

CASE LAW COVER PAGE TEMPLATE

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| Name of the court ¹ (English name in brackets if the court's language is not English): Inter-American Court of Human Rights | |
| Date of the decision: | (2013/11/25) |
| Case number: ² | Series C No. 272 |
| Parties to the case: Pacheco Tineo Family v. Bolivia | |
| Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| If yes, please provide the link: http://www.refworld.org/docid/52c53b154.html (If no, please attach the decision as a Word or PDF file): | |
| Language(s) in which the decision is written: Spanish | |
| Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which): | |
| Countr(y)(ies) of origin of the applicant(s): Peru | |
| Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Bolivia | |
| Any third country of relevance to the case: ³ | |
| Is the country of asylum or habitual residence party to: | |
| The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: |
| (Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: |
| (Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: |
| (For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No | Relevant articles of the Convention on which the decision is based: |
| For EU member states: please indicate which EU instruments are referred to in the decision | Relevant articles of the EU instruments referred to in the decision: |

Topics / Key terms: (see attached ‘Topics’ annex):

Access to procedures | Cessation clauses | Denial of refugee status | International protection | *Non-refoulement* | Refugee status determination (RSD) / Asylum procedures | Regional instruments | Rule of law / Due process / Procedural fairness | State protection | Voluntary repatriation

Key facts (as reflected in the decision): [No more than 200 words]

1. On February 21, 2012 the Inter-American Commission on Human Rights submitted to the Court an application against the State of Bolivia originating from petition No. 12,474. The case refers to the forced removal of the Pacheco Tineo family from Bolivia to Peru on February 24, 2001, as a consequence of the rejection of the request for recognition of refugee status in Bolivia.
2. The Pacheco Tineo family, consisting of Rumaldo Juan Pacheco Osco, his wife Fredesvinda Tineo Goths and their children Juana Guadalupe, Frida Edith and Juan Ricardo Pacheco Tineo, had entered Bolivia on February 19, 2001. Immigration authorities became aware of their illegal status and took prompt action to arrange their expulsion to Peru.
3. The Inter-American Commission alleged that the application for refugee status was denied in a summary manner and in violation of due process guarantees, after which the family members were expelled to Peru.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations)

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I. Decision or Judgment

4. The Court declared the State of Bolivia responsible for the violation of the right to physical, mental, and moral integrity (Article 5.1), right to a fair trial (Article 8), rights of the family and the child (Articles 19 and 17), right to seek and be granted asylum (Article 22.7), *non-refoulement* obligations (Article 22.8); and, right to judicial protection (Article 25) of the American Convention on Human Rights.
5. As a result of the violation of the right to seek and be granted asylum, of the non-refoulement obligations and of the due process guarantees, the Court ordered the State of Bolivia to implement permanent training programs directed towards agents of the National Migration Agency and the National Refugee Commission, as well as other agents that, due to their official functions, might have contact with migrants and asylum seekers.

II. Main considerations of the Court on due process guarantees in procedures that may lead to expulsion and in refugee status determination procedures

6. Before analyzing the merits of the case, the Court clarifies that it will study the State’s responsibility by referring to two main legal issues: 1) the minimum due process guarantees in migratory procedures that might culminate in the expulsion or deportation of an alien and 2) the minimum guarantees of due process in refugee status determination procedures.

1. The minimum procedural guarantees in migratory procedures that may culminate with the expulsion or deportation of an alien and the principle of *non-refoulement*

7. The Court starts by quoting the Case of *Vélez Loor v. Panama* to emphasize on the vulnerability of illegal migrants and their constant exposure to violations of their basic human rights². States must guarantee and respect

their human rights without distinction of any kind, such as regular or irregular residence, nationality, race, gender, or any other cause. The latter is of special significance when confronted against immigration policies; international law has ensured that processes of expulsion and deportation respect the right to due process, judicial protection, and respect for the inherent dignity of the human person, regardless of the legal condition or migratory status³.

8. Administrative sanctions, as well as penal sanctions, are an expression of the State's *ius puniendi*. In all democratic societies, the State's punitive power is exercised when it is strictly necessary; that is to guard basic individual legally protected values from attacks that may damage or put them in danger. Consequently, the State cannot dictate punitive administrative or judicial acts without proper respect of certain minimum guarantees corresponding to Articles 2 (domestic legal effects) and 8 (right to a fair trial) of the American Convention on Human Rights.

9. The Court starts by reaffirming the standard expressed in the *Case of the Constitutional Court v. Peru*, which indicates that the right to due process enshrined in article 8 of the American Convention refers to the procedural requirements that should be observed so that a person might defend himself adequately against any kind of act of the State (administrative, legal or judicial) that affects his rights⁴.

10. For the above reasons, in certain cases where migration authorities make decisions that affect fundamental rights, such as personal freedom, in procedures that may culminate in the expulsion or deportation of aliens, the State cannot dictate judicial or administrative acts without respecting specific minimum guarantees in light of the applicable rules of section 2 of Article 8 of the American Convention⁵.

11. The Court, reiterating what it declared in the *Case of Nadege Dorzema et al. v. Dominican Republic*, states that a legal proceeding that might result in the expulsion or deportation of an alien must comply with the following guarantees⁶:

i) To be expressly and formally informed of the charges against him or her and of the reasons for the expulsion or deportation. This notification must include information about his or her rights, such as:

a. The possibility of stating his or her case and contesting the charges against him or her.

b. The possibility of requesting and receiving consular assistance, legal assistance and, if appropriate, translation or interpretation.

ii) In case of an unfavorable decision, the alien must be entitled to have his or her case reviewed by the competent authority and appear before this authority for that purpose, and

iii) The eventual expulsion may only take effect following a reasoned decision in keeping with the law and must be duly notified⁷.

12. The *Case of Pacheco Tineo Family v. Bolivia* indicates that Article 22.8 of the American Convention provides the prohibition of expulsion or return of any "alien to a country, regardless of whether or not it is his country of origin", (hence, his country of origin or any other third State), "if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions"⁸.

13. Accordingly, and based on the direct relationship between these standards and the international *corpus juris* applicable to migrant persons, it is possible to consider that the Inter-American system recognizes the right of any alien, and not only refugees, to not be returned when his or her life, integrity and/or freedom are at risk of being violated, without taking into account the person's legal status or migratory condition in the country where he or she is located⁹.

14. In this regard, the Court makes reference to UNHCR's expert witness testimony in which it is expressed that countries like Mexico, Argentina, Costa Rica and Nicaragua have adopted domestic legislation establishing

complementary protection regulations in favour of aliens that are not refugees but that cannot be returned to their country of origin or a third country when their lives and/or security are at risk¹⁰.

15. For the Court, when an alien claims before a State the danger he would face in case of being returned, the competent authorities of said State should, at least, interview the alien and conduct a preliminary evaluation, in order to determine the existence – or not – of a risk in case of expulsion. This entails respect of the above stated guarantees, and if the risk is verified, the alien shall not be returned to his country of origin or to where the risk originates¹¹.

2. The minimum due process guarantees in refugee status determination procedures and the principle of *non-refoulement*

16. Referring to UNHCR's expert witness testimony for the case, the Court explains that the adoption of a set of treaties on diplomatic and territorial asylum and non-extradition for political reasons, led to what has been commonly defined as the *Latin-American tradition of granting asylum*¹².

17. The Court recognizes that in the region, the traditional concept of asylum as an individual right has evolved with the normative development of the *Inter-American Human Rights System*. Thus, the 1948 American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"), which includes the right of asylum in its Article XXVII¹³, led to the recognition of an individual right to seek and be granted asylum in the Americas. This development was universally followed by the adoption of the 1948 Universal Declaration of Human Rights, in which the "right to seek and enjoy in other countries asylum from persecution" was explicitly recognized in Article 14. Thereafter, the right of asylum started to be codified in human rights instruments rather than in inter-state treaties.

18. Additionally, referring to the UNHCR's expert witness testimony and also to the UNHCR's Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees¹⁴, the Court indicated that the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) and its Protocol of 1967 contain the general principles for the protection of refugees, the rules on their legal status and their rights and duties in the country of asylum¹⁵. For the Court, although the 1951 Convention does not explicitly provide the right of asylum, it is considered to be implicit in its terms, where it outlines the definition of refugee, the protection from *non-refoulement* and a range of rights to which said refugee is entitled to¹⁶.

19. Furthermore, making mention of the 1951 Refugee Convention's Preamble and the importance given there to international cooperation in the process of granting asylum¹⁷, the Court expresses that with the protection of the 1951 Convention and its 1967 Protocol, the institution of asylum undertook a specific form and modality: the refugee status. Accordingly, and citing UNHCR's Executive Committee's conclusion No. 82, the Court states that "the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14.1 of the 1948 Universal Declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees"¹⁸.

20. In the Judgment, the Court also refers to the importance of the 1984 Cartagena Declaration on Refugees, adopted by a group of government representatives, academics and lawyers from Central America, Colombia, Mexico, Panama and Venezuela, in which the refugee definition contained in the 1951 Refugee Convention was extended. Even with the non-binding character of the Declaration, the extended refugee definition contained therein¹⁹ has been adopted in 14 different national laws along the Latin American region²⁰, including the State involved in the case of the Pacheco Tineo family²¹.

21. Article 22.7 of the Convention states two criteria of cumulative nature for the existence or exercise of the right to seek and be granted asylum: a) "in accordance with the legislation of the state", hence, the country in which asylum is sought; and b) "in accordance with the international conventions". The Court recognizes that this notion

contained in the text of Article 22.7 of the Convention, read in conjunction with the right of *non-refoulement* in Article 22.8, supports the relationship between the extent and content of those rights and the international refugee law²².

22. Applying article 29.b) of the American Convention (no provision of the Convention can restrict the enjoyment or exercise of any right or freedom recognized in another convention to which the State is a party), the Court expressly takes into account the significant changes in the regulation and principles of international refugee law, also supported by the guidelines, standards and other authoritative statements of bodies such as the UNHCR. Thus, while establishing the compatibility of the actions and omissions of the State or of its rules with the Convention itself or other treaties for which it has jurisdiction, the Court can interpret the rights and obligations contained therein, in the light of other treaties and standards. In this case, while using the sources, principles and criteria of international refugee law and the special legislation applicable to situations of refugee status determination of a person and their correlative rights as a complement to conventional rules, the Court is not assuming a hierarchy between normative orders²³.

23. Consequently, the Court refers to UNHCR's expert witness testimony to affirm that, even when the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (hereinafter "the UNHCR's Handbook") is not a binding legal instrument, many Latin American States have incorporated a reference to the Handbook as an important interpretative guideline for their actions on the determination of the refugee status of an individual²⁴.

2.1 Refugee Status Determination

24. In the Judgment, the Court includes the refugee definition given by the 1951 Refugee Convention, and using the UNHCR's Handbook as the reference, states that the status of refugee is of a declarative, and not a constitutive nature, in the sense that a person is not a refugee as a result of the State recognition, but as a result of its compliance with the legal refugee definition. What the State does, is merely declare the status.

25. The Court is clear in the Judgment that, even with the important role played by the UNHCR in the process, the status of refugee should be declared mainly by the State itself, under fair and efficient procedures. Once the person is recognized as a refugee, he/she maintains the status unless a cessation clause under article 1 section C paragraphs 1) to 6) is applicable. The Court cites the UNHCR's Handbook and states that "the cessation clauses are negative in character and are exhaustively enumerated" and that "they should therefore be interpreted restrictively, and no other reasons might be invoked by way of analogy to justify the withdrawal of refugee status"²⁵.

26. As a very important precedent, the Court considers that, once declared by a State, the refugee status shall protect the person to whom it has been recognized even beyond the borders of the State, so that other States in which that person might enter, must consider such condition at the time of taking any action with regards to their migratory nature. Therefore, the State has the duty to guarantee special care in verifying such a condition and the actions that must be taken²⁶.

2.2 The principle of *non-refoulement* of refugees and asylum seekers

27. On the principle of *non-refoulement* the Court starts by recognizing the primary importance of *non-refoulement* as a cardinal principle of refugee protection, citing the UNHCR's Executive Committee's Conclusion No. 65 as the main source for its statement. Additionally, making reference to the 2001 Declaration of States parties to the 1951 Convention and or its 1967 Protocol relating to the status of refugees, the Tribunal established that the applicability of the principle of *non-refoulement* is embedded in customary international law²⁷.

28. In this regard, it is emphasized that refugees are then protected against *refoulement*, first, as a specific

modality of protection under article 22.8 of the American Convention, notwithstanding their legal or migratory status, and second, as an integral part of the international protection of refugees, under the 1951 Refugee Convention and its 1967 Protocol. The Court cites article 33.1 of the 1951 Convention which expresses that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”²⁸.

29. This means that refugees and asylum seekers cannot be rejected at the border or expelled without adequate and individualized analysis of their requests²⁹. By making reference to UNHCR’s submission in the Case of Hirsi and Others v. Italy before the European Court of Human Rights in March 2010, the Interamerican Court indicates that States are obliged not to hand over those concerned to the control of a state where they would be at risk of persecution or from which they would be returned to another country where such a risk exists (indirect *refoulement*)³⁰.

2.3 The minimum guarantees of due process in procedures for the determination of refugee status

30. The right to seek and be granted asylum established in article 22.7 of the American Convention, in conjunction with Articles 8 and 25 of the same Convention, ensures the right of asylum seekers to be heard by the authorities of the State of destination with due process of law³¹.

31. In light of these, the Court considers that in procedures involving applications for recognition of refugee status or, where appropriate, in procedures that might result in the expulsion or deportation of an asylum seeker or of a refugee, the obligations of States to respect and ensure the rights recognized in Articles 22.7 and 22.8 of the American Convention must be analyzed in relation to the guarantees established in Articles 8 and 25 of that instrument, as appropriate to the administrative or judicial nature of the relevant procedure in each case³².

32. Again, in accordance to the UNHCR’s Executive Committee’s Conclusions, the Court recognizes “the importance of establishing and ensuring access consistent with the 1951 Convention and the 1967 Protocol for all asylum-seekers to fair and efficient procedures for the determination of refugee status in order to ensure that refugees and other persons eligible for protection under international or national law are identified and granted protection”³³. The Court also makes reference to the 2001 Declaration of States parties to the 1951 Convention and or its 1967 Protocol relating to the status of refugees, where States expressed their concern about the importance of fair and efficient procedures³⁴.

33. The Interamerican Court acknowledges the judgment of the European Court of Human Rights in the case *Gebremedhin v. France*³⁵, where it defines the right to asylum as a fundamental freedom whose corollary is precisely the person’s right to apply for refugee status, which implies the right of applicants to a proper assessment of their application by the national authorities and of the risk he/she might face if returned to the country of origin³⁶.

34. The Court cites legal norms from 18 different Latin American countries to reflect a growing consensus in the region in the sense that refugee protection and asylum seeker protection should be ruled by International Refugee Law, through specific procedures and that due process guarantees should be respected³⁷.

35. Therefore, in accordance with the guarantees laid down in Articles 8, 22.7, 22.8 and 25 of the American Convention on Human Rights, and taking into account the guidelines and criteria from the UNHCR, asylum seekers should have access to procedures that allow a proper examination of their application and should be according to the guarantees contained in the Convention and other related international instruments. In such cases, States are obliged to:

a) The applicant must be guaranteed the necessary facilities, including the services of a competent interpreter and, where appropriate, access to legal advice and representation³⁸ to submit their request to the authorities. In this

regard, the applicant should receive the necessary guidance as to the procedure to be followed³⁹, in a language and manner that he can understand and, where appropriate, should be given the opportunity to contact a UNHCR representative⁴⁰;

b) The application must be examined objectively, in the procedure established for the purpose by a clearly identified authority⁴¹, which requires the completion of a personal interview⁴²;

c) The decisions taken by the competent bodies must be properly and explicitly substantiated⁴³.

d) In order to protect the rights of applicants who might be at risk, the asylum procedure must also respect in all stages the protection of the applicant's data, of the application and of the principle of confidentiality⁴⁴;

e) If the applicant is not granted the refugee status, he must be provided with information on how to appeal and be allowed a reasonable time to do so, according to the current system, so that the decision is formally reconsidered⁴⁵, and

f) The review or appeal should have suspensive effects and the applicant should be allowed to remain in the country until the competent authority takes a decision in the case, and even while the legal remedy is pending, unless it is shown that the request is manifestly unfounded⁴⁶.

36. In addition, regardless of the possibility of review in the context of the right to judicial protection enshrined in Article 25 of the American Convention and according to the rules of law of each State, there might be certain actions or judicial remedies, for example, amparo or habeas corpus, that are prompt, adequate and effective to question the possible violation of the rights recognized in Articles 22.7 and 22.8 of the Convention, or the Constitution and the law of each State. In these terms, such resources may, under certain circumstances, be an effective remedy against full or partial violations and, if necessary, to conduct administrative procedures, which shall be evaluated in each case⁴⁷.

3. Additional considerations of the Court

37. The Court stated that the determination of refugee status is a two-stage process: determination of the facts of the case and applying the definition of the 1951 Convention and the 1967 Protocol to the facts. Once all the evidence is obtained and verified and the examiner is generally satisfied with the applicant's credibility, the competent authority will make a duly and explicitly reasoned decision to recognize the status or not to the applicant. In interest of the *non refoulement* principle, this evidence of risk should not necessarily have an effect on the State to which the person will be sent⁴⁸.

38. On the other hand, States may establish "accelerated procedures" to resolve requests that are "manifestly unfounded and abusive", for which there is no need for international protection. However, given the serious consequences of an erroneous determination on the applicant, even in these proceedings, the minimum guarantees for hearings must be respected and the review of negative decisions should be allowed before the expulsion⁴⁹.

39. Even when a State argues the application of individual or collective cessation reasons, due process must be respected⁵⁰. What is relevant is that States cannot decide summarily on a claim without a hearing, interview or any other mechanism, without receiving evidence, without evaluating their circumstances, without allowing the applicants to argue in their favor and without duly reasoning their resolution beyond assuming, for example, a "tacit renunciation" to the refugee status. Also, in the case, it was not proven that the resolution of the application was duly notified to the family, which prevented them from knowing the content of it and therefore prevented them from submitting an appeal or any other legal remedy to challenge possible violations of due process, the right to seek and receive asylum or the *non-refoulement* principle⁵¹.

40. Moreover, the Court concluded that when a new asylum application is submitted by a person who had refugee status in the country, the State has the special duty to analyze the case with diligence and precaution, especially if it has information that the applicants were already recognized as refugees or residents in a third country. In this event, the State must be a safe State for the applicants, and it must ensure their right to not be returned to their country or origin⁵².

IV. Obligation to provide special measures of protection to children in relation to the rights of the family, right to a fair trial and judicial protection

41. As explained by the Inter-American Court, children are entitled to the rights established in the American Convention and to the special protection measures referred to in Article 19 (rights of the child). The adoption of special measures for child protection lies with the State and the family, the community and the society to which they belong⁵³.

42. Moreover, any state, social or family decision involving the limitation of the exercise of any right of a child, must take into account the best interests of the child. The Court reiterates that the principle is based on the very dignity of the human being, on the characteristics of children themselves, and on the need to foster their development, making full use of their potential. In this sense, it is necessary to weigh, not only the requirement of special measures, but also the particular characteristics of the situation in which the child is found⁵⁴.

43. Additionally, the Inter-American Tribunal indicated that Article 19 of the Convention also establishes the State's obligation to respect and ensure the rights of children recognized in other international instruments. It is relevant to refer to Articles 12 and 22 of the Convention on the Rights of the Child, which respectively recognize the right of children to enjoy the opportunity to be heard in any judicial and administrative proceeding affecting them, and the right to have the State achieve that the child who attempts to obtain refugee status or who is considered a refugee, receives the protection and assistance necessary to safeguard his rights⁵⁵.

44. Thus, the special protection found under Article 19 implies a more rigorous protection of Article 8 and 25 of the American Convention. The Court has already determined in other cases that the relationship between the right to be heard and the interests of the child facilitates the child's essential role in all decisions affecting his/her life.⁵⁶

45. The Court finds that, in this case, there are two situations in which it must be defined whether it was applicable or not to listen to the children. The first relates to the processing of the asylum procedure, while the second is related to the expulsion process⁵⁷.

46. Regarding the first situation, the right of children to express their opinions and participate in a meaningful way is also important in the context of asylum procedures, the extent of this might depend on whether the child is the applicant or not, regardless of being accompanied or not and/or separated from his parents or persons responsible for his/her care⁵⁸.

47. On the one hand, quoting UNHCR standards on the matter⁵⁹, the Court states that when the applicant for refugee status is a child, the principles contained in the Convention on the Rights of the Child must guide both the substantive and procedural aspects of the determination of the application for refugee status of the child. They should also benefit from specific and evidentiary procedural guarantees to ensure that a fair decision is made, which requires the development and integration of appropriate and safe procedures for children and an environment that generates trust in all stages of the asylum process. The Court, making reference to UNHCR's expert witness testimony for the case, indicated that, at the same time, if the principal applicant is excluded from refugee status, family members have the right to have their own applications evaluated independently⁶⁰.

48. On the other hand, also making reference to the UNHCR standards, if an applicant for refugee status receives protection, other family members, particularly children, can receive the same treatment or benefit from this recognition, in accordance to the principle of family unity⁶¹. In the refugee status determination process,

authorities must assess the need to listen to them, according to what was stated in the application. In this case, although Juan Ricardo was one year old, Juana Guadalupe and Frida Edith could have been heard by the authorities in relation to the application submitted by their parents⁶².

49. Regarding the second situation, as to the deportation proceedings, the Court recalled the intrinsic relationship between the right to protection of the family and the rights of children. With reference to this, the Court has stated that the right to a family and to live in on, recognized in Article 17 of the Convention, means that the State is not only obliged to provide and implement direct measures for the protection of children but also to promote the development and strengthening of the family. Thus, the separation of children from their families is, under certain circumstances, a violation of that right. For instance, even the legal separation of the child from his family can only come if duly justified in the interests of the child, when it is exceptional and, if possible, temporary⁶³.

50. Additionally, the Court considers that the separation of children from their parents might jeopardize their survival and development, elements which should be guaranteed by the State as defined in Article 19 of the Convention and Article 6 of the Convention on the Rights of the Child, especially through the protection of the family and the non-unlawful or arbitrary interference within the child's family life, to safeguard the family's vital role in the child's development. Also, the participation of children is especially relevant when it comes to procedures that might be punitive in nature, regarding a breach of immigration law, procedures open against migrant children or their families, their parents, guardians or take carers, as this type of procedures can result in the separation of the family and the subsequent involvement of the welfare of the children, regardless of the separation occurring in the expelling State or in the State where they are expelled to⁶⁴.

51. In response to the above criteria, the Court considers that in this case, the children had the right to have their guarantees of due process and their right to protection of the family especially protected in the administrative proceedings that led to their expulsion. The Court declared the Pacheco Tineo children should have been considered as interested or active parties by the authorities in these procedures, for it was clear that the authorities' conclusion might affect the children's rights or interests. This way, regardless of whether a specific asylum request was made in their favour, the State had the duty to ensure their best interests, the principle of *non-refoulement* and the principle of family unity, which required the State's migratory authorities to be especially diligent and exhaustive on all available information to determine their immigration status and, if necessary, make the best decision regarding the State to which they should be sent in case of expulsion⁶⁵.

² Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 128.

³ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 129.

⁴ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 130. See also: *Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001. Series C No. 71, para. 69.

⁵ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 131.

⁶ See also: *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No 251. paras. 161 and 175.

⁷ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 133.

⁸ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 134.

⁹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 135.

¹⁰ Cf. *Case of Pacheco Tineo Family v. Bolivia*, footnote 159.

¹¹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 134.

¹² Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 136.

¹³ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 137.

¹³ "Every person has the right, in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements."

¹⁴ See also: UN High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, January 1992, HCR/IP/4/Eng/REV.1, available at: <http://www.refworld.org/docid/3ae6b3314.html> [accessed 20 February 2014]. pp. 4-5.

¹⁵ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 139.

¹⁶ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 139.

¹⁷ Cf. *Case of Pacheco Tineo Family v. Bolivia*, footnote 169.

¹⁸ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 139. See also: UN High Commissioner for Refugees (UNHCR), *Safeguarding Asylum*, 17 October 1997, No. 82 (XLVIII) - 1997, available at: <http://www.refworld.org/docid/3ae68c958.html> [accessed 20 February 2014]. and also: UN High Commissioner for Refugees (UNHCR), *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.refworld.org/docid/3ae68c6e4.html> [accessed 20 February 2014].

¹⁹ The definition or concept of a refugee recommended by the Declaration "is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have

been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order". See also: Regional Refugee Instruments & Related, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, available at: <http://www.refworld.org/docid/3ae6b36c.html> [accessed 20 February 2014].

²⁰ This is the case of Argentina, Belize, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, México, Nicaragua, Paraguay, Peru and Uruguay.

²¹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 141.

²² Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 142.

²³ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 143.

²⁴ Cf. *Case of Pacheco Tineo Family v. Bolivia*, footnote 177.

²⁵ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 149.

²⁶ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 150.

²⁷ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 151. See also: UN High Commissioner for Refugees (UNHCR), *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSP/2001/09, available at: <http://www.refworld.org/docid/3d60f5557.html> [accessed 20 February 2014]. Preamble 4.

²⁸ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 152.

²⁹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 153.

³⁰ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 153. See also: UN High Commissioner for Refugees (UNHCR), *UNHCR intervention before the European Court of Human Rights in the case of Hirsi and Others v. Italy*, March 2010, Application no. 27765/09, available at: <http://www.refworld.org/docid/4b97778d2.html> [accessed 20 February 2014]. para. 4.3.4.

³¹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 154.

³² Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 155.

³³ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 154. See also: UN High Commissioner for Refugees (UNHCR), *General Conclusion on International Protection*, 8 October 1993, No. 71 (XLIV) - 1993, available at: <http://www.refworld.org/docid/3ae68c6814.html> [accessed 20 February 2014].

³⁴ See also: UN High Commissioner for Refugees (UNHCR), *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSP/2001/09, available at: <http://www.refworld.org/docid/3d60f5557.html> [accessed 20 February 2014]. Operative paragraph 6.

³⁵ E.C.H.R., *Case of Gebremedhin Vs. France*. Judgment of April 26th, 2007. (No. 25389/05). Section II, para. 65.

³⁶ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 156.

³⁷ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 158.

³⁸ Cf. *mutatis mutandi, Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206, para. 62. and *Case of Cabrera Garcia y Montiel Flores v. Mexico, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 155. See also: UN High Commissioner for Refugees (UNHCR), *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, available at: <http://www.refworld.org/docid/432ae9204.html> [accessed 20 February 2014]. para. 3.

³⁹ Cfr. UN High Commissioner for Refugees (UNHCR), *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.refworld.org/docid/3ae68c6e4.html> [accessed 20 February 2014]. para. e.ii.

⁴⁰ Cfr. UN High Commissioner for Refugees (UNHCR), *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.refworld.org/docid/3ae68c6e4.html> [accessed 20 February 2014]. para. e.iv.

⁴¹ Cfr. *Case of Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 77. and *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 130. See also: Cfr. UN High Commissioner for Refugees (UNHCR), *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.refworld.org/docid/3ae68c6e4.html> [accessed 20 February 2014]. para. e.iii.

⁴² UN High Commissioner for Refugees (UNHCR), *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, available at: <http://www.refworld.org/docid/432ae9204.html> [accessed 20 February 2014]. para. 4. and UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/IP/4/ENG/REV. 3*, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 20 February 2014]. paras. 196-199, 205.b.i.

⁴³ UN High Commissioner for Refugees (UNHCR), *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations*, March 2010, available at: <http://www.refworld.org/docid/4bab55752.html> [accessed 20 February 2014]. p. 18., para. 30. and UN High Commissioner for Refugees (UNHCR), *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards*, 2 September 2005, available at: <http://www.refworld.org/docid/432ae9204.html> [accessed 20 February 2014]. paras. 8-9.

⁴⁴ Cfr. UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, available at: <http://www.refworld.org/docid/3b36f2fca.html> [accessed 20 February 2014]. para. 50.M. See also: UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.refworld.org/docid/3f5857684.html> [accessed 20 February 2014]. para. 5.

⁴⁵ Cfr. *Case of Velez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 179. and *Case of Mohamed v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, para. 98. See also: Cfr. UN High Commissioner for Refugees (UNHCR), *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.refworld.org/docid/3ae68c6e4.html> [accessed 20 February 2014]. para. e.vi.

⁴⁶ Cfr. UN High Commissioner for Refugees (UNHCR), *Determination of Refugee Status*, 12 October 1977, No. 8 (XXVIII) - 1977, available at: <http://www.refworld.org/docid/3ae68c6e4.html> [accessed 20 February 2014]. para. e.vii.

⁴⁷ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 160.

⁴⁸ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 171.

⁴⁹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 172.

⁵⁰ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 177.

⁵¹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 174.

⁵² Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 179.

⁵³ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 217.

⁵⁴ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 218.

⁵⁵ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 219.

⁵⁶ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 220.

⁵⁷ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 222.

⁵⁸ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 223.

⁵⁹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 224. Also see: UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to*

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

Inter-American Court of Human Rights (IACrHR), *Case of the Constitutional Court v. Peru*, Serie C No. 55, 31 January 2001, <http://www.refworld.org/docid/501f91972.html>

Inter-American Court of Human Rights (IACrHR), *Case of Almonacid Arellano et al. v. Chile. Preliminary exceptions, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154

Inter-American Court of Human Rights (IACrHR), *Jesús Tranquilino Vélez Loor v. Panama*, Report N. 95/06 - Petition 92-04, 23 October 2006, <http://www.refworld.org/docid/502b60412.html>

Inter-American Court of Human Rights (IACrHR), *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs*. Judgment of November 17, 2009. Series C No. 206

Inter-American Court of Human Rights (IACrHR), *Case of Cabrera Garcia y Montiel Flores v. Mexico, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220

Inter-American Court of Human Rights (IACrHR), *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No 251

European Court of Human Rights (E.C.H.R.), *Case of Gebremedhin Vs. France*. Judgment of April 26th, 2007. (No. 25389/05), <http://www.refworld.org/docid/46441fa02.html>

the Status of Refugees. December 22, 2009. HCR/GIP/09/08. Available at: <http://www.refworld.org/docid/4b2f4f6d2.html> [accessed 18 February 2014].

⁶⁰ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 224. The Court cites the expert witness testimony of Juan Carlos Murillo presented on March, 29th 2013.

⁶¹ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 225. Also see: UN High Commissioner for Refugees (UNHCR), *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*. November 20, 2003. Available at: <http://www.refworld.org/docid/42d66dd84.html> [accessed 18 February 2014]. See also: UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> [accessed 20 February 2014]

⁶² Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 225.

⁶³ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 226.

⁶⁴ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 227.

⁶⁵ Cf. *Case of Pacheco Tineo Family v. Bolivia*, para. 228.

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