INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED EMPLOYEES OF THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE (ANCEJUB-SUNAT) *v.* PERU

JUDGMENT OF OCTOBER 8, 2020

(Interpretation of the judgment on preliminary objections, merits, reparations and costs)

In the case of *ANCEJUB-SUNAT v. Peru*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:[*]

Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, 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 Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), decides the requests for interpretation of the judgment on preliminary objections, merits, reparations and costs in the instant case delivered by the Court on November 21, 2019 (hereinafter also "the judgment"), that were filed on January 29, 2020, by the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT), and on May 22, 2020, by the State of Peru.[1]

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[*] Judge Elizabeth Odio Benito, President of the Court, did not take part in the deliberation and signature of this judgment for reasons beyond her control that were accepted by the Court. Consequently, pursuant to Articles 4(2) and 5 of the Court's Rules of Procedure, Judge Patricio Pazmiño Freire, Vice President of the Court, assumed the presidency, *ad interim*.

[1] Owing to the exceptional circumstances resulting from the COVID-19 pandemic, this judgment was deliberated and adopted during the Court's 138th regular session, which was held virtually using technological resources as established in the Court's Rules of Procedure.

I
REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On November 21, 2019, the Court delivered the judgment and this was notified to the parties and to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on December 19, 2019.

2. On January 29, 2020, the victims' representatives presented a request for interpretation of the judgment with regard to the following: (a) determination of the number of members of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (hereinafter "ANCEJUB-SUNAT") who were the beneficiaries of the judgment of the Supreme Court of Justice of the Republic of October 25, 1993; (b) scope of the decision taken by the Inter-American Court in the sixth operative paragraph of the judgment regarding the immediate payment of the concepts that remained pending under the provisions of the judgment of October 25, 1993, and (c) scope of the decision taken by the Inter-American Court in the eighth operative paragraph of the judgment with regard to the persons who will be included on the list that the State must create in order to execute the judgment fully.

3. On May 22, 2020, the State presented a request for interpretation with regard to the following: (a) the possible effects of the eighth operative paragraph of the judgment delivered by the Inter-American Court; (b) the list of other members of ANCEJUB-SUNAT who were not included as victims in the case; (c) the list of other persons who, without being members of ANCEJUB-SUNAT, are discharged or retired employees of SUNAT, and (d) aspects concerning the right to a pension.

4. On June 20, 2020, the representatives presented their written observations on the State's request for interpretation. On June 29, 2020, the State presented its written observations on the representatives' request for interpretation, and the Commission presented its written observations on both requests for interpretation.

II
JURISDICTION

5. Article 67 of the American Convention establishes:

> 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 this article, the Inter-American Court is competent to interpret its judgments. According to Article 68(3) of the Rules of Procedure, when examining requests for interpretation and making the corresponding decisions, the Court should, if possible, have the same composition it had when delivering the respective judgment. On this occasion, the Court is mainly composed of the same judges who delivered the judgment the interpretation of which has been requested (*supra* footnote 1).

III
ADMISSIBILITY

7. The Court must verify whether the request presented by the representatives complies with the requirements established in the rules applicable to a request for interpretation of judgment;

namely, Article 67 of the aforementioned Convention, and Article 68 of the Rules of Procedure. Also, Article 31(3) of the Rules of Procedure establishes that "[j]udgments and orders of the Court may not be contested in any way."

8. The Court notes that both the representatives and the State presented their request for interpretation within the 90-day period established in Article 67 of the Convention, because these were presented on January 29, 2020, and May 22, 2020, respectively, and the parties had been notified of the judgment on December 19, 2019.[2] Consequently, the request is admissible as regards the time frame for its presentation. Regarding the other requirements, the Inter-American Court will analyze the merits of this request in the following chapter.

IV
ANALYSIS OF THE ADMISSIBILITY OF REQUESTS FOR INTERPRETATION

9. This Court will examine the requests of the representatives and of the State to determine whether, based on the regulations and the standards developed in its case law, it is admissible to clarify the meaning or scope of any provision of the judgment.

10. The Court has indicated that a request for interpretation of judgment cannot be used as a means of contesting the decision whose interpretation is required. The purpose of this type of request is, exclusively, to determine the meaning of a ruling when any of the parties claims that the text of its operative paragraphs or of its considerations is unclear or imprecise, provided such considerations affect the said operative paragraphs. Consequently, a request for interpretation may not be used to seek the amendment or nullification of the judgment in question.[3]

11. The Court has also indicated that it is inadmissible to use a request for interpretation to submit considerations on factual and legal matters that have already been submitted at the property procedural moment and on which the Court has already taken a decision[4], or to expect the Court to re-assess matters that have been decided in the judgment.[5] Similarly, a request cannot be used to try and expand the scope of a measure of reparation that was ordered at the opportune procedural moment.[6]

12. The Inter-American Court will now examine the questions raised by the representatives and the State as follows: (a) determination of the number of victims and scope of the sixth operative paragraph of the judgment, and (b) scope of the measure of reparations established in section B.3 of the judgment.

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[2] The Court recalls that in accordance with its Decisions 1/20 and 2/20 the calculation of time frames was suspended from March 17, 2020, to May 20, 2020, owing to the health emergency resulting from COVID-19.

[3] *Cf. Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits.* Order of the Court of March 8, 1998. Series C No. 47, paras. 12 and 16, and *Case of Omeara Carrascal et al. v. Colombia. Interpretation of the judgment on merits, reparations and costs.* Judgment of October 14, 2019. Series C No. 389, para. 10.

[4] *Cf. Case of Loayza Tamayo v. Peru. Interpretation of the judgment on reparations and costs*, *supra*, para. 15, and *Case of Omeara Carrascal et al. v. Colombia. Interpretation of the judgment on merits, reparations and costs, supra*, para. 11.

[5] *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 Omeara Carrascal et al. v. Colombia. Interpretation of the judgment on merits, reparations and costs, supra*, para. 11.

[6] *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 Omeara Carrascal et al. v. Colombia. Interpretation of the judgment on Merits, reparations and costs, supra*, para. 11.

A. Determination of the number of victims and the scope of the sixth operative paragraph of the judgment

A.1 Arguments of the parties and observations of the Commission

13. The ***representatives*** asked the Court to clarify the identity and number of persons who should be understood to be beneficiaries of the reparations because paragraphs 120, 121 and 138 of the judgment refer to 604 persons, while paragraphs 122, 123 and the fourth operative paragraph refer to 598 personas and one of them is mentioned twice. The representatives also asked the Court to clarify the import given by the judgment to the expert report of October 18, 2011, based on which the concepts indicated in the sixth operative paragraph of the judgment should be paid. Regarding this request, they asked the Court to clarify whether the State's obligation to "pay, immediately, the concepts that remain pending under the provisions of the judgment of October 25, 1993, pursuant to paragraph 217 of this judgment" meant that this payment should abide by the terms of conclusions No. 1 and No. 4 of the expert report of the C.S.J.L. [Supreme Court of Justice of Lima] of October 18, 2011, or whether the decision meant something else. Among their arguments, the representatives indicated that the said expert report referred to situations that had not been covered in the 1993 judgment of the Supreme Court of Justice and were therefore unrelated to the equalized pension that was the object of the execution of the amparo judgment.

14. Regarding the representatives' request, the ***State*** indicated that the number of victims had been a constant issue during the debate at the domestic level. It argued that the Inter-American Court had clearly and definitively settled the dispute between the parties on this point, and this was why "Annex 2. List of victims in this case" of the judgment of November 21, 2019, had determined the identity (with first and last names) of the victims in the instant case. The State argued that there could be no doubt that the Court considered that this contested issue had been decided judicially in the domestic sphere, and that, when adopting the expert report of October 18, 2011, the Constitutional Court, in a judgment of April 23, 2019, considered as beneficiaries of the judgment of October 25, 1993, those persons listed in the annexes to the said expert report, five hundred and ninety-eight (598) persons, who had initially been identified in the ruling of June 3, 2005, and, subsequently, in the expert report adopted by the judgment of April 23, 2019. Therefore, only those five hundred and ninety-eight (598) persons could be considered presumed victims of the violations alleged in the instant case.

15. The State also argued that it was not appropriate to question, by interpretation of judgment, the expert report of October 18, 2011, regarding the sum calculated in this report or the amount that would correspond to each victim, especially if this had not been challenged in the supranational court. It argued that the representatives had mentioned aspects relating to a debate that belonged to the domestic sphere and, regarding which, a judicial ruling had already been made that approved the said expert report; therefore, it was not possible to change it, or to try and give another meaning to the sixth operative paragraph of the judgment delivered by the Inter-American Court in this case. It noted that the representatives' request was not supported by a legal interpretation of the judgment, but by an attempt to question the sixth operative paragraph and paragraph 217. On this basis, the State argued that, in this regard, the request for interpretation should be declared inadmissible.

16. The ***Commission*** considered that, as indicated by the representatives, there appeared to be a contradiction in relation to the number of victims identified by the Inter-American Court in: (a) paragraphs 120 and 122 of its judgment (604 personas), and (b) paragraphs 121, 122 and the fourth operative paragraph of its judgment (598 personas). Additionally, the Commission took note that, as indicated by the representatives, the Court's judgment listed

597 victims and not 598. Also, regarding the request for interpretation concerning the sixth operative paragraph, the Commission noted with concern the information presented by the representatives on the import given to the said expert report and stressed that the nature of the expert report would prejudice the remedial effect of the measure of restitution. This was because: (a) it did not cover all the victims whose rights were violated, as attested by the Court, and (b) the sums to be received were derisory compared to the measures ordered by the Court in judgments of a similar nature. Consequently, the Commission agreed with the representatives' request to determine the number of victims identified in the judgment who would receive a payment, as well as the amounts to be paid.

A.2 Considerations of the Court

17. First, regarding the request for interpretation concerning the determination of the number of victims, the Court reiterates what it had established in paragraphs 120, 121 and 122 of the judgment:

> 120. This matter was addressed by the ruling of the Sixth Civil Chamber of June 3, 2005, in which it recognized the persons who had been members of ANCEJUB-SUNAT when the application for amparo was filed as beneficiaries of the judgment of October 25, 1993, and identified 604 persons whose names were provided on a list prepared on the basis of the register of ANCEJUB-SUNAT members and a list of deductions relating to former SUNAT employees. In its considerations, the Chamber indicated that "[i]n response to the petition filed by [ANCEJUB-SUNAT], on behalf of its members, only those who were members when the proceedings were filed – that is December [30, 1991,] when the petition was admitted for processing – should be considered plaintiffs […] because those who joined the association after that date were not represented by the association in the proceedings and, therefore, are not plaintiffs."
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> 121. The Court agrees with this ruling in the sense that if ANCEJUB-SUNAT was acting on behalf of its members, it is logical that only those who were members when the application for amparo was filed in 1991 can be considered beneficiaries of the decision that declared it admissible. The Court observes that, in addition to the 604 individuals identified in the ruling of June 3, 2005, when approving the expert report of October 18, 2011, and ordering the payment of the reimbursements established therein, the Constitutional Court, in the judgment of April 23, 2019, considered as beneficiaries of the judgment of October 25, 1993, the persons listed in the annexes to the said expert report. Since the Court has no record of the revocation of the said rulings, it considers that the determination of the persons to whom the provisions of the judgment of October 25, 1993, applied was decided by the rulings of June 3, 2005, and April 23, 2019.
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> 122. In this regard, the Court recalls that, in this case, the main purpose of the litigation is to determine whether the State is internationally responsible for failing to execute the judgment of the Supreme Court of October 25, 1993, and the effects that this judgment could have on other rights of the presumed victims. Consequently, given that only the 598 individuals identified either in the ruling of June 3, 2005, or in the expert report adopted by the judgment of April 23, 2019, have been recognized as beneficiaries of the judgment of October 25, 1993, the Court finds that these are the only persons who may be considered presumed victims of the violations alleged in this case, provided they are included in the "single annex" to the Commission's Merits Report. For this reason, Mr. Ipanaqué cannot be considered a presumed victim in this case, even though the Commission considered him as such in its Merits Report.

18. Regarding these paragraphs, the Court clarifies that the difference between the number of beneficiaries of the judgment of June 3, 2005 (604 personas) and the number of persons included as victims in Annex 2 of the judgment (598 persons) is due to the fact that Víctor José Gutiérrez Infantas, María Rosario Medina Serrano de Rojas, Jorge Nieto Garrido, Néstor Pagaza Aguilar, Herbert Belisario Monzón Ugas and Sixto Melena Ballesteros were not included

in the Merits Report. Thus, although these persons were considered in the judgment of June 3, 2005, they were not considered presumed victims in the proceedings before the Court and, therefore, were not counted among the number of victims in this case.

19. Nevertheless, the Court notes that, in paragraphs 74, 120, 121, 122 and 138 of the judgment there is a material error as regards the number of beneficiaries referred to in the judgment of June 3, 2005. This error is the result of the fact that, although the said judgment mentions the existence of 604 beneficiaries, one of them is mentioned twice. This reiteration was transferred to the judgment. In this way, although throughout the judgment, 604 persons are mentioned as the total number of beneficiaries of the judgment of June 3, 2005, the Court notes that the name of Grimanesa Barrera Cárdenas was counted twice, so that the total number of persons should be 603. Also, in paragraph 122, it should be understood that the beneficiaries of the judgment of June 3, 2005, are 603 and not 598. Likewise, the Court notes that Annex 2 of the judgment refers to 598 persons as the total number of victims in the case, when really this number should be 597; in other words, the 597 persons mentioned in the judgment of June 3, 2005, who were included in the Merits Report. This error was due to the fact that the name of Emma Raquel Llamas Ordaya was listed twice in Annex 2 of the judgment. Consequently, based on the considerations in the preceding paragraph (*supra* para. 18), the number of victims in the case is 597 and not 598.

20. Second, regarding the request for interpretation of the scope of the sixth operative paragraph, the Court reiterates the contents of the judgment:

> [Operative paragraph No. 6] The State shall pay, immediately, the concepts that remain pending under the provisions of the judgment of October 25, 1993, pursuant to paragraph 217 of this judgment.

21. The Court considers that the question raised by the representatives regarding the scope of the sixth operative paragraph is answered clearly in paragraph 217 of the judgment, which indicates the following:

> 217. In this case, the Court has concluded that the State violated the right to judicial protection because it had not guaranteed the full execution, without unjustified delays, of the judgment of October 25, 1993. The Court determined that, even though approximately 27 years had passed since it was handed down, the process of executing this judgment was still ongoing because the reimbursements corresponding to the equalization of the victims' pensions while the Third Transitory Provision of Decree 673 was applicable had still not been paid. Consequently, the Court determined that the State had failed to comply with its obligation to guarantee the necessary means to achieve the execution of the judgment of October 25, 1993, contrary to the obligations established in Article 25(2)(c) of the Convention. The Court has also concluded that the period of 27 years that has passed since the delivery of the said judgment without the State having guaranteed full compliance at this time was not reasonable. Therefore, the Court orders the State to guarantee the effective and immediate payment of the reimbursements pending payment owing to the provisions of the judgment of October 25, 1993, as established in the expert report of October 18, 2011, which was adopted by rulings of June 13, 2017, and April 23, 2019.

22. The foregoing leaves no doubt that the payment of the pending reimbursements, under the provisions of the judgment of October 25, 1993, must be made in the context of compliance with the measure of restitution ordered by the Inter-American Court in the sixth operative paragraph of the judgment, "as established in the expert report of October 18, 2011," understanding this integrally.

23. That said, the Court observes that the representatives' request for interpretation, in addition to asking for clarification of the meaning of the sixth operative paragraph, questions the conclusions reached in the expert report of October 18, 2011. In this regard, the Court considers that it is not for an interpretation of judgment to determine the scope of the conclusions contained in the said report because these have already been debated by the parties in the domestic procedural instances, and addressed by the Court in paragraphs 108 to 116 of the judgment. Consequently, the Court considers that this request exceeds the purposes of interpretation established in Article 67 of the Convention because it does not relate to the meaning and scope of the judgment, but rather to a matter concerning the merits. Therefore, the Court declares the representatives' request for interpretation in this regard inadmissible.

B. Scope of the measure of reparations established in section B.3

B.1 Arguments of the parties and observations of the Commission

24. The ***representatives*** asked the Court to rule on the meaning of paragraph 226 of the judgment as regards the phrase "any other information or document necessary to fully execute the judgment issued in their favor." Specifically, they indicated that, given that paragraph 225 refers to "beneficiaries of a judicial ruling or an administrative decision – either in the context of an amparo proceeding or any other judicial remedy or administrative procedure against the application of Decree 673," they asked the Court to clarify whether, in this phrase in paragraph 226, the Inter-American Court was alluding to its own judgment of November 21, 2019, or else to the judgments referred to in paragraphs 224 and 225 of its judgment, or to both types of judgment. Similarly, they asked the Court to clarify whether the discharged or retired employees of SUNAT who are in "a similar situation to the victims in this case," but who are only beneficiaries of an administrative rather than a judicial decision needed to obtain a judicial ruling ordering the restitution of their right before being able to benefit from the Inter-American Court's decision in the eighth operative paragraph of the judgment.

25. The ***State*** also asked the Court to interpret paragraphs 225, 226, and 227, as well as the eighth operative paragraph of the judgment. It asked the Court to clarify the content of the judgment in relation to the scope, purpose and implications of the list ordered in the eighth operative paragraph of the judgment, especially with regard to the non-pecuniary consequences of the list, considering the expectations that this could give rise to among those concerned. The State's concerns refer fundamentally to the fact that the judgment did not expressly indicate the purpose of the creation of the list, which could have an impact on compliance with this requirement. The State asked the Court to clarify that the persons registered on the nominal list ordered could not obtain, *per se,* any pecuniary benefit based on their mere registration and, consequently, this would not result in pecuniary obligations for the State. Thus, the State understood that the only beneficiaries of the judgment of the Inter-American Court were the 598 persons listed as victims in Annex 2 to this judgment. The State also asked the Court to clarify who were the persons referred to in paragraph 225 of the judgment.

26. In addition, regarding the same measure of reparation, the State asked the Court to clarify whether – as the State understood it – the persons included on the list ordered by the judgment should have received a ruling from an administrative or judicial authority expressly recognizing their compliance with all the legal requirements to obtain the right to a pension. In this regard, the State indicated that, with regard to the list of "other persons who, while not members of this association, are discharged or retired employees of SUNAT in a similar situation to the victims in this case," it understood that this meant that the list would include beneficiaries of a judicial ruling or an administrative decision in which the authority: (i) declared

that the Third Transitory Provision of Legislative Decree No. 673 was inapplicable; (ii) reinstated the right to receive the corresponding pension, equalized with the pensionable remuneration of active employees of the SUNAT public sector, and (iii) ordered the reimbursement of the increases that had not been received due to the application of the said Third Transitory Provision of Legislative Decree No. 673.

27. With regard to the State's requests, the ***representatives*** indicated that it was necessary for the Court to clarify that the eighth operative paragraph of the judgment did have pecuniary effects because this would allow the 106 members of ANCEJUB-SUNAT who were not included in Annex No. 2 of the judgment to receive some type of reparation in their capacity as victims, as they had been deprived of the equalized pension to which they were legally entitled. Also, regarding the "list of other persons who, while not members of ANCEJUB are discharged or retired employees of SUNAT," they indicated that the meaning of the judgment was clear as regards the obligation of the State to create a list identifying other persons who, while not members of ANCEJUB-SUNAT, were discharged or retired employees of SUNAT who were in situations similar to the victims in this case. Accordingly, they indicated that what the State was requesting of the Court constituted "a distorted version" of what the Social and Constitutional Law Chamber of the Supreme Court of Justice had decided in its judgment of October 25, 1993.

28. Regarding the representatives' request concerning the interpretation of the meaning of the phrase "any other information or document necessary to fully execute the judgment issued in their favor" in paragraph 226, the ***State*** argued that it was clear that the judgment referred to other judgments obtained in the domestic sphere by other members of ANCEJUB or other persons who, while not members of this association, were discharged or retired employees of SUNAT because such persons would not be beneficiaries of the judgment of November 21, 2019. Furthermore, the Peruvian State understood that, in order to benefit from the eighth operative paragraph, the SUNAT discharged or retired employees who had obtained an administrative decision, should abide by the Peruvian legal system, because such a decision could be subject to judicial review. Therefore, in this regard, the Peruvian State also considered that the Court should declare the representatives' request for interpretation inadmissible.

29. The ***Commission*** observed that the representatives had referred to the scope of paragraph 226 in relation to the eighth operative paragraph of the Court's judgment. The Commission agreed with the representatives' request that the Court clarify who could register on the list created by the State. Also, regarding the State's request, the Commission understood that the purpose of this list was to identify all those who, to date, had not received the payment of pension rights owing to the failure to execute an internal decision, and so that they could receive the corresponding payments. Consequently, the Commission considered that the list would have pecuniary effects because supposing otherwise would entail denying the inherent remedial nature of this mechanism. In addition, the Commission underlined that the list related to the representatives' request concerning the number of victims in the judgment in order to determine who should be included on the said list.

B.2 Considerations of the Court

30. The Court reiterates what it established in paragraphs 224 to 227 of the judgment and in the eighth operative paragraph:

> 224. In this case, the Court has ordered a measure of restitution based on the human rights violations declared in this judgment. However, the arguments of the Commission and the representatives reveal that other members of ANCEJUB-SUNAT may find themselves in similar situations to those examined in this case, given the possible

> failure to execute judgments on the equalization of their pensions and the reimbursement of amounts they failed to receive owing to the application of Decree 673. The Court emphasizes that guarantees of non-repetition must be ordered in cases in which the pension rights of vulnerable groups have been violated.
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> 225. Consequently, as a guarantee of non-repetition, the Court finds it appropriate to order the State to create a list that identifies: (a) other members of ANCEJUB-SUNAT who are not among the victims in this case, and (b) other persons who, while not members of this association, are discharged or retired employees of the National Tax Administration Superintendence in a similar situation to the victims in this case, in that they have been the beneficiaries of a judicial ruling or an administrative decision – either in the context of an amparo proceeding or any other judicial remedy or administrative procedure against the application of Decree 673 – that recognizes, restitutes or grants the right to a pension, the execution of which has not started or is still ongoing.
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> 226. The State shall be responsible for: (a) creating and managing the list, on which it will register and identify adequately all the persons who meet the conditions indicated in this measure, and (b) collecting, reviewing and recording the information and/or documentation of the judicial proceedings, conditions of employment while they worked for the State (position, category, salary, length of service, date of retirement/discharge, etc.) and any other information or document necessary to fully execute the judgments issued in their favor.
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> 227. For the creation of this list, the State has six months from notification of the judgment. Once the list is created, the State shall, for three years, provide an annual report on the progress made regarding this guarantee of non-repetition. The Court will assess this information at the stage of monitoring compliance with this judgment and will rule in this regard.
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> […]
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> [Eighth operative paragraph] The State shall create, within six months of notification of this judgment, a list in order to settle cases similar to this one, as established in paragraphs 225 to 227 of this judgment.

31. The Court considers that the foregoing paragraphs should be interpreted in relation to the rest of the judgment, as well as the arguments that were presented by the parties and the observations of the Commission regarding the need to recognize guarantees of non-repetition in this case. Therefore, the Court considers that the judgment is clear that the measures of restitution and/or compensation for non-pecuniary damage were ordered in favor of the 597 persons indicated in Annex 2 of the judgment (*supra* paras. 18 and 19), who constituted the injured party pursuant to Article 63(1) of the Convention. However, the fact that only these persons were considered victims in the judgment does not ignore the fact that the rights of other members of ANCEJUB-SUNAT, and also other persons who were employed by SUNAT – although they were not recognized as victims in the case – could be impaired owing to the application of Decree 673, and that their pension rights could have been recognized by an internal judicial ruling or administrative decision that has not been executed.

32. In this regard, paragraph 225 of the judgment is clear and precise that the beneficiaries of the guarantee of non-repetition are: (a) other members of ANCEJUB-SUNAT who are not among the victims in this case, and (b) other persons who, while not members of this association, are discharged or retired employees of the National Tax Administration Superintendence." That said, the same measure leaves no doubt that the beneficiaries of this measures must have faced "a similar situation to the victims in this case." And this means "that they have been the beneficiaries of a judicial ruling or an administrative decision – either

in the context of an amparo proceeding or any other judicial remedy or administrative procedure against the application of Decree 673 – that recognizes, restitutes or grants the right to a pension, the execution of which has not started or is still ongoing." The Court notes that the identity of the group of persons to whom this measure of reparation is addressed is clear, and also the conditions they must meet to be considered as such.

33. With regard to the foregoing, the reference to "any other information or document necessary to fully execute the judgment issued in their favor" in paragraph 226 of the judgment, should be understood as part of the State obligation to create the list that is the main purpose of the guarantee of non-repetition. In this way, the information or document referred to in point (b) of paragraph 226 includes the information that will allow the State to individualize adequately the persons who meet the criteria established in paragraph 225, as well as the total amount of the payments they have not received and those to which they have a right, in order to comply satisfactorily with the execution of the internal judicial rulings or administrative decisions issued in their favor. However, the Court clarifies that this measure does not mean that the persons who are incorporated on the list created by the State are direct beneficiaries of this Court's judgment (as the 597 persons listed in Annex 2 of the judgment are); or that, merely by being incorporated on the list, such persons acquire the right to receive reparation. In this understanding, it is clear that those persons who have obtained an administrative decision in their favor should not necessarily have to go to court to be incorporated on the list that the State must create to comply with part of the guarantee of non-repetition.

34. Furthermore, with regard to the scope, purpose and implications of the guarantee of non-repetition ordered by the Court in the judgment, the Court finds it relevant to indicate that those elements are revealed by paragraphs 225 and 226 of the judgment when it indicates that the State must "create a list" that permits identifying adequately all those persons who are in similar situations to the victims in the instant case in accordance with paragraphs 225 and 226 and, thus, possess the necessary elements to execute the judicial ruling or administrative decision that "recognizes, restitutes or grants the right to a pension, the execution of which has not started or is still ongoing." In this way, the said guarantee of non-repetition has the scope of an obligation of means, and its purpose is that, by creating this list, the State will expedite the adoption of measures that allow it to resolve human rights violations similar to those declared in the judgment. In this regard, it is worth mentioning that the measure of reparation ordered has a general purpose, due to its nature as a guarantee of non-repetition; however, it is addressed at assisting the State – in compliance with its obligations to respect and to ensure rights – to make progress in resolving the broader issue signified by the failure to execute judicial rulings or administrative decisions that recognize pension rights to members of ANCEJUB who were affected by the application of Decree 673, but who have not been recognized as victims in the judgment.

V
OPERATIVE PARAGRAPHS

35. 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 presented by the victims' representatives and by the State in relation to the judgment on preliminary objections, merits, reparations and costs delivered in the case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) *v.* Peru pursuant to paragraph 8 of this judgment.

2. To clarify, by interpretation, the judgment on merits, reparations and costs delivered in the case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) *v.* Peru, presented by the representatives, with regard to the determination of the number of victims established in paragraphs 120, 121, 122, 123 and 138, pursuant to paragraphs 17 to 19 of this judgment on interpretation.

3. To clarify, by interpretation, the judgment on merits, reparations and costs delivered in the case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) *v.* Peru, presented by the representatives, with regard to the scope of paragraph 217 and the sixth operative paragraph, pursuant to paragraphs 20 to 22 of this judgment on interpretation.

4. To clarify, by interpretation, the judgment on merits, reparations and costs delivered in the case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) *v.* Peru, presented by the representatives and the State, with regard to paragraphs 225, 226, 227 and the eighth operative paragraph, pursuant to paragraphs 30 to 34 of this judgment on interpretation.

5. To reject, as inadmissible the request for interpretation of the judgment on merits, reparations and costs delivered in the Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) *v.* Peru presented by the representatives with regard to the sixth operative paragraph, pursuant to paragraph 23 of this judgment on interpretation.

6. To require the Secretariat of the Court to notify this judgment on interpretation to the State, the representatives and the Commission.

L. Patricio Pazmiño Freire
Vice President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

L. Patricio Pazmiño Freire
Vice President

Pablo Saavedra Alessandri
Secretary