

## **Inter-American Court of Human Rights**

### **Case of Barrios Altos v. Peru**

#### **Judgment of March 14, 2001 (Merits)**

[...]

### **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 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 Bernales 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 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 quashed and thus prevent the perpetrators of the massacre from being found criminally responsible;

j) Law No. 26479 granted an amnesty to all members of the security forces and civilians who had been accused, investigated, prosecuted or convicted, or who were carrying out prison sentences, for human rights violations. The few convictions of members of the security forces for human rights violations were immediately annulled. Consequently, eight men who had been imprisoned for the case known as "*La Cantuta*", some of whom were being prosecuted in the Barrios Altos case, were liberated;

**[Law No. 26.479**

**Article 1.** Grant a general amnesty to the Military, Police or Civilian personnel, whatever their Military Police or Official status, who face a formal complaint, investigation, criminal charge, trial, or conviction for common or military crimes, whether under the jurisdiction of the civil or military courts, in relation to all events derived or originated from, or a consequence of, the fight against terrorism, and which may have been committed either individually or by two or more persons between May 1980 and the date on which this law is promulgated.

**Article 6.** The events or crimes covered by the amnesty law, all rulings in favour of definitively closing a judicial process, and acquittals, are not subject to investigation, inquiry or summary proceedings; all judicial cases, whether ongoing or executed, remaining definitively closed.]

k) On June 16, 1995, pursuant to the Constitution of Peru, which indicates that judges have the obligation not to apply those laws that they consider contrary to the provisions of the Constitution, Judge Antonia Saquicuray decided that article 1 of Law No. 26479 was not applicable to the criminal cases pending in her court against the five members of the National Intelligence Service (SIN), since the amnesty violated constitutional guarantees and the international obligations that the American Convention imposed on Peru. A few hours after this decision had been issued, the Prosecutor General, Blanca Nélica Colán, stated in a press conference that Judge Saquicuray's decision was an error; that the Barrios Altos case was closed; that the Amnesty Law had the status of a constitutional law; and that the prosecutors and judges who did not obey the law could be tried for malfeasance;

l) The lawyers of those accused in the Barrios Altos case appealed Judge Saquicuray's decision. The case was transferred to be heard by the Eleventh Criminal Chamber of the Lima Superior Court, whose three members would be responsible for revoking or confirming the decision. On June 27, 1995, Carlos Arturo Mansilla Gardella, Superior Prosecutor, defended all aspects of Judge Saquicuray's decision declaring Amnesty Law No. 26479 inapplicable in the Barrios Altos case. An audience on the applicability of the said law was arranged for July 3, 1995.

m) Judge Saquicuray's refusal to apply Amnesty Law No. 26479 led to another congressional investigation. Before the public hearing could be held, the Congress of Peru adopted a second amnesty law, Law No. 26492, which "was directed at interfering with legal actions in the Barrios Altos case". This law declared that the amnesty could not be "revised" by a judicial instance

and that its application was obligatory. Moreover, it expanded the scope of Law No. 26479, granting a general amnesty to all military, police or civilian officials who might be the subject of indictments for human rights violations committed between 1980 and 1995, even though they had not been charged. The effect of this second law was to prevent the judges from determining the legality or applicability of the first amnesty law, invalidating Judge Saquicuray's decision and preventing similar decision in the future; and

n) On July 14, 1995, the Eleventh Criminal Chamber of the Lima Superior Court of Justice issued a decision on the appeal that was contrary to the decision by the Judge at the lower level; in other words, it decided that the proceeding in the Barrios Altos case should be quashed. In its judgment, this Chamber decided that the Amnesty Law was not contrary to the Constitution of the Republic or to international human rights treaties; that judges could not decide that laws adopted by Congress could not be applied, because that would go against the principle of the separation of powers; and ordered that Judge Saquicuray should be investigated by the Judiciary's internal control organ for having interpreted laws incorrectly.

[...]

## **VII THE INCOMPATIBILITY OF AMNESTY LAWS WITH THE CONVENTION**

41. This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.

42. The Court, in accordance with the arguments put forward by the Commission and not contested by the State, considers that the amnesty laws adopted by Peru prevented the victims' next of kin and the surviving victims in this case from being heard by a judge, as established in Article 8(1) of the Convention; they violated the right to judicial protection embodied in Article 25 of the Convention; they prevented the investigation, capture, prosecution and conviction of those responsible for the events that occurred in Barrios Altos, thus failing to comply with Article 1(1) of the Convention, and they obstructed clarification of the facts of this case. Finally, the adoption of self-amnesty laws that are incompatible with the Convention meant that Peru failed to comply with the obligation to adapt internal legislation that is embodied in Article 2 of the Convention.

43. The Court considers that it should be emphasized that, in the light of the general obligations established in Articles 1(1) and 2 of the American Convention, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse, in the terms of Articles 8 and 25 of the Convention. Consequently, States Parties to the Convention which adopt laws that have the opposite effect, such as self-amnesty laws, violate Articles 8 and 25, in relation to Articles 1(1) and 2 of the Convention. Self-amnesty laws lead to the defenselessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the

Convention. This type of law precludes the identification of the individuals who are responsible for human rights violations, because it obstructs the investigation and access to justice and prevents the victims and their next of kin from knowing the truth and receiving the corresponding reparation.

44. Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, the said laws lack legal effect and may not continue to obstruct the investigation of the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated.

## **VIII RIGHT TO THE TRUTH AND JUDICIAL GUARANTEES IN THE RULE OF LAW**

### *The Commission's arguments*

45. The Commission alleged that the right to truth is founded in Articles 8 and 25 of the Convention, insofar as they are both "instrumental" in the judicial establishment of the facts and circumstances that surrounded the violation of a fundamental right. It also indicated that this right has its roots in Article 13(1) of the Convention, because that article recognizes the right to seek and receive information. With regard to that article, the Commission added that the State has the positive obligation to guarantee essential information to preserve the rights of the victims, to ensure transparency in public administration and the protection of human rights.

### *The State's arguments*

46. The State did not contest the Commission's arguments in this respect and indicated that its human rights strategy was based on "recognizing responsibilities, but, above all, proposing integrated procedures for attending to the victims based on three fundamental elements: the right to truth, the right to justice and the right to obtain fair reparation".

### *The considerations of the Court*

47. In this case, it is evident that the surviving victims, their next of kin and the next of kin of the victims who died were prevented from knowing the truth about the events that occurred in Barrios Altos.

48. Despite this, in the circumstances of the instant case, the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention.<sup>1</sup>

49. Therefore, this matter has been resolved, since it has been indicated (*supra* para. 39) that Peru violated Articles 8 and 25 of the Convention, with regard to judicial guarantees and judicial protection. [...]

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<sup>1</sup> Cfr. *Bámaca Vélasquez case*. Judgment of November 25, 2000. Series C No. 70, para. 201.