

Inter-American Court of Human Rights

Case of Barrios Altos *et al.* v. Peru

Judgment of September 3, 2001 (*Interpretation of the Judgment of the Merits*)

In the Barrios Altos Case,

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

Antônio A. Cançado Trindade, President;
Hernán Salgado Pesantes, Judge;
Alirio Abreu Burelli, Judge;
Sergio García Ramírez, Judge, and
Carlos Vicente de Roux Rengifo, Judge;

Also present:

Manuel E. Ventura Robles, Secretary, and
Pablo Saavedra Alessandri, Deputy Secretary,

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 58 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure")** decides the following request filed by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on June 20, 2001, seeking an interpretation of the judgment that the Court delivered on March 14, 2001, on the merits of the Barrios Altos Case (hereinafter "the judgment on the merits").

I COMPETENCE AND COMPOSITION OF THE COURT

1. Article 67 of the Convention provides that:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Under that article, the Court is competent to interpret its own judgments. When considering a request for interpretation, the Court shall be composed,

* Judge Máximo Pacheco Gómez informed the Court that for reasons of *force majeure*, he was unable to participate in the deliberations on this Judgment or affix his name thereto. Judge Oliver Jackman did not participate in the deliberations on and rendering of the judgment because he did not participate in the judgment on the merits.

** In keeping with the Court's March 13, 2001 Order on the Transitory Provisions of the Court's Rules of Procedure, this judgment on the interpretation of the judgment on the merits of the case is delivered in accordance with the Rules of Procedure approved by the Court on September 16, 1996.

whenever possible, of the same judges who delivered the judgment of which interpretation is being sought (Article 58(3) of the Rules of Procedure). In this instance, the Court is composed of the same judges who delivered the judgment on the merits, whose interpretation the Commission has requested.

II INTRODUCTION OF THE REQUEST FOR INTERPRETATION

2. On June 20, 2001, the Commission presented a request for interpretation of the judgment on the merits, pursuant to Article 67 of the American Convention and Article 58 of the Rules of Procedure.

III PROCEDURE WITH THE COURT

3. By note of June 21, 2001, the Secretariat of the Court forwarded a copy of the request for interpretation to the State of Peru (hereinafter "the State" or "Peru") and, pursuant to Article 58 of the Rules of Procedure, invited it to present any written comments it deemed pertinent by July 23, 2001, at the latest.

4. On July 16, 2001, the State requested an extension for presenting its observations on the request for an interpretation of judgment. On instructions from the President of the Court (hereinafter "the President"), the extension was granted via a note from the Secretariat, dated August 13, 2001.

5. On August 17, 2001, Peru requested "a special extension, until Friday, [August] 24 of this [year] to present [its] comments [...] on the request for an interpretation of the judgment on the merits in the Barrios Altos Case," based on "the recent cabinet changes ushered in with the new Administration." On the President's instructions, the Secretariat informed the State that in view of the exceptional circumstance cited by Peru, its deadline for submitting its comments on the request for an interpretation of the judgment was extended until August 22, 2001.

6. Although it had requested and received two extensions, Peru finally presented its written comments on the request for an interpretation of the judgment on August 29, 2001, which was after the extended deadline. The Court considers that the time elapsed cannot be regarded as reasonable according to the criterion it uses in its case-law¹; and in the interests of the

¹ Cf. *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 50; *"The Last Temptation of Christ" Case (Olmedo Bustos et al. vs. Chile)*. Order of November 9, 1999, Consideranda 4; *Paniagua Morales et al. Case*. Judgment of March 8, 1998. Series C No. 37, paragraphs 152-156; *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No. 35, paragraphs 70-75; *Genie Lacayo Case*. Judgment of January 29, 1997. Series C No. 30, paragraphs 77-81; *Castillo Páez Case, Preliminary Objections*. Judgment of January 30, 1996. Series C No. 24, para. 34; *Paniagua*

necessity of juridical security and equality of arms, the Court decides not to add that brief to the case file.

7. On August 29, 2001, Walter Alban Peralta, Peru's Ombudsman, presented a brief of *amicus curiae*, which was added to the case file.

IV PURPOSE OF THE REQUEST FOR INTERPRETATION

8. In its request for an interpretation, the Commission is petitioning the Court for clarification of certain questions as to the *meaning* and *scope* of the judgment on the merits. Specifically, the Commission is asking the Court whether the effects of operative paragraph 4 of the judgment delivered on March 14, 2001 in this case apply only to this case or to all those cases of human rights violations wherein the amnesty laws (No. 26479 and No. 26492) were applied.

9. The Commission bases this request for interpretation on the fact that:

[i]n the negotiations between the petitioners' representatives and the Government of Peru on the matter of reparations, the petitioners' representatives, with the Commission's support, argued that the State is undertaking to nullify the effects of the amnesty laws (N° 26479 and N° 26492) in all cases of human rights violations where these laws were applied. However, the petitioners' representatives have informed the Commission [...] that the government delegation has insisted that in its opinion, the Judgment of the Inter-American Court would apply only to the Barrios Altos Case.

V ADMISSIBILITY

10. Under Article 67 of the Convention, the request for interpretation must be filed "within ninety days from the date of notification of the judgment." The Court has established that the Inter-American Commission was given notice of the judgment on the merits on March 20, 2001. The request for interpretation was, therefore, presented by the required time limit (*supra* para. 2).

11. The Court must now turn its attention to the question of whether the issues that the request for interpretation raises meet the standards that the applicable rules set. Article 58 of the Rules of Procedure provides that

[t]he request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

12. The Commission's request for interpretation is based on the fact that Peru "has insisted that in its opinion, the Judgment of the Inter-American Court would apply only to the Barrios Altos Case" (*supra* para. 9). Therefore, there is disagreement as to the judgment's *meaning* or *scope*.

Morales et al. Case, Preliminary Objection. Judgment of January 25, 1996. Series C No. 23, paragraphs 38, 40-42; and *Cayara Case, Preliminary Objections.* Judgment of February 3, 1993. Series C No. 14, paragraphs 42 and 63.

13. Based on the foregoing, the Court finds that the request conforms to Article 67 of the Convention and Article 58 of the Court's Rules of Procedure and therefore declares it admissible. Accordingly, the Court will now proceed to interpret those aspects of the judgment whose *meaning* or *scope* is at issue.

VI THE AMNESTY LAWS' INCOMPATIBILITY WITH THE CONVENTION

The Commission's arguments

14. In its request for interpretation, the Commission asked the Court to determine the following:

Is the Judgment in the Barrios Altos Case, concerning the incompatibility of laws Nos. 26479 and 26492 with the American Convention, general in scope or confined to that specific case only?

The Commission's contention is that "the effects of the Court's judgment are not confined exclusively to the Barrios Altos Case, but rather to all those in which those amnesty laws were applied." It points out that paragraph 44 of the Court's judgment of March 14, 2001 "can hardly be interpreted any other way." It further notes that in Ombudsman Report No. 57, titled "Amnesty vs. Human Rights: in search of justice," approved in Ombudsman Resolution No. 019-2001/DP, the Office of the Ombudsman noted that:

The Judgment of the Inter-American Court in the Barrios Altos Case is general in scope, because the laws themselves -Nº 26479 and Nº 26492- were violations. The laws are incompatible with the Convention not just in the Barrios Altos Case but in all cases involving human rights violations wherein the Convention applies.

The Court's observations

15. When addressing the amnesty laws' incompatibility with the American Convention, the Court wrote the following in the judgment on the merits in the present case:

[...] The Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary executions and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law [;]

[...] The Court, in accordance with the arguments put forward by the Commission and not contested by the State, considers that the amnesty laws adopted by Peru prevented the victims' next of kin and the surviving victims in this case from being heard by a judge, as established in Article 8(1) of the Convention; they violated the right to judicial protection embodied in Article 25 of the Convention; they prevented the investigation, capture, prosecution and conviction of those responsible for the events that occurred in Barrios Altos, thus failing to comply with Article 1(1) of the Convention, and they obstructed clarification of the facts of this case. Finally, the adoption of self-amnesty laws that are incompatible with the Convention meant that Peru failed to comply with the obligation to adapt internal legislation that is embodied in Article 2 of the Convention [;]

[...] The Court considers that it should be emphasized that, in the light of the general obligations established in articles 1(1) and 2 of the American Convention, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse, in the terms of Articles 8 and 25 of the Convention. Consequently, States Parties to the Convention which adopt laws that have the opposite effect, such as self-amnesty laws, violate articles 8 and 25, in relation to articles 1(1) and 2 of the Convention. Self-amnesty laws lead to the defenselessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the Convention. This type of law precludes the identification of the individuals who are responsible for human rights violations, because it obstructs the investigation and access to justice and prevents the victims and their next of kin from knowing the truth and receiving the corresponding reparation[; and]

[...] Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru where the rights established in the American Convention have been violated.²

16. In operative paragraph 4, the Court resolved the following in this regard:

[...] Amnesty Laws No. 26479 and No. 26492 are incompatible with the American Convention on Human Rights and, consequently, lack legal effect.

In operative paragraph 5, it resolved that:

[...] the State of Peru must investigate the facts to determine the identity of those responsible for the human rights violations referred to in this judgment, and also publish the results of this investigation and punish those responsible.

17. In its case-law the Court has held the following with regard to the State's obligation to suppress laws that imply a violation of the Convention:

[...] the general obligation of the State, established in Article 2 of the Convention, includes the adoption of measures to suppress laws and practices of any kind that imply a violation of the guarantees established in the Convention, and also the adoption of laws and the implementation of practices leading to the effective observance of the said guarantees.

[...]

[...] In international law, customary law establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. This law is universally accepted and is supported by jurisprudence. The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of this Convention, in order to guarantee the rights that it embodies. This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of *effet utile*). This means that the State must adopt all measures so that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires. Such measures are only effective when the State adjusts its actions to the Convention's rules on protection.³

² Cf. *Barrios Altos Case*. Judgment of March 14, 2001. Series C No. 75, paragraphs 41-44.

³ Cf. "*The Last Temptation of Christ*" Case (*Olmedo Bustos et al.*). Judgment of February 5, 2001. Series C No. 73, paragraphs 85-87; *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, para.137; and *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 207.

18. Enactment of a law that is manifestly incompatible with the obligations undertaken by a State Party to the Convention is *per se* a violation of the Convention for which the State incurs international responsibility. The Court therefore considers that given the nature of the violation that amnesty laws No. 26479 and No. 26492 constitute, the effects of the decision in the judgment on the merits of the Barrios Altos Cases are general in nature, and the question put to the Court in the Commission's request for interpretation must be so answered.

VII

Now, therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 67 of the Convention and Article 58 of the Court's Rules of Procedure,

DECIDES

unanimously:

1. That the request filed by the Inter-American Commission on Human Rights seeking an interpretation of the March 14, 2001 judgment in the Barrios Altos Case is admissible.
2. That given the nature of the violation that amnesty laws No. 26479 and No. 26492 constitute, the decision in the judgment on the merits in the Barrios Altos Case has generic effects.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, September 3, 2001.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary