

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF BARBANI DUARTE *ET AL.* v. URUGUAY

JUDGMENT OF JUNE 26, 2012
(*Request for interpretation of the judgment*
***on merits, reparations and costs*)**

In the case of *Barbani Duarte et al.*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:¹

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge, and
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

in accordance with Article 67 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Article 68 of the Rules of Procedure of the Court² (hereinafter “the Rules of Procedure”), decides the request for interpretation of

¹ In accordance with Article 19(1) of the Rules of Procedure of the Inter-American Court applicable to this case (*infra* nota 2), which establishes that “[i]n the cases referred to in Article 44 of the Convention, a judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case,” Judge Alberto Pérez Pérez, a Uruguayan national, did not take part in the processing of this case, or in the deliberation and signature of the judgment of October 13, 2011, or in this judgment. In addition, Judge Leonardo A. Franco, for reasons beyond his control, did not participate in the deliberation and signature of the judgment on merits, reparations and costs; therefore, in accordance with Article 68(3) of the Court’s Rules of Procedure (*infra* note 3), he did not take part in the deliberation and signature of this judgment.

² Rules of Procedure of the Court approved by the Court at its eight-fifth regular session held from November 16 to 28, 2009, which are applicable to the instant case in accordance with Article 79 thereof. According to Article 79(2) of these Rules of Procedure, “[i]n cases in which the Commission has adopted a report under article 50 of the Convention before the these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. The provision of these Rules of Procedure shall apply for the reception of statements.” Therefore, Articles 33 and 34 of the Rules of Procedure approved by the Court at its forty-ninth regular session are applicable to the presentation of the case.

the judgment on merits, reparations and costs delivered by the Court on October 13, 2011, in the instant case (hereinafter also "the judgment") submitted on February 13, 2012, by Alicia Barbani Duarte and María del Huerto Breccia Farro, victims and representatives of some of the victims in this case (hereinafter "the representatives" or "Mrs. Barbani and Mrs. Breccia").

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

1. On October 13, 2011, the Court delivered the judgment, which was notified to the parties on November 18 that year.
2. On February 13, 2012, the representatives presented a brief in which they submitted to the Court a request for "clarification" of the judgment, indicating that "having examined the list of the 539 [...] victims included in the judgment delivered on October 13, 2011, [they] h[ad] detected that [three] persons should not have been included on the list and should not be beneficiaries of the corresponding rights," owing to specific situations that they described (*infra* para. 16).³
3. On February 29, 2012, on the instructions of the Court in plenary, the Secretariat of the Court forwarded the said communication to the Oriental Republic of Uruguay (hereinafter "Uruguay" or "the State") and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"). In addition, the State and the Inter-American Commission were advised that they could present any written arguments or observations they deemed pertinent by March 23, 2012, at the latest.
4. On March 23, 2012, the Inter-American Commission presented its observations on the said "clarification" of the representatives, indicating that "it had no other information in relation to" the comments of the representatives about the three victims. The State did not present arguments or observations with regard to the representatives' request for "clarification."

II COMPETENCE

5. Article 67 of the Convention establishes 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.

6. According to this article, the Court is competent to interpret its judgments. When examining the request for interpretation and making the corresponding ruling, if possible, the Court must have the same composition that it had when it delivered the respective judgment, in keeping with Article 68(3) of the Rules of Procedure. On this occasion, the Court is composed of the judges who delivered the judgment whose interpretation has been requested by the representatives.

³ The brief of the representatives consists of an e-mail, without annexes or other documents attached.

III ADMISSIBILITY

7. The Court must verify whether the request submitted by the representatives meets the requirements established in the norms applicable to a request for interpretation of judgment, namely Article 67 of the Convention, cited above, and Article 68 of the Rules of Procedure, the pertinent parts of which establishes that:

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which 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.

8. In addition, Article 31(3) of the Rules of Procedure establishes that the “[j]udgments and orders of the Court may not be contested in any way.”

9. In the first place, the Court notes that the representatives did not indicate expressly that the said request for “clarification constituted a request for interpretation in accordance with Article 67 of the American Convention. In this regard, in its observations on this request, the Commission indicated that it understood that “[o]wing to the said brief’s reference to the time frame, it would appear that the representatives were referring to a request for interpretation of judgment in accordance with Article 67 of the American Convention.”

10. Bearing in mind the procedural moment at which the representatives’ request was filed and the regulatory references to which it alludes,⁴ this Court understands that the said communication from the representatives constitutes a request for interpretation of judgment. Consequently, the Court will proceed to examine the representatives’ communication under Articles 67 of the Convention and 68 of the Rules of Procedure.

11. The Court has noted that the representatives sent this request on February 13, 2012, within the time frame established in Article 67 of the Convention for the presentation of a request for interpretation of judgment (*supra* para. 5), because the latter was notified on November 18, 2011.

IV REQUEST TO EXCLUDE FROM THE VICTIMS, THREE PERSONS DECLARED AS SUCH IN THE JUDGMENT

12. The Court will proceed to examine the representatives’ request to determine whether it is appropriate to clarify the meaning or scope of any aspect of the judgment on merits, reparations and costs. The Court will take into account the observations of the Inter-

⁴ In their brief, the representatives indicated that: “[a]ccording to the provisions of the Rules of Procedure of the Inter-American Court, [they] were approaching the Court opportunistically and in the appropriate way in order to inform the Court that [certain] persons should not be included” on the list of 539 victims in the judgment, and that [they] submitted this matter as a “Clarification [of the] judgment [in the] case of Barbari Duarte *et al.* v. Uruguay.”

American Commission on the request for interpretation of the judgment and recalls that the State did not present arguments or observations.

13. In order to analyze the admissibility of the representatives' request, the Court takes into account its consistent case law, supported by the above-mentioned applicable norms, to the effect that a request for interpretation of judgment should not be used as a means of contesting the decisions whose interpretation is requested. The purpose of this request is exclusively to determine the meaning of a judgment when one of the parties affirms that the text of its operative paragraphs or its considerations lacks clarity or precision, provided that those considerations have an impact on the said operative paragraphs.⁵ Consequently, the respective judgment cannot be modified or annulled by means of a request for interpretation.⁶

14. Furthermore, the Court has established that the request for interpretation cannot be used to submit factual or legal questions that were already raised at the appropriate procedural opportunity and regarding which the Court has already taken a decision.⁷

15. The Court notes that the representatives' request refers to the determination of the victims made by the Court in its judgment, because it seeks the exclusion of three of the 539 victims. The Court will analyze this aspect first. In addition, the Court will include some additional considerations, because the representatives' request includes assertions concerning the award of reparations to the said three victims (*infra* paras. 24 and 25).

16. In their communication, the representatives indicated that "having studied the list of the 539 [...] victims included in the judgment delivered on October 13, 2011, [they] h[ad] detected that [three] persons should not be included on it, or be beneficiaries of the corresponding rights." In support of this affirmation, they merely indicated the following:

a) Martha Moreira, indicated as [...] victim No. 345, because she was one of the 22 depositors recognized by the Committee of the Central Bank del Uruguay created under article 31.

b) Rafael Lena, indicated as [...] victim No. 281, because the Peirano brothers had paid him under an extrajudicial agreement, as indicated by the State in the answer to the application (page 23).

c) Regarding another depositor, José Pedro Santiesteban, who also reached an extrajudicial agreement with the Peirano brothers, he is not on the list, but the Court indicated two people with the same last name on the list of presumed victims under Nos. 463 and 464, although it is not possible to determine whether this is the same person.

⁵ Cf. *C. Caso Loayza Tamayo Vs. Perú*. Interpretación de la Sentencia de Fondo. Resolución de la Corte Interamericana de Derechos Humanos de 8 de marzo de 1998. Serie C No. 47, párr. 16; *Caso Salvador Chiriboga Vs. Ecuador*. Interpretación de la Sentencia de Reparaciones y Costas. Sentencia de 29 de agosto de 2011. Serie C No. 230, párr. 11, y *Caso Abril Alosilla y otros Vs. Perú*. Interpretación de la Sentencia de Fondo, Reparaciones y Costas. Sentencia de 21 de noviembre de 2011. Serie C No. 235, párr. 10.

⁶ Cf. *Caso Loayza Tamayo Vs. Perú*. Interpretación de la Sentencia de Fondo, párr. 16; *Caso Salvador Chiriboga Vs. Ecuador*. Interpretación de la Sentencia de Reparaciones y Costas, párr. 11, y *Caso Abril Alosilla y otros Vs. Perú*. Interpretación de la Sentencia de Fondo, Reparaciones y Costas, párr. 10.

⁷ Cf. *Caso Loayza Tamayo Vs. Perú*. Interpretación de la Sentencia de Reparaciones y Costas. Sentencia de 3 de junio de 1999. Serie C No. 53, párr. 15; *Caso Salvador Chiriboga Vs. Ecuador*. Interpretación de la Sentencia de Reparaciones y Costas, párr. 30, y *Caso Abril Alosilla y otros Vs. Perú*. Interpretación de la Sentencia de Fondo, Reparaciones y Costas, párr. 17.

17. The Court has verified that Mrs. Barbani and Mrs. Breccia are not the representatives of the three victims who they are asking the Court to exclude by means of this request for interpretation. In the proceedings on this case before the Court, the Commission included these three individuals as presumed victims in its application and represented them.⁸ In its observations on the request for interpretation, the Inter-American Commission indicated that, regarding the victim Martha Moreira, it did "not have any other information [...] to determine whether or not [Marta Moreira included as a victim in its application and the person called Martha Moreira who obtained a favorable opinion from the Advisory Committee of the Directors of the Central Bank] are the same person." Regarding the victim Rafael Lena, the Commission also indicated that it did "not have any other information" than that provided by the State in its answer to the application, to the effect that the said victim "made a 'deal' with the Peirano Basso brothers." Lastly, regarding the third victim, it observed that the first names of the individuals indicated as victims in the judgment differ from José Pedro Santiesteban, "so that it would appear that it is not the same person"; nevertheless, it indicated that "it did not have any other information in this regard."

18. The Court finds that the purpose of the request submitted by Mrs. Barbani and Mrs. Breccia is not for the Court to clarify the meaning or scope of some aspect of the judgment, but seeks that the Court modify the terms of its decision concerning the determination of the victims of the violation of the right to be heard, protected under Article 8(1) of the American Convention. In addition, the Court underlines that Mrs. Barbani and Mrs. Breccia did not represent before the Court the three victims they seek to exclude in the instant case (*supra* para. 17).

19. The Court also considers that the grounds for declaring the said violation and the criteria based on which it declared 539 persons as victims are clearly established in paragraphs 133 to 147 of the judgment.

20. In this regard, the Court finds it pertinent to recall that, in its judgment, it concluded that Uruguay had violated the right to be heard, protected under Article 8(1) of the American Convention, to the detriment of 539 persons who had filed petitions under the special procedure established by article 31 of Law 17,613 that were rejected by the Uruguayan Central Bank. The Court considered that the violation occurred because the Central Bank made an incomplete analysis of the third requirement established in the said article 31, which had a direct impact on the decision of whether or not to accept the petitions.⁹ This article 31 granted two rights to those who met the requirements established in the said law: (i) recognition as a creditor of the Banco de Montevideo or of the Banco La

⁸ When notifying the Commission's application to the State and to the representatives, the parties were informed that, in accordance with the provisions of Article 34(3) of the Court's previous Rules of Procedure, applicable to this case as provided for in Article 79(2) of the current Rules of Procedure, "the Commission, in its capacity as guarantor of the public interest under the American Convention, shall represent the alleged victims [who do not have a duly accredited legal representative] in the proceedings in order to ensure that they enjoy legal defense."

⁹ The said article 31 authorized the Central Bank to grant to the depositors of the Banco de Montevideo and the Banco La Caja Obrera the same rights as the law provided to those "depositors" "whose deposits had been transferred to other institutions" "without their consent." According to the decisions issued by the Board of the Central Bank and the Contentious-Administrative Tribunal of Uruguay, this law called for concurrent compliance with all three requirements. This Court determined that the Central Bank of Uruguay had made an incomplete examination of the merits of the petitions of the 539 victims, under the special procedure of article 31, because it did not make a comprehensive examination of the element of consent, and this had affected the determination of the rights granted by article 31. The Court verified that the above-mentioned administrative body decided to examine only the elements from which consent could be inferred, but expressly inhibited itself from analyzing the arguments and evidence that could affect or invalidate consent. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* Judgment of October 13, 2011. Series C No. 234, paras. 77, 93, 125, 136, 141, 142 and 232 and first operative paragraph.

Caja Obrera for the nominal amount determined to have been transferred without his or her consent,¹⁰ and (ii) the right to receive from the State a complement to his or her proportional share.¹¹

21. In paragraphs 143 to 147 of the judgment, the Court established the criteria based on which it considered as victims the 539 persons who were thus declared, among whom are the three victims that the representatives seek to exclude with their request for interpretation.¹² The Court found that the said violation had been proved to their detriment because there was uncontested evidence in the case file that they had filed a petition under article 31 of Law 17,613 that had been rejected by the Central Bank del Uruguay. The said three victims were in this situation because there is evidence in the case file before this Court that they filed petitions before the Central Bank that were rejected (Martha Moreira under File No. 2003/0714, Rafael Lena under File. No. 2003/0691 and José Pedro Santiesteban Tristán¹³ under File No. 2003/0662).

22. Furthermore, the Court finds it appropriate to underline that, at the merits stage of the instant case, on three occasions it expressly asked the parties, including the representatives Mrs. Barbani and Mrs. Breccia, to provide information or observations on the determination of the victims.¹⁴ Thus, in addition to the information that they were able to provide in the brief with pleadings, motions and evidence, the oral arguments during the public hearing, and the brief with final arguments, the Court granted the representatives three specific additional opportunities to refer to the issue of the determination of the victims in this case or to forward any observations they deemed pertinent. However, the representatives did not request the exclusion of the three victims they do not represent on any of those occasions.

¹⁰ Thus making them proportional shareholders of the Bank Asset Recovery Fund of the respective bank. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, paras. 97, 126, 133 and 226.

¹¹ The complement consisted of covering (between their own share and the complement from the State) a maximum nominal amount of US\$100,000.00 (one hundred thousand United States dollars) or the equivalent in another currency. This right was recognized considering that they were in the same situation as the depositors with a checking, savings or fixed-term account referred to in article 27 of Law 17,613. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, paras. 97, 126, 133 and 226.

¹² In order to determine and identify the victims, the Court took into account: the list of presumed victims indicated by the Inter-American Commission in its application and in its Report on Merits; the list of presumed victims provided by the Inter-American Commission with its final written observations, in response to the Court's request that it list individually the names of the then presumed victims; the probative elements provided to the case file that prove that the person filed a petition before the Central Bank del Uruguay under article 31 of Law 17,613 that was rejected by the bank, as well as the clarifications and observations made by the parties in this regard.

¹³ The said victim is identified in the Annex of Victims of the Judgment as Tristán José Santiesteban (File No. 2003/0662).

¹⁴ During the public hearing (February 21 and 22, 2011) and in notes of March 8, 2011, the Court or its President called on the parties to present specific helpful information, documentation and explanations related to the determination of presumed victims. In particular, the Inter-American Commission was asked to forward an individualized list of the persons it had considered presumed victims in its application brief, and also that it indicate whether any of the petitions of the then presumed victims had been approved by the Board of the Central Bank del Uruguay. The Commission did not present any information on the last point. In addition, in notes dated April 14, 2011, the parties were given the opportunity to present any observations they deemed pertinent regarding the information and attachments forwarded by the other parties, in response to the requests for helpful evidence made by the Court and its President. The representatives and the State, together with their observations, forwarded certain new information and documentation in relation to the presumed victims in this case; consequently, on June 2, 2011, the parties were given a further opportunity to present any observations they deemed pertinent. Lastly, on September 23, 2011, the President of the Court asked the Inter-American Commission, the representatives and the State for certain information and documentation in relation to the determination of the presumed victims. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, paras. 10 to 14.

23. Moreover, the arguments submitted by the representatives on this occasion do not provide any relevant element that was unknown when the Judgment was delivered and that this Court needs to analyze, and does not alter the application of the said criteria for the determination of victims in relation to the three persons that they seek to exclude. The information provided by the representatives that the victims Lena and Santiesteban Tristán had made “deals” with the Peirano brothers had already been indicated by Uruguay in its answer to the application,¹⁵ without the State having provided any information to prove that, based on this, the rights of the said victims protected under article 31 of Law 17, 613 had been fulfilled (*supra* para. 20)¹⁶ Neither did the representatives provide any information in this regard when submitting their request for interpretation (*supra* para. 16). As regards the information provided by the representatives in relation to the victim Martha Moreira, when considering her a victim, the Court took into account that the petition she filed under File No. 2003/0714 was rejected by the Central Bank. None of the parties indicated during the merits stage of this case that the Martha Moreira whose petition was rejected under File No. 2003/0714 (based on which she was declared a victim) was the same person who had benefited from the petition presented by Rolando Massoni under File No. 2004/0228, which was accepted by the Central Bank.¹⁷ The Court points out that, during the proceedings, it even asked the Commission to indicate whether any of the petitions of the then presumed victims had been approved by the Board of the Central Bank del Uruguay. The Commission did not submit any information and the representatives did not present any observation in this regard.¹⁸ It is only recently, in their request for interpretation, that the representatives affirm that this is the same person, without providing any additional information in this regard (*supra* para. 16).

24. In addition, regarding the information provided by Mrs. Barbani and Mrs. Breccia concerning the granting of reparations to these three victims, the Court finds it pertinent to recall that, in the judgment, it ordered a measure of reparation designed “to guarantee that the victims in this case or their heirs could file new petitions in relation to the determination of the rights established by article 31 of Law 17,613 [...], which must be heard and decided, within three years, with due guarantees, by an organ that has the necessary competence to

¹⁵ In its answering brief, the State of Uruguay indicated that Rafael Lena and José Pedro Santiesteban had “made a deal with the brothers José, Dante and Jorge Peirano Basso under which their claim was satisfied.” Furthermore, during the public hearing before the Court, the representatives stated that “two depositors [...] who had been involved in the dispute [...] went to prison and there reached an extrajudicial deal with the Peirano brothers.” Also, in the list of presumed victims provided by the Inter-American Commission with its final written observation, footnotes 21 and 27 mention that “[a]ccording to the answer to the application [...], Mr. Lena made ‘a deal with the brothers José, Dante and Jorge Peirano Basso under which his claim was satisfied,’” and that “[a]ccording to the answer to the application [...], Mr. Santiesteban made ‘a deal with the brothers José, Dante and Jorge Peirano Basso under which his claim was satisfied.’” The Court underlines that this was the information presented to it with regard to the said “deals.”

¹⁶ Similarly, the Court recalls that, in its judgment, it concluded that other remedies before the ordinary jurisdiction that the State had argued were available to enable the victims to claim their rights “did not grant all the rights established under the said article 31 [of Law 17,613 ...]; therefore they c[ould] not be considered effective remedies for the matter that [was] the purpose of the case.” The Court also considered that the application of article 31 of Law 17, 613 and the determination of fulfillment of the requirements it established should be made by the administrative body responsible for the said procedure, which had been created especially to deal with the claims of those who allegedly met the requirements of the said law. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* para. 229.

¹⁷ The Court recalls that it considered as victims in this case those persons who, in person or through a representative, had filed petitions before the Central Bank under article 31 of Law 17,613 that had been rejected by the Board of the Central Bank. *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, para. 146.

¹⁸ *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, paras. 10 to 14.

make a complete analysis of the requirements established in the said law, in the terms established in paragraphs 133 to 142 of the [...] Judgment."¹⁹

25. Therefore, if any of the three victims indicated by the representatives on this occasion or any other victim determined in the judgment had, in fact, obtained the two rights established in article 31 of Law 17,613 (*supra* para. 20), it will correspond to the domestic body that the State determines is competent to make a fresh examination of the petitions under this article 31, and to determine in each specific case whether it is appropriate to grant the respective victim the rights established in the said law, in keeping with paragraphs 248 to 250 of the judgment. In addition, the Court finds, as it has in other cases,²⁰ that due implementation of the measures of reparation will be evaluated at the stage of monitoring compliance with the judgment; thus the Court will assess any information and observations that the parties may present in this regard at that stage.

26. Based on the preceding considerations, the Court finds that the determination of the victims in this case has been ruled on by this Court in accordance with criteria founded on the Convention and its case law and set forth in its judgment. Consequently, the Court finds that the representatives' request for interpretation is without merit, because it does not constitute a request for interpretation of the meaning and scope of the judgment,²¹ and this is contrary to the provisions of Articles 67 of the American Convention and 31(3) and 68(1) of the Court's Rules of Procedure.

V OPERATIVE PARAGRAPHS

27. Therefore,

THE COURT

pursuant to Article 67 of the American Convention on Human Rights and Articles 31(3) and 68 of its Rules of Procedure,

DECIDES:

unanimously,

1. To reject the request for interpretation of judgment presented by Alicia Barbani and María del Huerto Breccia, finding that the claim to exclude as victims three persons who had been declared as such in the judgment of October 13, 2011, is inadmissible, in accordance with paragraphs 13 to 26 of this judgment.

¹⁹ Cf. *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*, second operative paragraph and paras. 247 to 251.

²⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Interpretation of the judgment on merits, reparations and costs*. Judgment of July 1, 2009 Series C No. 199, para. 26.

²¹ Cf. *Case of Loayza Tamayo v. Peru. Interpretation of the judgment on merits, supra nota 3, para. 16; Case of Salvador Chiriboga v. Ecuador. Interpretation of the judgment on reparations and costs*. Judgment of August 29, 2011. Series C No. 230, para. 31; *Case of Abrill Alosilla et al v. Peru. Interpretation of the judgment on merits, reparations and costs, supra note 2, para. 18*, and *Case of Grande v. Argentina*. Request for interpretation of judgment on preliminary objections and merits. Order of the Court of February 22, 2012, sixteenth considering paragraph.

2. To require the Secretariat of the Court to notify this judgment to the Oriental Republic of Uruguay, the representatives of some of the victims, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary