

Human rights — Right to life — Right to humane treatment — Right to a fair trial — Right to judicial protection — American Convention on Human Rights, 1969 (“the Convention”) — Peru party to the Convention — Human rights violations — Peruvian State agents assassinating and seriously injuring persons in Barrios Altos incident — Peruvian legislation granting amnesty to agents responsible — Articles 4, 5, 8 and 25 of the Convention — Whether Peru violating the Convention — Whether Peru failing to comply with Articles 1(1) and 2 of the Convention

Relationship of international law and municipal law — American Convention on Human Rights, 1969 — Peruvian Amnesty Laws — Whether compatible with the Convention — Whether Peru violating international obligations in adopting Peruvian Amnesty Laws — Whether Peruvian Amnesty Laws having any legal effect — Whether Peru failing to comply with Articles 1(1) and 2 of the Convention — Whether Peru violating Articles 8 and 25 of the Convention

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BARRIOS ALTOS CASE

(CHUMBIPUMA AGUIRRE AND OTHERS *v.* PERU)¹*Inter-American Court of Human Rights**Merits.* 14 March 2001*Interpretation.* 3 September 2001*Reparations.* 30 November 2001(Cañado Trindade, *President*; Pacheco Gómez, *Vice-President*;
Salgado Pesantes, Abreu Burelli, García Ramírez and
de Roux-Rengifo, *Judges*)²

SUMMARY: *The facts:*—In November 1991 Peruvian army members stormed a building in the Barrios Altos neighbourhood in Lima, killing fifteen people and seriously injuring another four, and then fled. These agents of the State of Peru, acting unlawfully and clandestinely on behalf of the Colina Group, were targeting members of the terrorist group Shining Path believed to be meeting in the building.

A judicial investigation into the case was commenced in April 1995. On 14 June 1995 the Congress of Peru adopted Amnesty Law No 26479, which exonerated members of the army, police force and civilians who had been involved in human rights violations from 1980 to 1995 from responsibility. This law was promulgated by the President and entered into force on 15 June 1995. On 16 June 1995 a Peruvian criminal court held that Amnesty Law No 26479 did not apply in criminal cases because it violated constitutional guarantees³ and Peru's international obligations under the American Convention on Human Rights, 1969 ("the Convention"). On 27 June 1995 this decision was upheld by the Lima Superior Court of Justice.

A second law, Amnesty Law No 26492 (collectively "the Amnesty Laws"), was subsequently adopted. As well as expanding the scope of the first amnesty law, this law declared that the amnesty could not be revised by a judicial instance and that its application was obligatory. On 14 July 1995 the Lima Superior Court of Justice quashed the proceedings in the case. It held that the Amnesty Law was neither contrary to the Constitution nor international human rights

¹ A list of the parties' representatives can be found at para. 33 of the judgment on the merits.

² Judge Pacheco Gómez did not participate in the judgment on the interpretation of the judgment on the merits for reasons of *force majeure*. Judge Jackman did not participate in the judgments on the interpretation or on reparations because he did not participate in the judgment on the merits.

³ Under the Constitution of Peru, judges had an obligation not to apply laws that they considered were contrary to provisions in the Constitution.

treaties. For a judge not to apply laws adopted by Congress was against the separation of powers principle; the lower court judge was to be investigated for incorrect interpretation of laws.

In June 2000 the Inter-American Commission on Human Rights (“the Commission”) submitted to the Inter-American Court of Human Rights (“the Court”) a case against the State of Peru.⁴ The Commission requested that the Court decide whether Peru had violated the rights contained in Articles 4 (life), 5 (humane treatment), 8 (fair trial), 25 (judicial protection) and 13 (freedom of thought and expression) of the Convention by adopting and applying the Amnesty Laws and whether, as a result of those laws and the violation of those rights, Peru had failed to comply with Articles 1(1) (obligation to respect rights) and 2 (domestic legal remedies) of the Convention. The Commission also requested that Peru *inter alia* grant adequate reparation for material and moral damage and annul the Amnesty Laws.

On 19 February 2001 Peru recognized its international responsibility in the case.⁵

Merits (14 March 2001)

Held (unanimously):—Peru’s recognition of international responsibility was admitted. Peru had failed to comply with Articles 1(1) and 2 of the Convention in promulgating and applying the Amnesty Laws and in violating Articles 4, 5, 8 and 25 of the Convention.

(1) Since Peru had recognized its international responsibility and acquiesced with regard to the facts, the dispute had ceased with respect to the facts. Peru’s acquiescence had made a positive contribution to this proceeding and to the exercise of the principles that inspired the Convention (paras. 37-40).

(2) Peru had violated the right to life embodied in Article 4 of the Convention with respect to the fifteen persons executed and the right to humane treatment embodied in Article 5 of the Convention with respect to the four persons seriously injured (paras. 37-40 and 51).

(3) Peru had violated the right to a fair trial and to judicial protection embodied in Articles 8 and 25 of the Convention with regard to the next of kin of those killed and with regard to those seriously injured as a result of the promulgation of the Amnesty Laws (paras. 37-40 and 51).

(4) Since the Amnesty Laws were incompatible with the Convention, they lacked legal effect. All amnesty laws preventing investigation and punishment of those responsible for human rights violations were prohibited because they violated non-derogable rights recognized by international human rights law. Such self-amnesty laws were manifestly incompatible with the aims and spirit of the Convention as well as its Articles 8 and 25 (paras. 41-5 and 51).

⁴ Peru became a State Party to the American Convention on Human Rights, 1969 on 28 July 1978 and recognized the obligatory competence of the Court on 21 January 1981.

⁵ The text of this communication of 19 February 2001 can be found at para. 31 of the judgment on the merits.

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(5) That the victims and their next of kin had been denied the right to truth had been subsumed by the finding that Peru had violated Articles 8 and 25 of the Convention. Peru should investigate the facts to determine the identity of those responsible for the human rights violations, publish the results and punish those responsible (paras. 45-9 and 51).

(6) Reparations were to be established by mutual agreement between Peru, the Commission and the victims within three months of notification of this judgment (paras. 50 and 51).

Concurring Opinion of Judge Cançado Trindade: (1) The judgment was historically important due to Peru's recognition of its international responsibility. As well as admitting that recognition, the Court, using powers inherent to its judicial function, established the juridical consequences of that recognition, seeking to overcome impunity resulting from amnesty and thereby meeting a universal expectation (paras. 1-4).

(2) Self-amnesties, offending the right to truth and to justice, were manifestly incompatible with the Convention and thus devoid of legal effects. In affecting non-derogable rights, amnesty laws had no legal validity at all in light of the norms of the international law of human rights. Their very adoption engaged the international responsibility of the State, irrespective of application. State responsibility and individual penal responsibility now developed *pari passu*. Not truly laws, amnesty laws were an inadmissible affront to the juridical conscience of humanity (paras. 5-26).

Concurring Opinion of Judge García Ramírez: (1) Acquiescence, established in the Court's Rules of Procedure, was a well-known means of settling a lawsuit. The principal dispute had ceased to exist due to Peru's recognition of its international responsibility. Since the facts resulted in a violation of a binding international instrument, the Court had a duty to evaluate the resulting international responsibility. Acquiescence did not necessarily conclude the proceeding; the Court alone could decide whether its continuation was advisable for international judicial human rights protection for which it was responsible (paras. 1-6).

(2) The Court alone had to establish the relationship between the facts and the applicable norm. Very serious human rights violations had to be punished surely and effectively at the national and international level. While the democratic system required minimum State punitive intervention, it also required that extremely serious conduct be included in the punitive legislation. The self-amnesty laws, incompatible with Peru's international obligations under the Convention, were null and void and without legal effect (paras. 7-15).

(3) Compensation, agreed upon by the parties, had to be approved by the Court in order to ensure fair human rights protection. The Court was to decide other types of reparation, such as criminal prosecution (paras. 16-17).

On 20 June 2001 the Commission requested an interpretation of the judgment on the merits pursuant to Article 67 of the Convention⁶ and Article 58 of the Rules of Procedure.

Interpretation (3 September 2001)

Held (unanimously):—(1) The request was admissible. It was presented within the required time limit and related to a precise issue as to the meaning and scope of the judgment on the merits (paras. 1-13).

(2) Given the nature of the violation that the Amnesty Laws constituted, the decision in the judgment on the merits had generic effects. In all cases where they were applied to cases of human rights violations, the Amnesty Laws were incompatible with the Convention and lacked legal effect. The enactment of a law that was manifestly incompatible with a State Party's obligations under the Convention was *per se* a violation of the Convention for which the State incurred international responsibility (paras. 14-18).

Reparations (30 November 2001)

Held (unanimously):—The agreement on reparations between Peru, the victims, their next of kin and representatives signed on 22 August 2001 was approved (para. 50).

(1) The Court was competent to decide on reparations pursuant to Articles 62 and 63(1) of the Convention. Peru was a State Party to the Convention and had recognized the binding jurisdiction of the Court (para. 1).

(2) Article 63(1) was applicable to the matter of reparations. Since it was not disputed, the agreement was to be examined even though it was concluded after the specified term (paras. 19-22).

(3) It was a principle of international law that any violation of an international obligation that had caused damage also carried the duty to make adequate reparation. Where *restitutio in integrum* was not possible, steps had to be taken to guarantee the rights infringed, redress the consequences and determine compensation (paras. 23-5).

(4) The beneficiaries stated in the agreement were confirmed. The beneficiaries of the reparations were the surviving victims and the heirs of the deceased victims. Peru was to take steps to locate the unfound beneficiaries of the reparations pertaining to three of the deceased victims (paras. 26-32 and 50).

(5) The monetary reparation in the agreement, as a form of compensation for the damage caused, was confirmed together with its terms. Thus Peru was to pay US \$175,000.00 to each of the four surviving victims and to the beneficiaries of fourteen of the deceased victims, and US \$250,000.00 to the beneficiaries of deceased victim Máximo León León, during the first

⁶ For the text of Article 67 of the Convention, see para. 1 of the judgment on the interpretation.

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quarter of the fiscal year 2002. This was a positive step by Peru to fulfil in good faith its international convention obligations. Monies not received by beneficiaries in person were to be deposited in a bank within six months under the most favourable financial conditions and distributed pro rata among the other beneficiaries if unclaimed after five years (paras. 33-40 and 50).

(6) The other forms of reparation in the agreement were confirmed together with their terms. Peru was to grant the beneficiaries of the reparations their healthcare expenses as well as educational benefits and other specified reparation measures. These were a positive contribution to fulfil Peru's obligation to make reparation (paras. 41-5 and 50).

(7) The agreement on reparations was in conformity with the Convention, contributing to the attainment of its object and purpose. The Court reserved the authority to monitor Peru's compliance with the agreement, its terms and conditions (paras. 46-9).

Concurring Opinion of Judge García Ramírez: (1) The agreement on reparations, obviating the need for the Court to exercise its contentious jurisdiction, was effective despite being submitted after the deadline. No proceedings had yet been conducted. Neither must an appropriate settlement be sacrificed for procedural formality (paras. 1-5).

(2) The Court still had to exercise its verification function to ensure that the agreement was a legitimate solution; only then was the agreement admissible and effective. The agreement on compensation was admissible. It was however for the law, and not the parties, to determine that the State had a "criminal justice duty", or an obligation to adopt legislative measures, or must refrain from incurring human rights violations (paras. 6-12).

(3) Settlements did not create, modify or extinguish rights and duties; they merely underlined their existence. While such agreements usefully expedited the settlement of differences, they were not authoritative (paras. 13-17).

(4) The agreement on reparations was binding because it had been approved in the judgment. The Court's authority to interpret the agreement derived from Article 67 of the Convention and not its interpretive clause (para. 18).

The judgments of the Court on the merits, interpretation of the merits and reparations and costs are set out as follows:⁷

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⁷ The judgments on the interpretation and on reparations were delivered in accordance with the Rules of Procedure approved by the Court on 16 September 1996 in accordance with the Court's Order of 13 March 2001 on the Transitory Provisions of the Court's Rules of Procedure, in force as of 1 June 2001.

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The following is the text of the judgment of the Court on the merits:¹

JUDGMENT ON THE MERITS

I INTRODUCTION OF THE CASE

1. On June 8, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) submitted to the Court the application in this case, in which it invoked Article 51(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 32 of the Rules of Procedure. The Commission submitted the case so that the Court would decide whether the State of Peru (hereinafter “Peru”, “the State” or “the State of Peru”) had violated Article 4 (Right to Life) of the American Convention with regard to Placentina Marcela Chumbipuma Aguirre, Luis Alberto Díaz Astovilca, Octavio Benigno Huamanyauri Nolazco, Luis Antonio León Borja, Filomeno León León, Máximo León León, Lucio Quispe Huanaco, Tito Ricardo Ramírez Alberto, Teobaldo Ríos Lira, Manuel Isaías Ríos Pérez, Javier Manuel Ríos Rojas, Alejandro Rosales Alejandro, Nelly María Rubina Arquíñigo, Odar Mender Sifuentes Nuñez and Benedicta Yanque Churo. It also requested the Court to decide whether the State had violated Article 5 (Right to Humane Treatment) of the American Convention with regard to Natividad Condorcahuana Chicaña, Felipe León León, Tomás Livias Ortega and Alfonso Rodas Alvérez. Furthermore, it requested the Court to decide whether the State of Peru had violated Articles 8 (Right to a Fair Trial), 25 (Judicial Protection) and 13 (Freedom of Thought and Expression) of the American Convention as a consequence of the promulgation and application of Amnesty Laws No 26479 and No 26492. Lastly, it requested the Court to determine whether Peru had failed to comply with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Remedies) of the American Convention on Human Rights, as a result of the promulgation

¹ Judge Oliver Jackman informed the Court that, for reasons beyond his control, he could not attend the Twenty-fifth special session of the Court; consequently, he did not take part in the discussion and signature of this judgment.

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and application of Amnesty Laws No 26479 and No 26492 and the violation of the rights indicated above.

The Commission also requested the Court to call on Peru:

- a) To reopen the judicial investigation into the facts;
- b) To grant adequate integral reparation for material and moral damage to the next of kin of the 15 alleged victims who were executed and the four alleged victims who are alive;
- c) To abrogate or annul Law No 26479 that conceded “a general amnesty to military, police and civilian personnel for various reasons” and Law No 26492 that “[d]efines . . . [the] interpretation and [the] scope of [the] amnesty granted by Law No 26479”; and
- d) To pay the costs and expenses incurred by the alleged victims and/or their next of kin while litigating this case both in the domestic sphere and before the Commission and the Court, together with reasonable fees for their lawyers.

II FACTS

2. In section III of its application, the Commission described the facts that constituted the origin of this case. It indicated that:

- a) At approximately 11.30 p.m. on November 3, 1991, six heavily-armed individuals burst into the building located at No 840 Jirón Huanta in the neighborhood known as Barrios Altos in Lima. When this irruption occurred, a “*pollada*” was being held, that is, a party to collect funds in order to repair the building. The assailants arrived in two vehicles, one a jeep Cherokee and the other a Mitsubishi. These cars had police lights and sirens, which were turned off when they reached the place where the events took place;
- b) The individuals, who ranged from 25 to 30 years of age, covered their faces with balaclava helmets and obliged the alleged victims to lie on the floor. Once they were on the floor, the assailants fired at them indiscriminately for about two minutes, killing 15 people and seriously injuring another four; one of the latter, Tomás Livias Ortega, is now permanently disabled. Subsequently, and with the same speed with which they had arrived, the assailants fled in the two vehicles, sounding their sirens once again;
- c) The survivors stated that the detonations sounded “muffled”, which appears to suggest that silencers were used. During the

investigation, the police found 111 cartridges and 33 bullets of the same caliber at the scene of the crime; they corresponded to sub-machine guns;

- d) The judicial investigations and newspaper reports revealed that those involved worked for military intelligence; they were members of the Peruvian Army who were acting on behalf of the “death squadron” known as the “Colina Group”, who carried out their own anti-terrorist program. Information from different sources indicates that, in the instant case, the acts were executed in reprisal against alleged members of *Sendero Luminoso* (Shining Path);
- e) A week after the attack, Congressman Javier Diez Canseco Cisneros gave the press a copy of a document entitled “*Plan Ambulante*” (Door-to-door [salesmen] Plan), which described an intelligence operation implemented at the scene of the crime. According to this document, the “terrorists” had been meeting in the place where the events of the instant case took place since January 1989 and they concealed themselves by pretending that they were door-to-door salesmen. In June 1989, *Sendero Luminoso* had carried out an attack about 250 meters from the place where the Barrios Altos events occurred, in which several of the assailants were disguised as door-to-door salesmen.
- f) On November 14, 1991, the senators of the Republic, Raúl Ferrero Costa, Javier Diez Canseco Cisneros, Enrique Bernaldes Ballesteros, Javier Alva Orlandini, Edmundo Murrugarra Florián and Gustavo Mohme Llona requested the full Senate of the Republic to clarify the facts of the Barrios Altos crime. On November 15 that year, the Senate adopted this petition and appointed Senators Róger Cáceres Velásquez, Víctor Arroyo Cuyubamba, Javier Diez Canseco Cisneros, Francisco Guerra García Cueva and José Linares Gallo as members of an Investigation Committee, which was installed on November 27, 1991. On December 23, 1991, the Committee conducted an inspection of the building where the events took place, interviewed four people and executed other measures. The senatorial Committee did not complete its investigation, because the “Government of National Reconstruction and Emergency”, which came to power on April 5, 1992, dissolved Congress and the Democratic Constituent Congress elected in November 1992 did not take up the investigation again or publish the senatorial Committee’s preliminary findings;
- g) Although the events occurred in 1991, the judicial authorities did not commence a serious investigation of the incident until

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April 1995, when the prosecutor of the Office of the Forty-first Provincial Criminal Prosecutor of Lima, Ana Cecilia Magallanes, accused five Army officials of being responsible for the events, including several who had already been convicted in the *La Cantuta* case. The five men accused were Division General Julio Salazar Monroe, at that time Head of the National Intelligence Service (SIN), Major Santiago Martín Rivas, and Sergeant Majors Nelson Carbajal García, Juan Sosa Saavedra and Hugo Coral Goycochea. On several occasions, the prosecutor tried unsuccessfully to compel the accused men to appear before the court to make a statement. Consequently, she filed charges before the Sixteenth Criminal Court of Lima. The military officers replied that the charges should be addressed to another authority and indicated that Major Rivas and the sergeant majors were under the jurisdiction of the Supreme Military Justice Council. As for General Julio Salazar Monroe, he refused to answer the summons, arguing that he had the rank of a Minister of State and therefore enjoyed the same privileges as the Ministers;

- h) Judge Antonia Saquicuray of the Sixteenth Criminal Court of Lima initiated a formal investigation on April 19, 1995. Although this Judge tried to take statements from the alleged members of the “Colina Group” in prison, the Senior Military Command prevented this. The Supreme Military Justice Council issued a resolution establishing that the accused men and the Commander General of the Army and Head of the Joint Command, Nicolás de Bari Hermoza Ríos, were prevented from giving statements before any other judicial organ, because a case was being processed concurrently before military justice.
- i) As soon as Judge Saquicuray’s investigation began, the military courts filed a petition before the Supreme Court claiming jurisdiction in the case, alleging that it related to military officers on active service. However, before the Supreme Court could take a decision on this matter, the Congress of Peru adopted Amnesty Law No 26479, which exonerated members of the army, police force and also civilians who had violated human rights or taken part in such violations from 1980 to 1995 from responsibility. The draft law was not publicly announced or discussed, but was adopted as soon as it was submitted, in the early hours of June 14, 1995. The President promulgated the law immediately and it entered into force on June 15, 1995. The effect of this law was to determine that the judicial investigations were definitively