

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Lori Berenson-Mejia v. Peru
Doc. Type: Judgement (Interpretation of the Judgment of Merits, Reparations and Costs)
Decided by: President: Sergio Garcia-Ramirez;
Vice President: Alirio Abreu-Burelli;
Judges: Oliver Jackman; Antonio A. Cancado Trindade; Cecilia Medina-Quiroga; Manuel E. Ventura-Robles

Judge Diego Garcia-Sayan, a Peruvian national, excused himself from hearing this case, pursuant to sections 19(2) of the Statute and 19 of the Rules of Procedure of the Court, and also because a judge ad hoc has been appointed since October 2002. Moreover, although the judge ad hoc Juan Federico D. Monroy Galvez did not participate in the debate previous to rendering the instant Judgement that took place at the seat of the Court in San José, Costa Rica, the Court consulted him on the criterion it had adopted, and he agreed with the decision of the Court.

Dated: 23 June 2005
Citation: Berenson-Mejia v. Peru, Judgement (IACtHR, 23 Jun. 2005)

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In the case of Lori Berenson-Mejía,

The Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “the Tribunal”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter the “Convention” or “the American Convention”) and Article 59 of the Rules of Procedure of the Court (hereinafter “the Rules”), decides on the petition for the interpretation of the judgment on the merits, reparations, and costs rendered by the Court on November 25, 2004, in the case of Lori Berenson-Mejía (hereinafter, “the request for interpretation”), filed by the representatives of the victim and her relatives (hereinafter, “the representatives”) on March 2, 2005.

I. JURISDICTION 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

Pursuant to the abovementioned article, the Court has jurisdiction to interpret its own judgments and, when 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. (Article 59(3) of the Rules). In this case, the Court is composed of the same judges who delivered the judgment of which the interpretation is being sought by the representatives.

II. INTRODUCTION OF THE REQUEST FOR INTERPRETATION AND ITS PURPOSE

2. On March 2, 2005, and pursuant to Articles 67 of the Convention and 59 of the Rules, the representatives filed a petition, in English language, for the interpretation of the Judgment on the merits, reparations, and costs. On March 11, 2005 the representatives submitted the translation into Spanish of such petition.

3. In the request for interpretation, the representatives stated that:

a) as regards the alleged violation of Article 9 of the Convention, “the Court, by majority vote, concluded that the description of the crime of cooperation with terrorism does not present the flaws pointed out in connection with the crime of treason, but [...] it did not state[d] the reason for such a conclusion”, therefore they asked “whether the Judgment sustains that the evidence of a typical description of terrorism is enough to ground a sentence for cooperation with terrorism, or if the description included in Article 2 of Decree Law 25,475 is the definition of terrorism;”

b) in the light of the decision of the Court in the case of Loayza-Tamayo, “[the] second suit that, after the acquittal granted by the Supreme Council of Military Justice (Consejo Supremo de Justicia Militar) was brought [against Mrs. Lori Berenson] before the Anti-Terrorism Civil Division on the same facts, violated Article 8.4 of the Convention;”

c) the Court should clarify whether “the finding of the Court [...] that the formal motion of [Mrs.] Lori Berenson to challenge [a judge due to his/her alleged bias as to the case], filed during the [civil] proceedings, violated the procedural law of [the Illustrated State of] Peru [(hereinafter “the State” or “Peru”)], -which required the filing of such motions to be made before the commencement of the suit-, means that the procedural legal rules of Peru can set aside [the right to be tried by an independent and impartial judge] guarantee[d] by Article 8(1) of the Convention;”

d) as regards the alleged violation of the right to be tried by a competent court, under to Article 8(1) of the Convention, “[Mrs.] Lori Berenson was tried by a special court ad hoc,” which makes it necessary for the Court to clarify if, according to the criteria established in the Judgment, “it should be understood that the cases tried by special courts ad hoc under Decree Law 25,475 can be considered ordinary proceedings heard by a competent judge and that the laws, the judges and the legal proceedings are, under the law, the appropriate ones for criminal actions and for convicting the accused persons;”

e) as regards the alleged violation of Article 8(2) of the Convention, “[a]lthough the Court admitted that the Anti-Terrorism Civil Division based its decision exclusively on evidence arising from acts performed directly under the jurisdiction of the Anti-Terrorism Civil Division, it cannot verify such a fact since it is impossible to determine, from the analysis of the judgment, upon which evidence, if any, the Judgment of the Anti-Terrorism Civil Division declaring [Mrs.] Lori Berenson guilty, was based”. In this sense, the Court should clarify whether the Judgment

“states that a court of a State that has convicted an accused person and that has clearly admitted the existence of illegal evidence in the proceedings, may avoid its liability for violation of Article 8(2) of the Convention by declaring merely that its judgment was not based on any illegal evidence, and that it had dispassionately weighed evidence that was slightly defective, although it did not specify upon which evidence the sentence was based;”

f) “[i]t looks like the Judgment eliminates any need of Peru to comply with Article 2 of the Convention and also eliminates the requirement that the provisions of Decree Law 25,475, including Article 4, be adapted in order to comply with the provisions in Article 9 of the Convention by adequately defining terrorism or the terrorist acts with which cooperation is forbidden[, and consequently] Peru shall not be obliged to comply with such provisions, unless the Court clarifies the meaning and scope of the Judgment and the interpretation thereof may change the impression it creates;”

g) “the Court refused to consider many [claims for relief] made by [Mrs. Lori] Berenson in the instant case”, which “shows the Court is biased in favor of the State, unless the meaning of the Court’s decisions be clarified and such impression is changed.

h) “there remains the general impression that, due to political pressures, the Court changed its opinion in one of the most publicized and politicized cases brought before it[, for which reason] the Court must clarify the measures it adopted and thus modify the idea created by media reports that the Court changed its decision responding to political pressures. Otherwise, the Court void the Judgment and declare that one or more provisions of the Convention have been violated, as determined by the [Inter-American] Commission [of Human Rights (hereinafter, the “Commission” or “the Inter-American Commission”)]”.

III. PROCEEDINGS BEFORE THE COURT

4. On March 16, 2005, pursuant to Article 59(2) of the Rules, the Secretariat transmitted a copy of the request for interpretation to the Inter-American Commission and to Peru and, following the instructions of the President of the Court (hereinafter, “the President”), granted them a time limit of two months, as from the receipt of said copy, to submit any written comments they might deem relevant.

5. On May 16, 2006, the Commission filed its written comments, in which it stated that:

a) it had submitted “its arguments of fact and of law in this case, upon which [...] the Court had rendered [J]udgment;”

b) “[i]n said [J]udgment, as well as in the dissenting and in the separate concurrent opinions, some of the arguments of the Commission have been admitted, and others have been dismissed, in a judgment that, pursuant to the provisions of Article 67 of the American Convention [...] is ‘final and not subject to appeal’;” and

c) “the petition for clarification filed by the representatives of the victim does not meet the standards [...] established by the current precedents of the Court to test requests for interpretation”.

6. On May 17, 2005, Peru filed its written comments, where it:

- a) pointed out that the representatives, “under the appearance of a request for interpretation[,] filed [...] a brief that is, in fact, a covert appeal challenging the judgment which is not provided in the legal rules of the Court;”
- b) “protest[ed] and objected that the terms used in [the request for interpretation] were offensive to the dignity of the [...] Court;” and
- c) requested the Court to declare “the petition [for interpretation] groundless, since the questions included are not consistent with the procedures for the interpretation of judgments”.

IV. ADMISSIBILITY

7. The Court must verify if the terms of the request for interpretation comply with the applicable rules.

8. Article 67 of the Convention provides as follows:

[Th]e 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.

9. Article 59 of the Rules provides, in its pertinent part, that:

1. [Th]e 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.

[...]

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

10. Article 29(3) of the Rules provides that “3. Judgments and orders of the Court may not be contested in any way”.

11. When analyzing the comments filed by the representatives (*supra*, paragraph 3), this Court finds that, under the appearance of a request for interpretation, petitioners intend to modify the Judgment on the merits, reparations, and costs pronounced by this Court on November 25, 2004 in the case of *Lori Berenson-Mejía*, since the representatives do nothing but submit once more to the Court issues of fact and of law that have already been submitted at the pertinent procedural stage and regarding which this Court has already handed down a decision.

12. As this Court has previously stated, a petition for the interpretation of a judgment should not be used as a means to appeal but rather it should have as its only purpose to clarify the meaning of a ruling when one of the parties maintains that the text in its operative parts or in its considerations lacks clarity or precision, provided that such considerations have a bearing on the operative parts and, therefore, modification or annulment of the respective judgment cannot be petitioned through a request for interpretation. [FN1]

[FN1] Cf. Case of Juan Humberto Sánchez. Interpretation of the Judgment on Preliminary Defenses and Pleas, on the Merits and Reparations. (Article 67 of the American Convention on Human Rights.) Judgment of November 26, 2003. Series C No. 102, paragraph 14; Case of Cesti Hurtado. Interpretation of the Judgment ordering Reparations. (Article 67 of the American Convention on Human Rights.) Judgment of November 21, 2001. Series C No. 86, paragraph 31; similarly, Case of Ivcher Bronstein. Interpretation of the Judgment on the Merits. (Article 67 of the American Convention on Human Rights.) Judgment of September 4, 2001. Series C No. 84, paragraph 19; Eur. Court H.R., Hentrich v. France, (interpretation), Judgment of 3 July 1997), Reports of Judgments and Decisions 1997-IV, paragraph 16; Eur. Court H.R., Allenet de Ribemont v. France, (interpretation), judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, paragraphs 17 and 23; and Eur. Court H. R., Ringeisen v. Austria, (interpretation), Judgment of 23 June 1973, Series A, Vol. 16, paragraph 13.

13. Furthermore, this Court has previously stated that analysis of its judgments and decisions and the comparative study of its jurisprudence are eminently academic tasks, beyond the functions of this Court and outside the provisions of Article 67 of the Convention. [FN2]

[FN2] Cf. Case of Cesti Hurtado. Interpretation of Judgment on the Merits. (Article 67 of the American Convention on Human Rights). Judgment of January 29, 2000. Series C No. 65, paragraph 30.

14. On the grounds of the abovementioned, the request for interpretation must be dismissed as its terms do not comply with the provisions in Article 67 of the Convention and in Articles 29(3) and 59 of the Rules.

For the above reasons,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 67 of the Inter-American Convention on Human Rights and to Articles 29(3) and 59 of the Rules of Procedure of the Inter-American Court of Human Rights

DECIDES:

unanimously,

1. To dismiss, on the grounds of its not being in order, the request for interpretation of the Judgment on the merits, reparations, and costs, dated November 25, 2004 in the Case of Lori Berenson-Mejía, filed by the representatives of the victim and her relatives.

2. To continue monitoring the execution of the Judgment on the Merits, reparations, and costs dated November 25, 2004 in the case of Lori Berenson-Mejía, under the terms set forth in paragraph 247 of said judgment.

Done in Spanish and English, the Spanish deserving full faith, in San Jose, Costa Rica, on June 23, 2005.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary