establish the legal basis based on which the nullity was declared or the reason why it was in order. This absence of reasoning and grounds in the judgment of the Supreme Court meant that it was impossible for Ms. J. to defend herself adequately so as to be able to contest it or appeal against it in order to enforce the acquittal delivered in her favor.

227. The Court emphasizes that, although the decision of the "faceless" Supreme Court did not

constitute a conviction, it did impair the rights of Ms. J., insofar as it affected the final nature of the acquittal. If the acquittal delivered in favor of Ms. J., had not been declared null and void, currently there would be no criminal proceedings open against Ms. J. In addition, the Court considers that the exigency of an adequate reasoning in the said ruling was even greater, because it annulled an acquittal delivered owing to insufficient evidence based on a supposed inadequate assessment of the evidence (*supra* para. 225).

228. In addition, this Court considers that the Supreme Court failed to act in accordance with the principle of the presumption of innocence, by requiring the lower court "to establish the innocence or guilt of those accused." The Court recalls that the principle of the presumption of innocence requires that no one be convicted unless there is complete evidence or evidence beyond any reasonable doubt of their guilt. The Higher Court of Lima decided to acquit Ms. J. because it did not have sufficient evidence of her guilt. By not explaining how the evidence had been assessed inadequately, or the undue evaluation of the facts, the Supreme Court presumed that Ms. J. was guilty.

229. Based on the above considerations, this Court finds that the judgment of December 27, 1993, of the "faceless" Supreme Court of Justice failed to comply with the obligation to provide the reasoning for judicial decisions and infringed the presumption of Ms. J.'s innocence, in violation of paragraphs 1 and 2 of Article 8 of the American Convention, in relation to Article 1(1) thereof.

27. Now, in addition to the foregoing considerations, the Court recalls that when analyzing the alleged violation of the principle of *non bis in idem*, it also established that:

269. Regarding the defects in the judgment of the "faceless" Supreme Court of Justice, the representative indicated that this ruling should not have legal effects because the identity of the judges was secret, and owing to the failure to provide the reasoning for the judgment, the alleged time-barred nature of its delivery, and its illegality (because it had no basis in any of the specific causes established by law).

270. In this regard, the Court notes that the secret identity of the judges constituted a common defect of both courts (*supra* paras. 102 and 105). In addition, the Court recalls that it has concluded that the said ruling of the "faceless" Supreme Court lacked reasoning, in violation of Article 8(1) of the Convention (*supra* para. 229). Furthermore, since the reasoning for the said judgment is lacking, it is not possible to determine whether Ms. J. had the opportunity to be heard during the said nullity proceeding, through her defense counsel, or to exercise an adequate defense. In addition, the absence of reasoning does not permit the Court to determine the cause of nullity that was applied, pursuant to the presumptions established in the Peruvian Code of Criminal Procedures. The Court has established that the reasoning shows the parties that they have been heard and, in those cases in which the decisions can be appealed, provides them with the possibility of contesting the decision and obtaining a fresh examination of the matter before the higher courts. Nevertheless, **the Court has no evidence that would permit it to conclude that the failure to provide the reasoning for the 1993 judgment of nullity would have the effect of rendering the acquittal delivered previously in favor of Ms. J. final and non-appealable.** [emphasis added]

[...]

273. Consequently, the Court concludes that the State did not violate Article 8(4) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Ms. J.

28. This Court considers that the clarification requested seeks for the Court to re-examine the representative's argument, set forth in paragraph 269 of the judgment cited *supra*, by which it claimed that the December 27, 1993, decision of the Supreme Court of Justice had no legal effect. Therefore, under the guise of a request for interpretation, the representative raises a discrepancy with what was resolved by the Court. In this regard, this Court reiterates that a request for interpretation cannot be used as a means of challenging the decision whose interpretation has been requested, nor to request any modification to the respective judgment (*supra* para 12). In addition,

the Court recalls that a request for interpretation may be used as an attempt to broaden the scope of reparations ordered in a timely fashion (*supra* para 13).

29. Therefore, and in accordance with Articles 67 of the American Convention and 31(3) and 68 of its Rules of Procedure, this Court considers that the representative's request is inadmissible, insofar as it seeks an expansion or modification of the measures of reparation ordered in the judgment. Notwithstanding the foregoing and to the extent that it could contribute to the clarity of the operative paragraphs of the judgment or of the considerations that affect its operative part (*supra* para 12), the Court considers it pertinent to make certain clarifications as to the measures of reparation ordered in the judgment. In this regard, the Court recalls that repairing the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the previously existing situation. However, in its consistent case law, the Court has highlighted that when full restitution is not feasible, it will determine measures to guarantee the violated rights and repair the consequences that the infractions produced.¹³

30. This highlights the fact that it is not always possible to restore the situation to that existing prior to the violation. The time that has elapsed or the succession of other facts that did not violate the Convention may make it impossible to restore the situation of the victim to the that existing immediately prior to the violation or prevent the effects and consequences of the violating situation from being completely eliminated. In the case at hand, the Court considered that it was not possible to restore the situation of violation to the immediately previous situation. As established in paragraph 270 of the judgment, the Court "ha[d] no evidence that would permit it to conclude that the failure to provide the reasoning for the 1993 judgment of nullity would have the effect of rendering the acquittal delivered previously in favor of Ms. J. final and non-appealable." Likewise, as established in paragraph 413 of the judgment,¹⁴ the effects of the violations found in this judgment on the criminal proceedings underway against Ms. J. must be determined. Contrary to the Commission's allegations, the Court finds that it is not its responsibility to clarify the specific effects of said violations, but rather that they must be determined in accordance with the domestic criminal law.

31. In response to the representative's question, as to what would be the legal consequence of the violations derived from the Supreme Court's December 27, 1993, judgment, the Court recalls, first of all, that its judgment constitutes, *per se*, a form of reparation. Notwithstanding the foregoing, it points out that, given the impossibility of restoring Ms. J.'s situation to that existing prior to issuing said internal judgment, in the case at hand, this Court ordered various substitute measures of reparation. In this sense, the Court recalls that in order to repair the violations of due process, including the improper reasoning of the judgment that annulled the acquittal of Ms. J., the Court ordered the publication and dissemination of the judgment and the respective official

¹³ Cf. *Case of Velásquez-Rodríguez v. Honduras Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 26, and Case of Rochac Hernández et al. v. El Salvador Merits, Reparations and Costs. Judgment of October 14, 2014. Series C No. 285, para. 175.*

¹⁴ In paragraph 413 of the judgment, the Court ordered that "the State must ensure that the proceedings against Ms. J. observe all the requirements of due process of law with full guarantees of a hearing and defense for the accused and, to this end, the State must take into account the Court's conclusions in Chapters VIII and IX of this judgment and ensure that the violations of due process verified in them are not repeated, and also, if appropriate, determine the effects of the violations found in this judgment on the criminal proceedings underway against Ms. J." *Case of J. v. Peru Preliminary Objection, Merits, Reparations and Costs, supra*, para. 413.

summary, the payment of compensatory damages, as well as the aforementioned obligation to respect the guarantees of due process in the criminal proceedings opened against Ms. J., taking into account the violations declared in the judgment.¹⁵

C. The criteria and methodology for determining the amounts set as costs and expenses

Arguments of the Commission and the parties

32. The **State** affirmed that "it is not questioning the amounts or the term set for their payment." However, it asked the Court "to specify the criteria and the methodology used to determine the amounts established as expenses and costs, to the extent that the information provided by the Court in said paragraph and in the footnotes does not provide clarity on the matter." According to the State, "the manner in which [the costs and expenses] are calculated constitutes an issue of special importance in the context of the proceedings before the Commission and the Court[, for which] it considers it important that in the rulings of the latter, there may be clear and uniform criteria in this regard."

33. The **Commission** indicated that it had no observations to make regarding this request for interpretation by the State, while the **representative** did not refer to said request in its brief.

Considerations of the Court

34. The Court indicates that the determination of the expenses of the representative and the award of costs and expenses were made at the time of delivering the judgment based on the evidence provided to the process, in light of the provisions of the American Convention and the principles on which it is based. In particular, in paragraphs 418 to 423 of its judgment, this Court established that:

418. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention. Costs and expenses are part of the concept of reparation, because the actions taken by the victims in order to obtain justice at both the domestic and the international level, entail disbursements that must be compensated when the State's international responsibility has been declared in a guilty verdict.

[...]

421. The Court recalls that, in the instant case, the representative's claims are admissible as regards the costs and expenses produced following the presentation of the motions and arguments brief (supra para. 33). The Court has indicated that the claims for costs and expenses of the victims or their representatives, and evidence that supports them, must be submitted to the Court at the first procedural moment granted them; that is, in the motions and arguments brief, without prejudice to the possibility of updating those claims subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court. In addition, the Court reiterates that it is not sufficient to merely forward probative documents; rather the parties must also include arguments that relate the evidence to the fact that it is considered to represent and that, in the case of alleged financial disbursements, the items and their justification must be clearly established.

422. The Court notes that the expenses of the representative, incurred after the presentation of the motions and arguments brief, for which evidence was provided, amount to approximately US\$237,880.14. Nevertheless, some vouchers refer to expenses covered by resources from the

¹⁵ Cf. *Case of J. v. Peru Preliminary Exception, Fund, Repairs and Costs*, supra, paras. 394, 398, 413, and 417.

Victim's Legal Assistance Fund,⁵⁸⁶ and some vouchers refer, in general, to expenses for office supplies, without an indication of the specific percentage that corresponds to the expenses for this case. In fairness, these concepts have been deducted from the calculation made by the Court. In addition, those expenses the quantum of which is not reasonable will be deducted from the assessment made by the Court. Also, as it has in other cases, the Court can infer that the representative incurred expenses during the processing of the case before the inter-American human rights system derived from the litigation and from attending the hearing held before the Court and, consequently, they will be taken into account when establishing the respective costs and expenses.

423. Consequently, the Court decides to establish a reasonable sum of US\$40,000.00 (forty thousand United States dollars) for costs and expenses for the work carried out in the litigation of the case at the international level, including the expenses arising from the participation of the two lawyers who collaborated in the defense of the case as of the public hearing. [...]

35. 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 with respect to the specific case (*supra* para 35). On the other hand, this Court considers that the transcribed paragraphs, and in particular paragraphs 422 and 423, clearly refer to the criteria used by the Court to determine costs and expenses, based on the evidence provided by the representative, equity and reasonableness. Therefore, it does not consider it appropriate or necessary to exert additional pressure in this regard.

D. Application of Article 76 of the Rules of Procedure

36. Meanwhile, the Court mentions that the other two points on which the State and the representative, respectively, requested interpretation refer mainly to requests to rectify material errors (*supra* paras. 2.i and 3.iii). In this regard, Article 76 of the Rules of Procedure establishes that "[t]he Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified." Regarding the observations of both parties on the deadline to submit a request for rectification,¹⁶ the Court recalls that although, based on Article 76 of the Rules of Procedure, the parties may request a rectification of egregious, editing or calculation errors only "within one month of the notice of the judgment or order;" this period does not apply to any corrections that the Court may make *of its own accord*.¹⁷

37. Regarding the State's request regarding the position of the informant Federico Javier Llaque Moya, this Court notes that, indeed, in paragraph 268 of the judgment¹⁸ Mr. Federico Javier Llaque Moya is referred to as "Counter-terrorism Prosecutor", while

¹⁶ Both the State and the representative argued that the request to rectify the material error of the counterparty should have been made within the one-month term provided in Article 76 of the Rules of procedure.

¹⁷ Cf. *Case of Escher and others v. Brazil. Monitoring Compliance with judgment*. Order of the Court of May 17, 2010, considering paragraph 15; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Interpretation of the judgment on Merits, Reparations and Costs*. Judgment of the Court of August 19, 2013, Series C. No.262, para. 24, and *Case of the Massacres of El Mozote and nearby places v. El Salvador Interpretation of the judgment on Merits, Reparations and Costs*. Judgment of August 19, 2013. Series C No. 264, para. 39.

¹⁸ In the aforementioned paragraph 268 it is indicated that: "[...] the Court takes note that Federico Javier Llaque Moya, Counter-terrorism Prosecutor, explained during the hearing in this case that the acquittals handed down by the "faceless" judges were not annulled "because even in cases in which the standards of due process were not met, following an acquittal, the case with a final judgment could not be dismissed' [...]" *Case of J. v. Peru Preliminary Objection, Merits, Reparations and Costs, supra*, para. 268.

identifying himself as "Lawyer of the Special Prosecutor's Office for Terrorist Crimes" in the State's answering brief and "Advisor to the Prosecutor" in his corresponding resume.¹⁹ Therefore, in application of Article 76 of the Court's Rules of Procedure, this Court proceeds to rectify the name of Mr. Federico Javier Llaque Moya's position contained in paragraph 268 of the judgment. Therefore, it is clearly established that the deponent, for informational purposes, acted as "Lawyer of the Specialized Prosecutor's Office for Terrorist Crimes."

38. Regarding the request for clarification of paragraph 87 of the judgment,²⁰ the representative pointed out that in said paragraph a material error was incurred in that Ms. J.'s mother and sister were not taken to the Las Esmeraldas building but to the building on Casimiro Negrón Street. This Court notes that the statement of Ms. J.'s mother, used as evidence in this case, is not very clear as to the sequence of events and the places where they were and where they went or took them. However, in view of what was indicated by the representative on this occasion and in application of Article 76 of the Rules of Procedure, the Court considers it pertinent to rectify the reference to the Las Esmeraldas property in paragraph 87 of the judgment in such a way as to reflect that the mother of Ms. J. and her sister were taken "to the property where she had [her] business," as Ms. J.'s mother put it in her statement.

39. For the purposes of the eventual publication and dissemination of the judgment, it is ordered that the parties and the Commission be sent a corrected version of the judgment with the pertinent rectification of the material errors found (*supra* paras. 37 and 38). Notwithstanding the foregoing, this Court recalls that, in accordance with Article 68 of the Rules of Procedure, an interpretation shall not suspend the effect of the judgment, for which the terms established in the judgment must be counted from the notification of the original version of said decision, which in this case is December 23, 2013, taking into account that the rectifications made do not affect the State's complying with the reparation measures established therein.

40. Meanwhile, the Court indicates that, in addition to the rectification of a material error in paragraph 87 of the judgment (*supra* para 38), the representative requested clarification of its "implication" in the Court's reasoning in paragraph 147 of the judgment. This Court recalls that, when issuing its ruling in this case, it determined that the State did not violate the right to protection of Ms. J.'s home, with respect to this first search of the building on Casimiro Negrón Street, stating the following:

146. With regard to the first search of the house located on Casimiro Negrón Street, the Court notes that, according to the search record, it was carried out with the authorization of J.'s mother, who signed the said record. J.'s mother indicated that "[t]hey wanted her to sign some papers. They said that they were papers that had been seized; there was a list." She also stated that her younger daughter had refused to sign the record and had therefore been arrested. The State did not question the truth of the statement made by Ms. J.'s mother, while the refusal of J.'s younger sister to sign the record and her arrest appear in the file of this case (*supra* paras. 87 and 89). Meanwhile, at the domestic level, the presumed victim declared that her mother had been coerced to sign a record,²⁴⁷ and this could correspond to the assertion of the CVR that

¹⁹ Cf. State's answering brief (merits file, folio 521) and Mr. Federico Javier Llaque Moya's resume (file of annexes to the answering brief, annex 67, folio 4275).

²⁰ Paragraph 87 of the judgment provides: "According to J.'s mother, a neighbor of the building on Las Esmeraldas Street advised her that "some thieves had forced their way into the property." When J.'s mother was on the way to the building accompanied by J.'s younger sister, they were "assaulted by two men who forced them into a car," and drove them to the building on Las Esmeraldas Street. J.'s mother indicated that, when they arrived, she was told that her "daughter had resisted and [they had] killed her." *Case of J. v. Peru Preliminary Objection, Merits, Reparations and Costs, supra*, para. 87.

many of the witnesses had stated that they were unable to read the records made of the searches, and that "the victim or the family members were required to sign [them]."

147. Despite the above, the Court underscores that, in her statement, J.'s mother did not deny that she had authorized this search. Also, it should be recalled that the statement of the presumed victim cannot be assessed in isolation, but rather in the context of all the evidence in the proceeding. Likewise, regarding the statement by J.'s mother, this Court finds that, since she is a member of the presumed victim's family and has a direct interest in this case, her testimony cannot be assessed in isolation, but rather in the context of the evidence in the proceedings. Consequently, the Court finds that it does not have sufficient evidence to disprove the fact that, according to the respective search record, J.'s mother authorized the entry into her home of the police agents and, therefore, concludes that the search of the home of Ms. J. on Casimiro Negrón Street did not violate Article 11(2) of the Convention.

41. As can be deduced from the cited paragraphs, the material error pointed out by the representative in no way affects the provisions of the Court in its judgment. This Court expressly indicated that "since she is a member of the presumed victim's family and has a direct interest in this case, her testimony cannot be assessed in isolation, but rather in the context of the evidence in the proceedings." Regardless of whether Ms. J.'s mother and her sister were taken directly to the building on Casimiro Negrón Street, where, according to her statement, everything was already in a mess when they arrived, and not to the building on Las Esmeraldas, the fact that Ms. J.'s mother signed the search report where it is established that she gave her authorization, coupled with the impossibility of assessing her statements in isolation, led the Court to conclude that "it d[id] not have sufficient evidence" to declare a violation of Article 11 of the Convention, by virtue of said search. This Court considers that, under the guise of a request for interpretation, the representative seeks a modification of that ordered by the Court in paragraph 147 of the judgment, which would imply an assessment of matters of fact and law that were already raised at the procedural opportunity and on which this Court has already made a decision. Since there is no possibility for the ruling to be modified, in accordance with Articles 67 of the American Convention and 31(3) and 68 of its Rules of Procedure, the representative's request is inadmissible.

V

OPERATIVE PARAGRAPHS

42. Therefore,

THE COURT

in accordance with article 67 of the American Convention on Human Rights and articles 31(3), 68, and 76 of the Rules of Procedure,

DECIDES:

Unanimously,

1. To declare as admissible the request for interpretation of the judgment on Preliminary Objections, Merits, Reparations and Costs in the case *J. v. Peru* filed by the State and the representative of the victim.

2. To specify the meaning and scope of the considerations of the Court regarding the legal classification of the ill-treatment suffered by Ms. J. at the time of her arrest, in accordance with paragraphs 19 to 21 of this judgment of interpretation.

3. To dismiss as inadmissible the objections made by the State and the representative regarding the legal effects of the violation of rights mentioned in paragraph 227 of the judgment, the criteria and methodology used to determine the amounts established as costs and expenses, and the alleged effects of the material rectification of paragraph 87 of the judgment, to the extent that they are not in accordance with the provisions of Articles 67 of the Convention and 68 of the Rules of Procedure, as indicated in paragraphs 25 to 31, 34 to 35, and 40 to 41 of this judgment of interpretation.

4. To rectify the material errors in paragraphs 87 and 268 of the judgment, regarding the property to which the mother of Ms. J. and her sister were taken and the position of the deponent for information purposes, Federico Javier Llaque Moya, in accordance with paragraphs 37 and 38 of this judgment of interpretation.

5. To order that the Secretariat of the Court notify this judgment of Interpretation to the Republic of Peru, the representatives of the victim, and the Inter-American Commission on Human Rights.

Written 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