

LOAYZA TAMAYO CASE

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF MARCH 8, 1998

In the Loayza Tamayo case,

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

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Vice President
Héctor Fix-Zamudio, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge, and
Alirio Abreu-Burelli, Judge;

also present,

Manuel E. Ventura-Robles, Secretary
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary,

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29(2) and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") rules on the request for interpretation of the judgment of September 17, 1997, rendered by the Court in the Loayza Tamayo case (hereinafter "the judgment"), submitted by the State of Peru (hereinafter "Peru" or "the State") on December 19, 1997.

* Judge Oliver Jackman excused himself from hearing the request for interpretation submitted by Peru, owing to his inability to attend the XXIII Special Session of the Court, of which the President was duly informed.

I INTRODUCTION TO THE APPLICATION

1. On December 19, 1997, Peru submitted, in accordance with Article 67 of the American Convention, in connection with Article 58 of the Rules of Procedure, a request for interpretation of the aforementioned judgment.
2. By note of December 22, 1997, the President granted the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") until January 27, 1998 to present its arguments in connection with the request for interpretation.
3. On January 16, 1998 the Commission submitted a brief containing its comments on the request for interpretation, in which it asked the Court to declare it out of order and rejected.
4. On February 23, 1998 the State dispatched a brief in which it referred to the Inter-American Commission's comments on the request for interpretation. It also repeated some of the points contained therein.
5. On March 3, 1998 the Commission submitted a note containing comments on the State's brief, dated February 9, 1998, in which it again said that it did not express its opinion on many of the points raised by the State because

it deemed it unnecessary in view of their groundlessness ... [and that] the Commission has no "obligation" to pronounce on the specific point referred to in the aforementioned brief, especially since the request for interpretation was addressed to the Honourable Court and not to the Commission.

It also requested that the brief in question not be added to the file, on the ground of its inadmissibility since it does not comply with the Rules of Procedure.

II COMPOSITION AND COMPETENCE

6. For this occasion the Court is composed of the judges who delivered the judgment of September 17, 1997, for which the interpretation is being sought by Peru.

7. This composition is in keeping with Article 58(3) of the Rules of Procedure, which provides that

[w]hen considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which the interpretation is being sought [...]

8. The Court is competent to settle the present request for an interpretation inasmuch as Article 67 of the Convention provides that:

[t]he 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 that the request is made within ninety days from the date of notification of the judgment.

9. For its part, Article 58 of the Rules of Procedure establishes the following:

1. The 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.

2. The Secretary shall transmit the request for interpretation to the States that are parties to the case and to the Commission, as appropriate, and shall invite them to submit any written comments they deem relevant, within a time limit established by the President.

[...]

10. The judgment of September 17, 1997 was notified on September 20 to Peru, which submitted the aforementioned request for interpretation within the time limit established in Article 67.

III PURPOSE OF THE REQUEST

11. The State pointed out, in its request for interpretation, that it refers to the operative part of the judgment of the Court of September 17, 1997, in which the Court decided:

unanimously,

1. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the right to personal liberty recognized in Article 7 of the American Convention on Human Rights, in relation to Articles 25 and 1(1) thereof.

unanimously,

2. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the right to humane treatment recognized in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof.

unanimously,

3. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the judicial guarantees established in Article 8(1) and (2) of the American Convention on Human Rights, in relation to Articles 25 and 1(1) thereof, on the terms set forth in this judgment.

by six votes to one,

4. That the State of Peru violated, to the detriment of María Elena Loayza-Tamayo, the judicial guarantees established in Article

8(4) of the American Convention on Human Rights, in relation to Article 1(1) thereof.

Judge Alejandro Montiel-Argüello dissenting.

by six votes to one,

5. To order the State of Peru to release María Elena Loayza-Tamayo within a reasonable time, on the terms set forth in paragraph 84 of this judgment.

Judge Alejandro Montiel-Argüello dissenting.

unanimously,

6. That the State of Peru is obliged to pay fair compensation to the victim and her next of kin and to reimburse them for any expenses they may have incurred in their representations before the Peruvian authorities in connection with this process, for which purpose the corresponding proceeding remains open.

Judge Montiel-Argüello informed the Court of his Dissenting Opinion, and Judge Cançado Trindade and Judge Jackman of their Joint Concurring Opinion, both of which are attached to this judgment.

12. The Court summarizes the arguments and requests submitted by the State in its request for interpretation as follows:

a. that the operative part of the judgment does not contain any pronouncement on the exhaustion of domestic remedies, since only a brief and incomplete mention is made on the subject in paragraphs 47 and 48, nor did the Court, in the judgment on preliminary objections rendered in this case, put forward any basis for its rejection of the non-exhaustion of domestic remedies. Peru submitted other arguments connected with above-mentioned preliminary objection and declared the entire proceeding before the

Commission and the Court to be null and void. For these reasons, it requested the Court to deliver a specific ruling on the non-exhaustion of domestic remedies;

b. that Article 7 of the Convention had not been violated to the detriment of Ms. María Elena Loayza-Tamayo and that the judgment did not specify which of the seven subparagraphs of that article had been violated; that in the judgment the Court admitted that Supreme Decree 006-93-DE/CCFFAA of January 19, 1993, extending the state of emergency in the Province of Lima and in the Constitutional Province of Callao was in force on February 6, 1993, the date on which Ms. Loayza-Tamayo was arrested and that her detention was effected in accordance with the requirements of Article 27 of the Convention and of the Constitution and laws of Peru. The State further stated that the Court did not study the validity of the declaration of the state of emergency, within the requirements of the aforementioned Article 27;

c. that Ms. María Elena Loayza-Tamayo was serving a 20-year prison sentence; that in this case, under Peruvian legislation, the fulfillment of that sentence could only be interrupted when it had been served or by the granting of a pardon; that, for this reason, the Court's order to release Ms. Loayza-Tamayo was out of order and illegal; that the Court's order was complied with even though the Supreme Court of Justice of Lima, by decision of October 14, 1997, expressed its disagreement with the tenor and scope of the judgment of the Inter-American Court, with particular regard to operative paragraphs four and five, inasmuch as, in its view, the Peruvian jurisdictional organs did not violate Article 8(4) of the Convention which concerns the principle of *res judicata* or double jeopardy. Nor did the judgment specify whether the decision to order the release was a dismissal of the case, a supranational judicial pardon, or a supranational review. It added that, in a note of May 20, 1995, the President of the Court (hereinafter "the President") pointed out, after consultation of the Permanent Commission, that the Court was not empowered to, nor should it, intervene directly in the taking of judicial or administrative decisions which fall within

the purview of the national organs that comprise each country's domestic jurisdiction. According to the State, that note was not challenged and constitutes a part of the proceeding, even though it was "deliberately" excluded from the acts mentioned in the text of the judgment. Consequently, the Court committed an error in iudicando in taking a decision contrary to a previous decision in the same case and ruled on a matter which falls outside its competence. The State also requested the Court to clarify how the order for Ms. María Elena Loayza-Tamayo's release is to be interpreted in accordance with the provisions of Peruvian domestic law. Lastly, the State claimed that the Court should withdraw all the points contained of operative paragraph 5) of that judgment.

d. that any request to the Court must be based on the preceding events in the proceeding before the Inter-American Commission, which ends with the Report in which it concludes that a State has violated specific rights to a person's detriment, as did Report No. 20/94 in which it declared that Peru was responsible for the violation of the right to personal liberty and integrity and judicial guarantees set forth in Articles 7, 5 and 25 of the American Convention; that the applications lodged by the Commission in this case, exceeding the scope of that Report, included aspects which were not germane to it, such as the violation of the rights embodied in Article 8, paragraphs 1, 2(d), 2(g), 3 and 4 of the Convention and that the Court not only admitted that claim into the case but declared it out of order, which obliges the Tribunal to provide an interpretation on this matter. It further stated that operative paragraph three of the judgment was inconsistent with paragraph 64, since in the latter the Court declared that there was no evidence that Ms. María Elena Loayza-Tamayo had been coerced into testifying against herself and admitting her participation in the events, and that, however, in that operative paragraph Peru had been found guilty of violation of Article 8(2) of the Inter-American Convention.

e. that even though the request for compensation for Ms. María Elena Loayza-Tamayo's relatives was not included in Report No.

20/94 of the Commission nor in its petition to the Court, the judgment ordered them to be compensated without specifying who they were. Peru stated that the Court ruled on this matter *ultra petita*, for which reason an interpretation is needed in order to exclude those relatives from the decision contained in operative paragraph 6) of the judgment on the ground that they were not included in Report No. 20/94 nor in the brief containing the application and

f. that the Court accepted the testimony of Juan Alberto Delgadillo-Castañeda, Guzmán Casas-Luis, Pedro Telmo Vega-Valle, Luis Alberto Cantoral-Benavides, María Elena Loayza-Tamayo, Víctor Alvarez-Pérez and Iván Arturo Bazán-Chacón, although, for a variety of reasons, those witnesses were not impartial. The State requested that, in the interpretation, the Court rule that those statements are invalid.

13. In its brief of January 16, 1998 the Commission pointed out that the request for interpretation did not meet the requirements set forth in Article 67 of the American Convention, since rather than seeking clarification of the meaning or scope of the judgement but, on the contrary, challenges the judgment, which is final and not subject to appeal. The Court summarized the arguments adduced by the Commission in its comments on the request for interpretation as follows:

a. that the Court, in the judgment on preliminary objections and in paragraphs 47 and 48 of the judgment, referred properly and clearly to the objection of non-exhaustion of domestic remedies; that the statement concerning the allegation of lack of motive for it is groundless and, in any event, could not be brought through a request for interpretation.

b. that the Court did rule in the judgment that the scope of the declaration of the state of emergency governed by Article 27 of the Convention was not pertinent. It further declared that the State is refuting the Court's decision, rather than submitting any request for interpretation or clarification of the meaning or scope of the judgment;

c. that the judgment is clear regarding the meaning and scope of the order for Ms. María Elena Loayza-Tamayo's release, pursuant to Article 63(1) of the Convention, since in accordance with the principle of *restitutio in integrum*, the victim's rights and freedoms enshrined in the American Convention and which the Court found to have been violated must be restored. It further stated that Peruvian domestic law provides for compliance with an order issued by an international organization through its jurisdictional organs, when Peru is subject to its jurisdiction.

d. that there is no conventional or statutory provision that establishes that the request originating in a case before the Court must conform to the terms of the report referred to in Article 50. It further pointed out that the Court found that the principle of innocence embodied in Article 8(2) of the Convention had been violated and that it was not a question, as Peru claimed in its request for interpretation, of a denunciation of a generic violation of that article.

e. that, there is no need to clarify the meaning or scope of the compensation ordered to be paid to the victim's next of kin, since a person's next of kin are those relatives designated by their own names for hereditary purposes, as the Court has already stated; and

f. that, with regard to the witnesses, the Court acted in accordance with Article 48(3) of its Rules of Procedure and so indicated when it ruled on the allegations submitted by the State. It further stated that a reading of the judgment implies that the Court had attributed value to the statements when information provided by the witnesses was corroborated by other evidence produced in the case.

IV INADMISSIBILITY OF THE APPLICATION

14. According to Article 67 of the Convention transcribed above (*supra*, para. 8), the judgments of this Court are final and not subject to appeal,

but may be interpreted at the requested of any of the parties when there is disagreement on the meaning and scope of the decision.

15. The European Court of Human Rights, on the basis of Article 57 of Rules A of that Tribunal, which is similar to the aforementioned precept of the American Convention, pointed out that the interpretation of a decision calls implies an explanation not only of the text of its operative paragraphs, but also a determination of the scope, meaning and purpose of its considerations (Eur. Court H. R. Ringeisen Case (Interpretation of the Judgment of 22 June 1972), Judgment of 23 June 1973, Series A, Vol 16).

16. By the same token, this Court considers 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.

17. This Court, in studying the State's arguments summarized above (*supra*, para. 12), observes that an improper attempt is being made, in the guise of a request for interpretation, to amend the judgment on merits rendered by this Tribunal on September 17, 1997 in the Loayza Tamayo case, inasmuch as Peru alleges that the decision was based on omissions in some aspects and is incorrectly founded on others.

18. On this subject, in two recent judgments the European Court of Human Rights applied the same criterion adopted by this Court when it considered that interpretation of a judgment shall not alter its binding aspects (Eur. Court HR, *Allenet de Ribemont v. France*, judgment of 7 August 1996 (interpretation) and Eur. Court HR, *Hentrich v. France*, judgment of 3 July 1997 (interpretation), Reports of Judgments and Decisions 1997-IV).

19. With regard to the State's request for an explanation of the scope of the provision contained in paragraph 84 of the decision which states

that "[t]he State of Peru must, in accordance with the provisions of its domestic law, order the release of Ms. María Elena Loayza-Tamayo within a reasonable time", the Court considers that Peru duly complied with that part of the judgment by releasing her on October 16, 1997, for which reason there is no sense to the request for interpretation

V

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

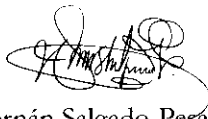
pursuant to Article 67 of the American Convention on Human Rights and Article 29(2) and 58 of its Rules of Procedure,

RESOLVES:


unanimously,

To reject as out of order the request for interpretation submitted by the State of Peru.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, this eighth day of March 1998.



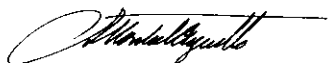
Hernán Salgado-Pesantes
President



Antônio A. Cançado Trindade



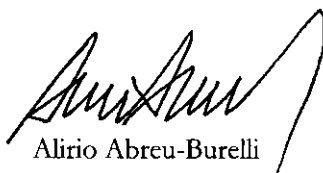
Héctor Fix-Zamudio



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Alirio Abreu-Burelli

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Secretary