

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Laura Susana Alban-Cornejo, Carmen Susana Cornejo-Alarcon de Alban and Bismarck Wagner Alban-Sanchez v. Ecuador
Doc. Type:	Judgement (Interpretation of the Judgment on the Merits, Reparations and Costs)
Decided by:	President: Cecilia Medina-Quiroga; Vice President: Diego Garcia-Sayan; Judges: Sergio Garcia-Ramirez; Manuel E. Ventura-Robles; Leonardo A. Franco; Margarett May-Macaulay; Rhadys Abreu-Blondet
Dated:	5 August 2008
Citation:	Alban-Cornejo v. Ecuador, Judgement (IACtHR, 5 Aug. 2008)
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In the case of Albán-Cornejo et al.,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court” or “the Tribunal”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and to Article 59 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), decides on the request for interpretation of the Judgment on the Merits, Reparations and Costs handed down by the Court on November 22, 2007 in the case of Albán-Cornejo et al. v. Ecuador (hereinafter “the request” or “the request for interpretation”), filed by the representatives of the victims (hereinafter “the representatives”).

## I. INTRODUCTION OF THE REQUEST FOR INTERPRETATION AND PROCEEDINGS BEFORE THE COURT

1. On January 19, 2007 the representatives filed a request for interpretation of the Judgment on the Merits, Reparations and Costs, [FN1] issued in the present case on November 22, 2007 (hereinafter “the Judgment on the Merits”), under Article 67 of the American Convention and Article 59 of the Rules of Procedure. In the application the representatives requested “the INTERPRETATION” of some points in the Judgment on the Merits, for which purpose they posed four questions, with the objective that the Court construe the scope and meaning of: a) the obligations in which the State incurred on account of having violated Article 1(1) of the American Convention, in connection with the declared violations of Articles 8(1) and 25(1) of the aforementioned Convention, regarding investigation and punishment of all those responsible for human rights violations; b) the conviction of the State for having violated Article 1(1) of the American Convention as regards the scope of the duty to punish and investigate those responsible for the declared violations, in relation to the institution of the statute of limitations; c) the State’s obligations for having violated Article 2 of the American Convention concerning the

duty to enact and regulate medical malpractice into domestic law, given the lack of statutory punishment thereof; and d) the patient rights dissemination campaign, specifically a determination of the scope of the terms “campaign” and “dissemination”.

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[FN1] Cf. Case of Albán-Cornejo et al. Merits, Reparations and Costs. Judgment of November 22, 2007.

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2. On April 2, 2008, pursuant to the provisions in Article 59(2) of the Rules of Procedure and following instructions by the President of the Tribunal, the Secretariat of the Court (hereinafter “the Secretariat”) forwarded a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”) and to the State of Ecuador (hereinafter “the State” or “Ecuador”) and notified them that they had a non-renewable time-limit up to May 5, 2008 to submit whatever written arguments they deemed fit. Likewise, the State was reminded that, pursuant to the provision in Article 59(4) of the Rules of Procedure, “[the] request for interpretation shall not suspend the effect of the judgment”.

3. On May 5, 2008 the State filed its written arguments on the request for interpretation. In turn, on May 9, 2008 the Inter-American Commission filed its written arguments after the deadline for submission had expired, without accounting for the delay up to the aforementioned date.

## II. JURISDICTION AND COMPOSITION OF THE COURT

4. Under Article 67 of the Convention, [FN2] the Court has jurisdiction to interpret its own judgments. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which an interpretation is being sought (Article 59(3) of the Rules of Procedure). In this case, the Court is composed of the same judges who delivered the judgment of which the interpretation is being sought.

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[FN2] Article 67 of the Convention establishes 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 the request is made within ninety days from the date of notification of the judgment.

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## III. ADMISSIBILITY

5. The Court is to verify whether the terms of the request for interpretation meet the standards set in the applicable rules, to wit, Article 67 of the Convention and Articles 29(3) [FN3] and 59 [FN4] of the Rules of Procedure.

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[FN3] Article 29(3) of the Rules of Procedure establishes that the “[j]udgments and orders of the Court may not be contested in any way”.

[FN4] Article 59 of the Rules of Procedure provides, with regards to this matter, that:

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, stating with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

[...]

The request for interpretation shall not suspend the effect of the judgment.

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

6. The Court has verified that the representatives filed the request for interpretation within the time limit set in Article 67 of the Convention.

7. In addition, as previously decided by this Court, a request 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 of the judgment in question. [FN5]

[FN5] Cf. Case of Loayza Tamayo v. Perú. Interpretation of the Judgment on the Merits. Order of the Inter-American Court of Human Rights of March 8, 1998. Series C No. 47, para. 16; Case of Cantoral-Huamaní and García-Santa Cruz v. Perú. Interpretation of the Judgment on the Preliminary Objection, Merits, Reparations and Costs. Judgment of January 28, 2008. Series C No. 176, para. 10, and Case of Ezcúé-Zapata v. Colombia. Interpretation of the Judgment on the Merits, Reparations and Costs. Judgment of May 5, 2008. Series C No. 178, para. 10.

#### IV. ON THE OBLIGATION OF THE STATE TO INVESTIGATE AND PUNISH ALL THOSE RESPONSIBLE FOR THE HUMAN RIGHTS VIOLATIONS

8. In their request for interpretation the representatives asked the Court to “construe the scope and the meaning of the obligations of the State arising from its conviction for having violated [Article] 1(1) of the Convention, specifically whether its acknowledgment of having violated the aforementioned provision includes among its obligations that the State adopt measures aimed at investigating and punishing all those responsible for the human rights violations declared in the judgment”. According to the representatives, the Judgment on the Merits determines the scope of the declaration that Article 1(1) of the Convention, in connection with the rights established in Articles 8(1) and 25(1) of the American Convention had been violated. They further indicated that the interpretation must have the same meaning the Court gave to the obligation to investigate in the case of Tibi v. Ecuador, considering that one of the

grounds thereof is the right of the victims and their next of kin to know what happened and to know who the State agents responsible for the events were.

9. The State pointed out that it is necessary to underscore the differences between the instant case and the case of *Tibi v. Ecuador* cited by the representatives, for in the latter the source of responsibility is to be found in direct action by State agents who incurred in acts of torture. The State affirmed therefore that in the case of *Albán-Cornejo et al.* “it appears clearly that the purpose of the Judgment by the Inter-American Court was not to determine the international responsibility of the State for not having prevented the violation declared. The possibilities of preventing a private physician from acting in a private hospital are basically limited to verifying the controlling framework of health institutions.” The State added that the Court declared Article 1(1) of the American Convention violated, not independently, but rather in connection with Article 5(1) of the Convention, for lack of judicial action aimed at establishing the circumstances in which Laura Albán died and her parents were denied their right to humane treatment. The notion the State upholds is that this Tribunal declared that Article 1(1) of the Convention had been violated in connection with Articles 8(1) and 25(1) of the Convention, because the former had not commenced the pertinent investigation in due time. The Court recognized the preeminence of the right of the accused physicians to benefit under the statute of limitations and therefore it abstained from ordering Ecuador to investigate and punish those responsible.

10. While analyzing the violation of articles 8(1) and 25(1) of the American Convention, in paragraphs 60 to 62 of the Judgment on the Merits, the Court reaffirmed its standard regarding the duty of the State to investigate the facts within the due process of the law. Considering the facts of the case and on the grounds of argument by the parties and on its own case law, this Tribunal found that the State did not institute or carry out the proceedings in a timely manner. Paragraph 96 of such Judgment indicated that:

Given that the State acquired knowledge of Laura Alban’s death on August 3, 1995, it should have instituted investigation proceedings in order to clarify the events from that date. However, the investigation was not initiated until fifteen months later, as has already been proven (*supra*, para. 81). On this matter, this Court considers that the aforementioned facts indicate that State authorities did not seriously process, with the due guarantees, the complaint filed by Laura Albán’s parents. Therefore, the Court considers that the State has infringed Articles 8(1) and 25(1) of the American Convention for not having instituted the investigation of Laura Albán’s death in a timely manner.

11. On the other hand, in the Judgment on the Merits, the Court did not order the State to carry out an investigation. Thus, the question presented by the representatives, stated in paragraph 8, does not have the purpose of either clarifying or giving precision to the content of some point in the aforementioned Judgment, nor of working out the meaning of said Judgment because its operative or considering paragraphs lack sufficient clarity or precision.

12. Consequently, the Court declares the question presented in the cited paragraph to be inadmissible, because it does not meet the standards set forth in the American Convention and the Rules of Procedure, for the purposes of interpretation.

## V. ON THE SCOPE THE STATUTE OF LIMITATIONS

13. The representatives in their request for interpretation sought that the Court construe the scope and meaning: “[...] of the conviction of the State for having violated [Article] 1(1) of the Convention, especially as regards the scope of the duty to punish and investigate those responsible for the breach of the [A]rticles of the Convention [...] the Judgment declared to have been violated in connection with the enforcement of the statute of limitations, an institution which has been recognized in the Judgment as a guarantee”. The representatives considered that the State could not allege a future breach of its duty to investigate and punish on the grounds that the statute of limitations has operated to extinguish the actions that might have been brought against those responsible for the death of Laura Albán.

14. The State held that, from the Judgment on the Merits, and especially from paragraph 111, it can be inferred that the Inter-American Court has done nothing but clarify the precedents that are usually followed on statute of limitations matters, setting as its standards that: i) the statute of limitations is recognized as a way to forbid double jeopardy, a basic due process guarantee benefiting the accused; ii) the effects of the statute of limitations are reaffirmed, to wit: extinction of the action for punishing brought about by the passage of time and limitation of the *ius puniendi* of the State; and iii) the effectiveness of the institution of the statute of limitations in criminal law is recognized, with the proviso that it cannot be invoked “to exclude responsibility” in cases where gross human rights violations are involved, for the statute of limitations has been considered inapplicable to such violations in international instruments. Even though there is a generic duty to investigate pursuant to Article 1(1) of the Convention, such duty must be considered in a more general framework, where it collides with rights inuring to the benefit the accused. In the case of Albán-Cornejo, the sentence of the Tribunal declares the international responsibility of the State [...] for omissions by State agents regarding action by private parties, which have their own degree of importance but do not have a systematic character or such seriousness as to consider the offense a crime so felonious as to warrant annulment of fundamental guarantees benefiting the accused.” [FN6]

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[FN6] Brief by the State dated May 5, 2008, page 13.

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15. The Court, in its Judgment on the Merits, established the following:

111. “[...]In the instant case, the application of the statute of limitations cannot be excluded as the requirements therefor set in international instruments are not met.

112. On the other hand, the accused is not responsible neither of the celerity of the action of the judicial authorities in its development, nor for the lack of due diligence of the state authorities. The burden of the delay on the administration of justice cannot be imposed over the accused in a criminal procedure, which would inevitably represent a breach of the rights of the accused in the terms of the applicable law.

16. This Tribunal considers that the paragraphs transcribed solve with clarity that in the instant case the exclusion of the criminal action from the statute of limitations does not apply.

Consequently, the second question posed by the representatives (supra para. 13) does not meet the standards in the American Convention and in the Rules of Procedure, for which reason the Tribunal declares it inadmissible.

## VI. SCOPE OF THE OBLIGATION TO ADAPT DOMESTIC LEGISLATION

17. The representatives held that they wished to know “[...] the scope and meaning of the obligation of the State [...] regarding violation of [Article] 2 of the Convention which was alleged in the application inasmuch as it relates to the duty of the State to enact and regulate domestic law. [Likewise, they wished to know] the scope and meaning of the acknowledgement effected by the State concerning its admission of non-compliance with adequating its domestic legislation.” They requested that the Court interpret the scope of the obligation of the State in view of the lack of domestic legislation on medical malpractice.

18. The State underscored how clear paragraphs 115, 136 and 137 of the Judgment on the Merits were and reaffirmed its willingness to draft a “bill on medical malpractice”, in order to enact into Ecuadorian criminal law a specific statutory description thereof, wherein the distinctive features of incorrect medical practice be duly taken into account and wherein punishment commensurate with the criminal conducts be established. Likewise, the State added that to carry out this endeavor it is necessary to take time enough to ensure that the expected result be attained, for “[...] it cannot be undertaken lightly, the issue must be publicly discussed and above all dealt with as one where the interests of the victims and their next of kin, as well as those of the medical profession, are both defended in a referential and non-conclusive manner, because otherwise it would either foster vicious criminal proceedings against physicians or endorse the uncontrolled practice of an activity that is very important and necessary for the health system users’ very life.”

19. In paragraphs 136 and 137 of the Judgment on the Merits this Tribunal took into account the decision reaffirmed by the State to review its criminal legislation regarding medical malpractice and indicated it is for the State itself to decide the best way to respond, in this area, to the needs for punishment. On the basis of the foregoing, this Court notices once again that the question posed by the representatives in the request for interpretation filed is not aimed at rendering more precise the content of some point in the Judgment, but rather at obtaining a decision that differs from the one provided in the sentence.

20. Consequently, the third question posed by the representatives, described in paragraph 17 of the instant Judgment does not meet the standards in the provisions of the American Convention and of the Rules of Procedure, for which reason the Tribunal declares it to be inadmissible.

## VII. SCOPE OF THE “DISSEMINATION CAMPAIGN” OF PATIENT RIGHTS

21. The representatives requested that “[...]the meaning and the scope to be given to the campaign for disseminating patient rights mentioned in paragraphs 162 and 163 of the [J]udgment be interpreted. Specifically, “[...] that the court determine the scope of the terms “campaign” and “dissemination.”” In this regard, they pointed out that a campaign should be

understood as an ongoing process sustained in time with adequate resources allowing general access to all citizens. Dissemination is the adequate deployment of communication mechanisms, media and spaces allowing the citizenry access to a global and thorough understanding of their rights.

22. The State held that the Judgment establishes no means for achieving the objectives set in the resolution, respecting the mechanisms adopted by the States for such purpose. Along this line, the State expressed that “[t]o demand precision from the Court as to the words “campaign” and “dissemination”, would be to restrain the legitimate leeward the State has to decide the best way to design its public policies and to do its duty to prevent violations of the right to health and of other economic, social and cultural rights, the salient feature of which is that they generate duties of a progressive and general nature.”

23. This Tribunal held in the Judgment on the Merits that:

c) Campaign for the rights of patients and education and training of justice operators

162. Within a reasonable time, the State shall widely disseminate patients’ rights, using proper means of communication and applying both existing Ecuadorian legislation and international standards.

163. In this regard, the State shall also take into account the provisions of Article 15 of the Law on the Rights and Protection of the Patient, enacted on February 3, 1995: “[t]he duty of all health care services to place copies of this law at the disposal of users and to display patients’ rights in visible places for the public to see”.

24. Paragraphs 162 and 163 of the Judgment on the Merits clearly point out that the obligation of the State consists in widely disseminating patient rights among the population in its country, through the proper means of communication and applying both existing national legislation and international standards. Within such framework the State may use the specific and adequate mechanisms for attaining the aforementioned goal. The Court will monitor compliance with this reparation measure and the representatives will be able to file, in due course, the observations they may deem fit.

25. Consequently, the meaning of the Judgment of the Court is clear with regard to the fourth question presented by the representatives, described in paragraph 21 of the instant Judgment, for which reason this Tribunal declares it inadmissible in light of the American Convention and of the Rules of Procedure

## VIII. OPERATIVE PARAGRAPHS

26. Therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

Unanimously,

1. To reject, based on their being inadmissible, the request for interpretation of the Judgment on the Merits, Reparations and Costs handed down on November 22, 2007 regarding the questions posed by the representatives, individualized in paragraphs 8, 13, 17 and 21 of the instant Judgment, because they do not meet the standards in the provisions of Articles 67 of the Convention and 29(3) and 59 of the Rules of Procedure.
2. Request the Secretariat of the Court to serve notice of the instant Judgment upon the representatives of the victims, upon the State and upon the Inter-American Commission on Human Rights.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on August 5, 2008.

Cecilia Medina-Quiroga  
President

Diego García-Sayán  
Sergio García-Ramírez  
Manuel E. Ventura-Robles  
Leonardo A. Franco  
Margarette May Macaulay  
Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Cecilia Medina-Quiroga  
President

Pablo Saavedra Alessandri  
Secretary