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| Institution:          | Inter-American Court of Human Rights  |
| Title/Style of Cause: | María Elena Loayza-Tamayo v. Peru   |
| Doc. Type:            | Judgment (Interpretation of the Judgment of Reparations and Costs)  |
| Decided by:           | President: Hernan Salgado-Pesantes;<br>Vice President: Antonio A. Cancado Trindade;<br>Judges: Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli;<br>Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo |
| Dated:                | 3 June 1999   |
| Citation:             | Loayza-Tamayo v. Peru, Judgment (IACtHR, 3 Jun. 1999)   |
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In the Loayza Tamayo Case,

the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the Inter-American Convention”) and articles 29(2) and 58 of the Court’s Rules of Procedure (hereinafter “the Rules of Procedure”), decides the request filed by the Peruvian State (hereinafter “the State:” or “Peru”) on March 2, 1999, seeking an interpretation of the judgment on reparations that the Court delivered on November 27, 1998 in the Loayza Tamayo Case (hereinafter “the judgment on reparations”).

## I. COMPOSITION

1. Under Article 67 of the Convention, the Court is competent to interpret its judgments. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which interpretation is being sought (Article 58.3 of the Rules of Procedure). On this occasion, the Court is composed of the judges who delivered the judgment on reparations whose interpretation Peru is seeking.

## II. FILING OF THE REQUEST FOR INTERPRETATION

2. On March 2, 1999, the State filed a request for interpretation of the judgment on reparations, in accordance with Article 67 of the American Convention and Article 58 of the Rules of Procedure.

3. By note of March 5, 1999, the Secretariat of the Court (hereinafter “the Secretariat”) forwarded copies of the request for interpretation to Mrs. María Elena Loayza Tamayo, the victim in the instant case, and to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) and, following the President’s

instructions, invited them to submit the written comments they deemed relevant by April 5, 1999.

4. On April 1, 1999, the Commission filed its written comments on the request for interpretation. Mrs. María Elena Loayza Tamayo filed her comments on April 5, 1999.

### III. PURPOSE OF THE REQUEST

5. With its request for interpretation, the State petitioned the Court seeking an interpretation of various aspects of the judgment on reparations. The State's first question went to the concept and extent of the nuclear family that the Court used when determining who the beneficiaries of the reparations measures were. Peru's second question concerned the difficulties of reinstating Mrs. María Elena Loayza Tamayo in the teaching service in public institutions, as ordered in paragraph 192.1 of the judgment on reparations, inasmuch as she currently resided in Chile. Thirdly, Peru questioned the criteria used by the Court to fix the amount of the reparations, alleging that they were different from the criteria used to fix reparations in previous cases. Finally, the State asked whether the tax exemption ordered by the Court also applied to attorney's fees.

6. In the relevant operative paragraphs of the judgment on reparations, the Court resolved the following:

#### AS RESTITUTION MEASURES,

Unanimously

1. That the State of Peru shall take all measures necessary to re-instate Ms. María Elena Loayza Tamayo in the teaching service in public institutions, on the understanding that the amount of her salaries and other benefits shall be equal to the pay she was receiving for her teaching services in the public and private sectors at the time of her detention, appreciated to reflect its value as of the date of this Judgment

[...]

#### AS COMPENSATORY DAMAGES,

By six votes to one

4. That the State of Peru shall pay, under the conditions and in the manner described in paragraphs 183 to 190 of this Judgment, a total of US\$167,190.30 (one hundred sixty-seven thousand one hundred ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, distributed as follows:

a. US\$99,190.30 (ninety-nine thousand one hundred ninety United States dollars and thirty cents) or its equivalent in Peruvian currency, to Ms. María Elena Loayza Tamayo;

- b. US\$15,000.00 (fifteen thousand United States dollars) or its equivalent in Peruvian currency, to Gisselle Elena Zambrano Loayza and US\$15,000.00 (fifteen thousand United States dollars) or its equivalent in Peruvian currency to Paul Abelardo Zambrano Loayza;
- c. US\$10,000.00 (ten thousand United States dollars) or its equivalent in Peruvian currency to Mrs. Adelina Tamayo Trujillo de Loayza and US\$10,000.00 (ten thousand United States dollars) or its equivalent in Peruvian currency to Mr. Julio Loayza Sudario; and
- d. US\$18,000.00 (eighteen thousand United States dollars) or its equivalent in Peruvian currency, to Carolina Maida Loayza-Tamayo, Delia Haydee Loayza Tamayo, Olga Adelina Loayza Tamayo, Giovanna Elizabeth Loayza Tamayo, Rubén Edilberto Loayza Tamayo and Julio William Loayza Tamayo, with each receiving US\$3,000.00 (three thousand United States dollars) or its equivalent in Peruvian currency.

[...]

#### CONCERNING FEES AND COSTS,

Unanimously

- 7. That the State of Peru shall pay, in the form of fees and costs and under the terms and in the manner described in paragraphs 183 to 190 of this Judgment, the sum of US\$20,000 (twenty thousand United States dollars) or its equivalent in Peruvian currency, to Ms. Carolina Maida Loayza-Tamayo.

#### FURTHER, THE COURT

DECIDE[D]:

Unanimously

[...]

- 9. That any payment ordered in the present Judgment shall be exempt from existing or future taxes or levies.

- 7. Having established the four parts of the judgment on reparations that the State has petitioned the Court to interpret, the latter shall now proceed to consider the matter of admissibility.

#### IV. ADMISSIBILITY

- 8. Under Article 67 of the Convention, for a request for interpretation of a judgment to be admissible, it must be made "within ninety days from the date of notification of the judgment." In the instant case, the Court established that the State was notified of the judgment on reparations on December 2, 1998. Therefore, the request for interpretation was filed within the specified time frame (supra 2).

9. Inasmuch as the comments from the Commission and Mrs. María Elena Loayza Tamayo were submitted on time, the Court shall examine them.

10. The Court will now examine whether the substantive aspects of the request for interpretation meet the applicable rules. The pertinent part of Article 58 of the Rules of Procedure reads as follows:

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 sought.

Under Article 67 of the Convention, the Court is authorized to interpret its judgments when there is disagreement as to their meaning or scope.

11. The Inter-American Commission observed that Peru's petition was not so much a request for interpretation as an attempt to get the judgment on reparations reversed. It argued that the application was "more like an interrogation of the Court, as its comments and questions go to the motives and grounds for the judgment, but not about its operative paragraphs."

12. For her part, Mrs. María Elena Loayza Tamayo asked that the Court dismiss the request for interpretation since it was "not seeking clarification of the operative paragraphs of the judgment or of the legal reasoning behind them; the request does not specify what points in the judgment are either obscure or ambiguous [...] and have a direct bearing upon its execution."

13. The Court has ruled that

[The] interpretation of a judgment involves not only precisely defining the text of the operative parts of the judgment, but also specifying its scope, meaning, and purpose, based on the considerations of the judgment. This has been the rule enunciated in the case law of international courts (see Eur. Court H. R., Ringeisen Case (Interpretation of the judgment of 22 June 1972), judgment of 23 June 1973, Series A, Vol. 16). [FN1]

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[FN1] Velásquez Rodríguez Case, Interpretation of the Compensatory Damages Judgment (Art. 67 American Convention on Human Rights), Judgment of August 17, 1990. Series C No. 9, para. 26.

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14. The case law of the European Court of Human Rights has also established that the interpretation of a judgment cannot alter those issues which the Court decided with binding force. [FN2]

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[FN2] Eur. Court H. R., *Alenet de Ribemont v. France* Case (Interpretation of the judgment of 7 August 1996) and Eur. Court H. R., *Hentrich v. France* Case (Interpretation of the judgment of 3 July 1997), Reports of Judgments and Decisions 1997-IV.

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15. After considering the request for interpretation filed by Peru under Article 67 of the Convention, the Court finds no ambiguity as to the meaning and scope of the judgment on the first three points that Peru raises (*supra* 5). In the request, the State is merely re-arguing the same questions of fact and of law already raised at the proper point in the proceedings and then adjudicated by this Court.

16. Given that fact, any exploration of the State's first three questions would be both useless and pointless. The meaning and scope of the rulings whose interpretation is being requested are clear from a combined reading of operative paragraphs one and four of the judgment on reparations. Those points are clearly explained in paragraphs 92, 102 to 105 and 139 to 143 of the judgment.

17. As for the issue of attorney's fees, the Court's finding in an earlier case applies with equal force to the instant case:

The transparency of this Tribunal's proceedings is enhanced by clarification, when it so deems appropriate, of the content and scope of its Judgments, thereby dissipating any doubts about them, and [so that] they may not be challenged by merely formal considerations. [FN3]

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[FN3] *El Amparo Case, Request for an Interpretation of the Judgment on Reparations of September 14, 1996*, Order of the Inter-American Court of Human Rights of April 16, 1997, Annual Report 1997, pp. 123-125, first Consideranda.

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18. The Court will, therefore, interpret the fourth point raised in the State's request.

#### V. ON PAYMENT OF FEES AND COSTS

19. The Court will now interpret operative paragraph seven of the judgment on reparations, as it pertains to operative paragraph nine thereof, wherein the Court ordered that the payment of fees and costs was to be tax exempt (*supra* 6).

20. The State noted that the Judgment in question ordered payment of US\$20,000.00 (twenty thousand United States dollars) in fees for the sister of the victim, who served as her attorney. It further noted that said payment would appear to be exempt from any existing or future taxes or levies in Peru. The request for interpretation contains several questions for the Court on this matter, having to do with the Court's grounds or reasons for ordering that exemption and its authority to order that the amounts that professionals receive for their services shall be tax exempt. Finally, the State's questions go to the matter of the Court's power to declare tax

exemptions, given the provisions of articles 29 and 32 of the Convention and the principles contained in its preamble.

21. In this matter, the Commission commented that it would be unfair for the State to profit by withholding, in the form of taxes, a portion of the reparations it owed when those reparations were necessitated by its own unlawful conduct.

22. Mrs. María Elena Loayza Tamayo commented that Peru's questions were not about the meaning and scope of the judgment; instead, it was using the request for interpretation as a vehicle for challenging the Court's decision. The State's questions were, in any event, extemporaneous, since they concerned matters that the Court had already considered and adjudicated.

23. The Court observes that the question raised by the State concerns tax exemption in respect of the "fees" of Mrs. Loayza Tamayo's attorney. It must be made clear, however, that of the US\$20,000.00 (twenty thousand United States dollars) ordered for attorney Carolina Maida Loayza Tamayo, US\$5,000.00 (five thousand United States dollars) were for costs, while the remaining US\$15,000.00 (fifteen thousand United States dollars) were for fees for her professional services.

24. In its recent case law, and particularly since its current Rules of Procedure took effect, the Court has recognized that costs

are one element to be considered under the concept of reparations to which Article 63(1) of the Convention refers since they are a natural consequence of the effort made by the victim, his or her beneficiaries, or representatives to obtain a court settlement recognizing the violation committed and establishing its legal consequences. [FN4]

When this matter was considered, the sum ordered as payment for the attorney of Mrs. Loayza Tamayo was considered fair. Therefore, the fundamental consideration in the Court's ruling on this matter is that, as part of the fair compensation of which Article 63(1) of the Convention speaks, it is "fair" that the victim's attorney should be paid those amounts in full. Were the State to deduct some percentage of those amounts for tax purposes, then the amounts that the beneficiary received would not be the amounts that the Court fixed and ordered. This would constitute noncompliance with the judgment on reparations.

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[FN4] Garrido and Baigorria Case, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of August 27, 1998. Series C No. 39 para. 79.

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25. The application of this rule in the judgment on reparations being interpreted is consistent with what the case law of this Court [FN5] and of the European Court of Human Rights has always been. When it orders payment of costs, the European Court either requires that the State add to the costs the value of any taxes that may be due on them, [FN6] or does the calculations and orders the State to pay the figure it has thus computed. [FN7]

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[FN5] See, inter alia, the Blake Case, Reparations (Art. 63(1) of the American Convention on Human Rights), Judgment of January 22, 1999. Series C No. 48, operative paragraph four, and Suárez Rosero Case, Reparations (Art. 63(1) of the American Convention on Human Rights), Judgment of January 20, 1999. Series C No. 44, operative paragraph 4.b.

[FN6] See, inter alia, European Court of Human Rights, Bulut v. Austria, Judgment of February 22, 1996, Recueil des arrêts et décisions 1996-II, operative paragraph four.

[FN7] See, inter alia, European Court of Human Rights, Young, James and Webster, Judgment of October 18, 1982 (Article 50), Series A No. 55, operative paragraph two.  
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26. The Court considers that it need not make pronouncements on each and every question raised by the State in this regard, as their intent is not to dispel doubts as to the judgment's interpretation, but rather to question what the Court's motives were in delivering the Judgment.

27. Hence, the Court reiterates that the payment of attorney's fees and costs ordered for Mrs. Loayza Tamayo's attorney shall not be subject to any State tax or levy.

28. Once the beneficiary has received full payment of the amount owed for fees and costs, that amount will become part of her assets. Thereafter, the sums in question are to be used, administered and allocated in accordance with the applicable provisions of Peruvian law.

VI.

29. Now therefore,

THE COURT DECIDES,

unanimously,

1. That the request filed by the Peruvian State seeking an interpretation of the Judgment of November 27, 1998 in the Loayza Tamayo Case is admissible only insofar as it pertains to the payment of fees and costs ordered for Carolina Maida Loayza Tamayo.

2. That Carolina Maida Loayza Tamayo shall receive payment, in full and in cash, of the fees and costs ordered by the Inter-American Court of Human Rights in the Judgment in question and that at time of payment, said amount shall not be subject to any deductions or taxes.

Done, in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on the third day of June 1999.

Hernán Salgado-Pesantes  
President

Antônio A. Cançado Trindade  
Máximo Pacheco-Gómez

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Oliver Jackman  
Alirio Abreu-Burelli  
Sergio García-Ramírez  
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles  
Secretary

So ordered,

Hernán Salgado-Pesantes  
President

Manuel E. Ventura-Robles  
Secretary