

Inter-American Court of Human Rights

Case of Tibi v. Ecuador

Judgment of September 07, 2004 (Preliminary Objections, Merits, Reparations and Costs)

In the *Case of Tibi*,

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

Sergio García Ramírez, President;
Alirio Abreu Burelli, VicePresident;
Oliver Jackman, Judge;
Antônio A. Cançado Trindade, Judge;
Cecilia Medina Quiroga, Judge;
Manuel E. Ventura Robles, Judge;
Diego García-Sayán, Judge, and
Hernán Salgado Pesantes, Judge *ad hoc*;

Also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 29, 31, 37(6), 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")* and to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), issues the instant Judgment.

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INTRODUCTION OF THE CASE

1. On June 25, 2003 the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Ecuador (hereinafter "the State" or "Ecuador"), which originated in application No. 12.124, received by the Secretariat of the Commission on July 16, 1998.

2. The Commission filed the application pursuant to Article 61 of the American Convention, for the Court to decide whether the State abridged Articles 5(1) and 5(2) (Right to Humane Treatment), 7(1), 7(2), 7(3), 7(4), and 7(6), (Right to Personal Liberty), 8(1), 8(2), 8(2)(b), 8(2)(d), 8(2)(e), 8(2)(g) and 8(3) (Right to Fair Trial), 21(1) and 21(2) (Right to Property) and 25 (Right to Judicial Protection) of the American Convention, all of them in combination with Article 1(1) (Obligation to Respect Rights) of that same convention, to the detriment of Daniel David Tibi

^T The instant Judgment is issued pursuant to the Rules of Procedure adopted by the Inter-American Court of Human Rights in its XLIX Regular Session, through its November 24, 2000 Order, which entered into force on June 1, 2001, and in accordance with the partial amendment adopted by the Court in its LXI Regular Session, through its November 25, 2003 Order, in force since January 1, 2004.

241. The State pointed out that if it is found responsible, the Court must estimate to what extent Mr. Tibi and his next of kin were affected by the violations to set a monetary compensation.

Considerations of the Court

242. Non-pecuniary damage may include both the suffering and grief caused to the direct victims and their close relations, and detriment to very significant values of the individuals, as well as non-pecuniary changes in the conditions of existence of the victim or the victim's family. Since it is not possible to assign a specific monetary equivalent to non-pecuniary damage, it can only be compensated in two ways. First, by payment of an amount of money or delivery of goods or services that can be assessed in monetary terms, set by the Court by reasonably applying judicial discretion and in terms of fairness. And second, through acts or works that are public in their scope or repercussions, such as transmitting a message of official reproof of the human rights violations involved, and of commitment to efforts to ensure that they do not happen again, which have the effect, among others, of acknowledging the victim's dignity.¹⁷¹ The first aspect of the reparation for non-pecuniary damages will be analyzed in this section, and the second one in section D) of this chapter.

243. International jurisprudence has repeatedly established that the judgment is *per se* a form of reparation. Nevertheless, bearing in mind the circumstances of the instant case, the intensity of the suffering caused by the facts to the victims, changes in the conditions of their existence, and the other non-pecuniary or non-material consequences they suffered, the Court deems it pertinent to order payment of a compensation for non-pecuniary damages, in fairness.¹⁷²

244. In setting compensation for non-pecuniary damages in the *sub judice* case, it is necessary to take into account that Daniel Tibi was subjected to inhuman conditions of incarceration and that he was tortured, which caused him intense corporal pain, suffering, and psychological problems, as well as physical and psychological consequences that continue to date. Furthermore, the actions against him did not fulfill the requirements of due process (there was an unlawful and arbitrary detention, disregard for the right to fair trial and to judicial protection). Naturally, persons subjected to arbitrary detention experience profound suffering,¹⁷³ which is worsened if we take into account that the facts regarding the victim's torture have not been investigated. This Court deems that it can be assumed that this type of violations cause those who suffer them non-pecuniary harm.¹⁷⁴

245. It is reasonable to consider that the violations against Daniel Tibi clearly altered his life plan. His expectations for personal, professional, and family development, possible under normal conditions, were abruptly interrupted.

¹⁷¹ See *Case of the Gómez Paquiyauri Brothers*, *supra* note 8, para. 211; *Case of the 19 Tradesmen*, *supra* note 9, para. 244; and *Case of Molina Theissen. Reparations*, *supra* note 9, para. 65.

¹⁷² See *Case of the Gómez Paquiyauri Brothers*, *supra* note 8, para. 215; *Case of the 19 Tradesmen*, *supra* note 9, para. 247; and *Case of Molina Theissen. Reparations*, *supra* note 9, para. 66.

¹⁷³ See *Case of Maritza Urrutia*, *supra* note 8, para. 168; *Case of Bulacio*, *supra* note 129, para. 98; and *Case of Juan Humberto Sánchez*, *supra* note 3, para. 174.

¹⁷⁴ See *Case of the Gómez Paquiyauri Brothers*, *supra* note 8, para. 217; *Case of the 19 Tradesmen*, *supra* note 9, para. 248; and *Case of Molina Theissen. Reparations*, *supra* note 9, para. 67.