

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF CUYA LAVY ET AL. V. PERU**

**JUDGMENT OF JULY 27, 2022**

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

In the case of *Cuya Lavy et al. v. Peru*,

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

L. Patricio Pazmiño Freire, Acting President  
Humberto Antonio Sierra Porto  
Eduardo Ferrer Mac-Gregor Poisot  
Eugenio Raúl Zaffaroni,  
Ricardo Pérez Manrique,

also present,

Pablo Saavedra Alessandri, Registrar  
Romina I. Sijniensky, Deputy Registrar,

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”), renders its decision on the request for interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs in the instant case delivered by the Court on September 28, 2021 (hereinafter also “the judgment”), that was filed on March 8, 2022, by the State of Peru (hereinafter “the Peruvian State”, “the State” or “Peru”).

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\* This interpretation of judgment was delivered during the sixty-fifth special session of the Court, which was held virtually using technological resources pursuant to the Court’s Rules of Procedure. Judges Elizabeth Odio Benito and Eduardo Vio Grossi did not take part in the deliberation and signature of this judgment due to circumstances beyond their control that were accepted by the full Court.

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

1. On September 28, 2021, the Inter-American Court issued the judgment in this case, of which the parties and the Inter-American Commission on Human Rights (hereinafter also "the Commission") were notified on December 10 of the same year.
2. On March 8, 2022, the State submitted a request for interpretation regarding paragraph 206 of the judgment, specifically with respect to the Court's ruling that it was necessary for the State "to adapt its domestic legal system to the provisions of the American Convention, with regard to the reinstatement of non-ratified judges to the Judiciary or the Public Prosecution Service and to the possibility of appealing decisions determining the non-ratification of a judge; and, while the measures are not adopted . . . to exercise *ex officio* conventionality control between domestic law and the American Convention."
3. On March 22, 2022, pursuant to Article 68(2) of the Rules of Procedure and on the instructions of the President of the Court, the Court's Secretariat forwarded the request for interpretation to the representatives of the victims (hereinafter "the representatives")<sup>1</sup> and the Commission, and gave them until April 22, 2022, to submit any written observations they deemed pertinent. On April 21 and 22, 2022, the representatives and the Commission submitted their respective observations. One of the representatives attached a number of annexes to the observations.

**II**  
**JURISDICTION**

4. 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.

5. 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 its decisions, the Court shall be composed, whenever possible, of the judges who delivered the original judgment. On this occasion, Court is made up of a majority of the same judges that delivered the judgment whose interpretation is being sought.

**III ADMISSIBILITY**

6. It is the responsibility of the Court to verify whether the request submitted by the State meets the requirements established in the rules applicable to a request for interpretation of judgment, namely, Article 67 of the Convention and Article 68 of the Rules of Procedure, as cited above. Furthermore, Article 31(3) of the Rules of Procedure establishes that "[j]udgments and orders of the Court may not be contested in any way."

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<sup>1</sup> Mariano Patricio Maciel and Leonardo Cardoso de Magalhães are the representatives of Jorge Luis Cuya Lavy. Rivana Barreto Ricarte de Oliveira and Hugo Cesar Gimenez Ruiz Díaz are the representatives of Walter Antonio Valenzuela Cerna. Enrique Tazza Chaupis is the representative of Jean Aubert Díaz Alvarado and Marta Silvana Rodríguez Ricse.

7. The Court notes that the State submitted its request for interpretation of the judgment within the period of ninety days established in Article 67 of the Convention. Since the State was notified of the judgment on December 10, 2021, and the request for interpretation was submitted on March 8, 2022, the request is admissible so far as the time frame for submission is concerned. The Inter-American Court will consider the merits of the request with regard to the other requirements in the next chapter.

#### **IV ANALYSIS OF THE ADMISSIBILITY OF A REQUEST FOR INTERPRETATION**

8. The Court will examine the State's request 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.

9. The Court has indicated that the request or petition for interpretation of a judgment may not be used as a means of challenging it, but must be made for the sole purpose of working out the meaning of the decision when one of the parties maintains that the text of its operative paragraphs or its consideranda is unclear or imprecise, provided those consideranda affect that operative paragraph. Hence, a request for interpretation may not be used to seek amendment or nullification or the judgment in question.<sup>2</sup>

10. The Court has also upheld the inadmissibility of using a request for interpretation to submit considerations on matters of fact and law already raised at the proper procedural time and on which the Court has already adopted a decision,<sup>3</sup> nor to seek that the Court again assess matters already decided in the judgment.<sup>4</sup> Furthermore, this avenue cannot be used to attempt to broaden the scope of a reparation measure ordered in a timely manner.<sup>5</sup>

#### **A. The State's request for interpretation with regard to the reinstatement of judges and the possibility of appealing decisions, and the adaptation of the legal system ordered by the Court to guarantee non-repetition**

##### **A.1. Arguments of the parties and the Commission**

11. The **State** asked the Court to interpret paragraphs 204 and 206, and operative paragraph 10, of the judgment issued in the present case. Specifically, it asked the Court to clarify and further explain the ruling contained in paragraph 206 of the judgment. The State also raised the two points described below.

12. The first concerns the adaptation of the State's domestic legal system to the provisions of the Convention with regard to: (i) the reinstatement of the non-ratified judges

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<sup>2</sup> 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, para. 16, and *Case of Casa Nina v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of September 1, 2021. Series C No. 433, para. 10.

<sup>3</sup> Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on reparations and costs*. Judgment of June 3, 1999. Series C No. 53, para. 15, and *Case of Casa Nina v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

<sup>4</sup> Cf. *Caso 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 Casa Nina v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

<sup>5</sup> Cf. *Caso 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 Casa Nina v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 11.

to the Judiciary or the Public Prosecution Service, and (ii) the possibility of appealing decisions determining the non-ratification of a judge. The State noted that the Court, in paragraph 206 of its judgment, had stated the need to bring the State's domestic laws into line with the guarantees established in the American Convention. Peru stated that it understood that the amendment or adaptation of its legal framework (at the regulatory, legislative or constitutional level, taking into account the legal hierarchy of the Peruvian State) that was required to comply with operative paragraph 10 was a process that pertained to its domestic laws. It added that its understanding was that "the considerations expressed by the [Court] in the [...] judgment mean that the adoption of measures to adapt the State's domestic legal system, as called for paragraph 206, could be inferred from a comprehensive reading of the judgment to entail only the reinstatement of judges who have not been ratified within the Judiciary or the Public Prosecution Service, and to the possibility of appealing decisions determining the non-ratification of a judge, and that completion of this process would constitute full compliance with operative paragraph 10." Therefore, it asked the Court to clarify, via hermeneutics, that "this adaptation of the legal framework does not extend to other additional guarantees, in order to avoid creating false expectations and confusion regarding the reparation measure ordered by the [Court]" (emphasis in original).

13. The second point has to do with the State's actions to suspend, nullify, eliminate, discontinue, or any others that would curtail the processes used to evaluate and ratify judges, whether such actions are finalized, in process, or still pending. In this regard, Peru held that the non-repetition measures ordered by the Court are in relation to the stipulations of paragraph 204 of the judgment, where the Court acknowledges that the State has adopted a number of regulations governing the evaluation and ratification procedure currently in effect, through the constitutional reform on the establishment and responsibilities of the National Board of Justice of the Judiciary (also, "JNJ"), the Organic Law of the JNJ, and the regulations governing the comprehensive evaluation and ratification process for judges of the Judiciary and prosecutors of the Public Prosecution Service. Peru added, however, that the Court had found in paragraph 206 the State was to adopt measures to adapt its legal system with respect to the reinstatement of non-ratified judges to the Judiciary or the Public Prosecution Service, and to the possibility of appealing decisions determining the non-ratification of a judge, specifying that "while the measures are not adopted, the State authorities are under the obligation to exercise *ex officio* conventionality control between domestic regulations and the [Convention];" thus, it ordered the State to continue with the evaluation and ratification processes that are under way and/or to be carried out. Therefore, the State asked the Court to confirm that, in operative paragraph 10, pursuant to paragraphs 204 and 206 of the judgment, "it has not ordered the State of Peru to suspend, nullify, eliminate, discontinue, or perform any other kind of action that would curtail the processes used to evaluate and ratify judges, whether such actions are finalized, in process, or still pending. This would prevent confusion regarding the scope of the reparation measure ordered by the [Court]" (emphasis in the original).

14. The **Commission** was of the opinion that the wording of operative paragraph 10 and paragraphs 203, 204, 205 and 206, and of paragraphs 132<sup>6</sup> and 133<sup>7</sup> of the judgment was

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<sup>6</sup> Paragraph 132 states that: "Furthermore, this Court pointed out that "in the opinion of the Court, to a process of evaluation or ratification, insofar as it involves the possibility of dismissal of the officials evaluated in cases of incompetence or poor performance, the guarantees of due process characteristic of disciplinary processes are applicable, although their scope may be different in content or intensity".

<sup>7</sup> Paragraph 133 notes that: "In this regard, Article 8 of the Convention establishes the guidelines of due legal process, which refers to the set of requirements that must be observed in the procedural instances so that individuals are in a position to adequately defend their rights before any act of the State that may impair them. In this sense, in its established case law, this Court has indicated that it is required of any public authority, whether administrative, legislative or judicial, whose decisions may affect the rights of individuals, to adopt said decisions with full respect for the guarantees of due legal process."

clear enough to permit an understanding of the changes called for in operative paragraph 10, which, according to paragraph 206 refer to [...] the possibility of “the reinstatement of the non-ratified judges to the Judiciary or the Public Prosecution Service, and to the possibility of appealing decisions determining the non-ratification of a judge.” The Commission emphasized the fact that the authorities’ obligation to exercise *ex officio* conventionality control while the process of amending the legal framework was carried out was made sufficiently clear in the judgment.

15. The **representatives of Jorge Luis Cuya Lavy** made reference to several documents,<sup>8</sup> based on which they believed that the request for interpretation submitted by the State should not to be limited to the issues raised, but rather include others ranging from constitutional/legal considerations (Organic Law of the National Council of Justice) to regulatory matters and the directives for the implementation of the current process of evaluation and ratification of judges of the Judiciary and prosecutors of the Public Prosecution Service, based on the regulations for the procedure governing the comprehensive evaluation and ratification process for judges of the Judiciary and prosecutors of the Public Prosecution Service. This meant that the National Council of Justice should proceed immediately to adapt its scope to the parameters set by the Convention as established in the judgment of September 28, 2021 and suspend the announcement of processes for the comprehensive evaluation and ratification of judges of the Judiciary and prosecutors of the Public Prosecution Service. This would avert any imminent risk of a repetition of the events described in the judgment and of the State failing to perform its duties.<sup>9</sup> Furthermore, the representatives requested that the Court provide an extensive interpretation of the judgment dealing with aspects related to the overarching process of ratifying judges and prosecutors.

16. The **representatives of Walter Antonio Valenzuela Cerna**<sup>10</sup> indicated that they “understand that the judgment issued by the Court [...] is direct and allows no room for error.”

17. The representative of **Jean Aubert Díaz Alvarado and Marta Silvana Rodríguez Ricse** did not submit observations directly related to the State’s request for interpretation. However, he drew attention to “three legislative proposals that the State must implement”: (a) “amendment of subparagraph 13 of Article 48 of Law 29,277,<sup>11</sup> under which the ‘failure to give the grounds for judicial decisions’ is classified as a very serious offense”; (b) the application of the principle of expiry in administrative sanctions procedures, according to Article 259 of Law No 27,444, General Administrative Procedure Act,<sup>12</sup> which establishes that

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<sup>8</sup> These were issued by: the President of the National Board of Justice; the President of the Judiciary; the Judiciary; the Supreme Court of Justice of the Republic; the presidents of Peru’s 35 Higher Courts of Justice; the President of the Higher Court of Justice of Arequipa; the President of the Justice and Human Rights Commission of the Congress of the Republic; the President of the National Council of Deans of the Bar Associations of Peru; the President of the District Association of Judges of Arequipa; and, the President of Peru’s National Association of Judges, Association of Public Prosecutors, Association of Judges for Justice and Democracy, among others.

<sup>9</sup> The representatives also pointed out that the Supranational Specialized Public Prosecutor’s Office had sought the interpretation only at the request of the National Board of Justice, without considering the arguments of Peru’s Judiciary.

<sup>10</sup> On April 17, 2022, the representatives reported that Valenzuela Cerna had died on April 11, 2022.

<sup>11</sup> Paragraph 13 of Article 48 of the law presently reads as follows: “Failure to give the grounds for judicial decisions, or unjustified failure to perform judicial duties.” The amendment proposed by the representative would read: “Failure to give the grounds for judicial decisions. Complainants wishing to challenge this finding must have appealed the decision that they find injurious.” Cf. Judicial Service Act, published on November 7, 2008, in the official state newspaper *El Peruano*.

<sup>12</sup> Article 259 establishes: “Administrative expiry of sanctions procedure 1. The period for issuing decisions regarding sanctions procedures initiated *ex officio* is nine (9) months from the date of notification of proceedings. This term may be extended exceptionally, for a maximum of three (3) months, and the competent body must issue a duly justified decision on the reasons for the extension, before the initial term has expired. Administrative expiry

administrative sanctions procedures expire nine months from the date of notification of proceedings, and the procedure is closed; and, (c) the representative noted that the National Board of Justice has a double standard for sanctions against judges.

### **A.2. Considerations of the Court**

18. In paragraphs 204, 205 y 206 of the judgment, referring to the guarantees of non-repetition it requested, the Court established the following:

204. From the information provided by the State, it is indicated that, after the events of this case, Peru has adopted various regulations to regulate the evaluation and ratification procedure that is in force, through the constitutional reform on the establishment and functions of the National Council of the Judiciary, the Organic Law of the JNJ and the Regulation of the Comprehensive Evaluation and Ratification Process of Judges of the Judiciary and Prosecutors of the Public Prosecution Service through Resolution No. 260-2020-JNJ of December 9, 2020 (*supra* para. 80).

205. The Court notes that, according to the allegations of the parties, the victims' own statements, as well as the regulations in force, the prohibition that non-ratified magistrates may re-enter the Judiciary and the Public Prosecution Service still remains, despite the fact that the State has repeatedly indicated that the Constitutional Court in its judgment of January 8, 2006 indicated that the right of non-ratified magistrates to re-apply to the Judiciary and the Public Prosecution Service cannot be prevented in any way, since the fact of not having been ratified should not be an impediment to re-enter the judicial profession.

206. In light of the foregoing, the Court considers it necessary for the State to adopt legislative or other measures to adapt its domestic legal system to the provisions of the American Convention, in accordance with the ruling in this judgment in relation to the reinstatement of the non-ratified magistrates to the Judiciary or the Public Prosecution Service and to the possibility of appealing decisions determining the non-ratification of a magistrate. This implies that the State must adopt said measures within a reasonable period of time. Regardless of the reforms that the State must introduce, while the measures are not adopted the State authorities are under the obligation to exercise *ex officio* conventionality control between domestic law and the American Convention, within the framework of their respective competencies and the corresponding procedural regulations. In this task, the domestic authorities must take into account not only the treaty, but also its interpretation by the Inter-American Court, the ultimate interpreter of the Convention.

19. Based on the above considerations, this Court established the following in operative paragraph 10:

10. The State shall adapt, within a reasonable timeframe, its domestic legal system to the parameters established in this judgment, pursuant to the provisions of paragraphs 203 to 206 of this judgment.

20. Having studied the request submitted by the State, this Court recalls that the parties must consider the judgment as a whole and each paragraph in light of the rest rather than interpreting paragraphs in isolation.<sup>13</sup> With that in mind, the Court notes that the meaning and scope of the adaptation of the legal system ordered as a guarantee of non-repetition is evident from the text of the paragraphs transcribed, in conformity with paragraphs 203 and 205 and paragraphs 132 and 133 of the judgment.

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does not apply in the case of the appeals procedure. When, by law, the bodies concerned have more time to rule on the expiry period, the expiry period established under this act shall apply. [...]". Cf. General Administrative Procedure Act, published on April 11, 2001, in the official state newspaper *El Peruano*.

<sup>13</sup> Cf. *Case of Pollo Rivera et al. v. Peru. Request for interpretation of the judgment on merits, reparations and costs*. Judgment of May 25, 2017. Serie C No. 335, para. 26, and *Case of Casa Nina v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs, supra*, para. 33.

21. Paragraph 206 of the judgment specifically holds that the State should adopt “legislative or other measures to adapt its domestic legal system to the provisions of the American Convention, in accordance with the ruling in this judgment in relation to the reinstatement of the non-ratified judges to the Judiciary or the Public Prosecution Service and to the possibility of appealing decisions determining the non-ratification of a judge”.

22. Therefore, the Court hereby clarifies paragraph 206 of the judgment, which establishes that the State must adopt legislative or other measures that provide for: (i) the reinstatement of non-ratified judges to the Judiciary or the Public Prosecution Service, and (ii) the possibility of appealing decisions not to ratify a judge, such that its domestic legal system will be compatible with the provisions of the American Convention.

## **V OPERATIVE PARAGRAPHS**

23. Therefore,

### **THE COURT**

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

### **DECIDES:**

Unanimously:

1. To declare admissible, pursuant to paragraph 7 of this judgment of interpretation, the request for interpretation of the judgment on preliminary objections, merits, reparations and costs in the *Case of Cuya Lavy et al v. Peru* submitted by the State.
2. To clarify, by interpretation, paragraph 206 of the judgment on preliminary objections, merits, reparations and costs in the *Case of Cuya Lavy et al v. Peru*, pursuant to paragraphs 21 through 23 of this judgment of interpretation.
3. To require the Registrar of the Court to notify this judgment on interpretation to the Republic of Peru, the representatives of the victims and the Inter-American Commission on Human Rights.

IA/ Court HR. *Case of Cuya Lavy et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs.* Judgment of July 27, 2022.

L. Patricio Pazmiño Freire  
Acting President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Registrar

So ordered,

L. Patricio Pazmiño Freire  
Acting President

Pablo Saavedra Alessandri  
Registrar