

**Order of the
Inter-American Court of Human Rights^{*}
of August 6, 2008
Case of Ricardo Canese v. Paraguay
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, reparations and costs (hereinafter, the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal") on August 31, 2004, in which it:

ORDE[ED]

Unanimously that:

5. [The] Judgment constitutes *per se* a form of reparation, in the terms of its paragraphs 205 and 211.

6. The State shall pay the sum of US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Paraguayan currency, to compensate the non-pecuniary damage caused to Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 206 and 207 of [...] judgment

7. The State shall pay Ricardo Nicolás Canese Krivoshein the total amount of US\$5,500.00 (five thousand five hundred United States dollars), for costs and expenses. Of this total, the sum of US\$1,500.00 (one thousand five hundred United States dollars) shall correspond to the expenses which Mr. Canese Krivoshein incurred before the Inter-American Commission, and the amount of US\$4,000.00 (four thousand United States dollars) to the costs and expenses that Mr. Canese Krivoshein must reimburse to his representatives for the expenditure they assumed in the international proceeding before the Inter-American System for the protection of human rights, in the terms of paragraphs 214, 215 and 217 of [...] judgment

8. The State shall publish once in the Official Gazette and in another newspaper with national circulation the chapter on the proven facts in this Judgment, without the corresponding footnotes, and its operative paragraphs, in the terms of paragraph 209 of [...] Judgment.

9. The State shall comply with the measures of reparation and reimbursement of

* Judge Cecilia Medina Quiroga declined from hearing the instant case in accordance with Articles 19 of the Statute and 19 of the Court's Rules of Procedure, and the Court accepted such self-disqualification. Therefore, Judge Medina Quiroga did not participate in the deliberation and signature of this Order.

costs and expenses ordered in Operative paragraphs 6, 7 and 8 of [...] judgment, within six months of its notification, in the terms of paragraph 216 of [...] judgment

[...]

12. If the State should delay payment, it must pay interest on the amount owed, corresponding to the banking interest on arrears in Paraguay.

[...]

2. The private hearing to monitor compliance with the Judgment on the merits, reparations and costs held on February 4, 2008 in which the parties referred to the status of compliance with the Judgment.

3. The Orders to monitor compliance with the Judgment issued by the Tribunal on February 2, 2006, September 22, 2006 and February 6, 2008. In the last order, the Court:

DECLARE[D]:

1. That in view of the provisions of *Considering* clauses 4 to 13 of [...] Order, the State has fully complied with the following measures of redress:

a) pay compensation and reparations ordered for non-pecuniary damage and for costs and expenses (*Operative Paragraphs 6 and 7 of the judgment*), except insofar as they entail payment of overdue interest, in accordance with the provisions of Operative Paragraph 12 of the judgment, and

b) publish in the Official Gazette and another newspaper of nationwide circulation, the chapter concerning the proven facts and the Operative Paragraphs of the judgment (*Operative Paragraph 8 of the judgment*).

AND DECIDE[D]:

1. To ask the representatives to advise the Court, by March 28, 2008 at the latest, of the victim's position concerning the request by the State of Paraguay for forgiveness of overdue interest payments.

2. To continue monitoring compliance of the August 31, 2004 judgment on merits, reparations and costs.

4. The brief of March 27, 2008 by which the representatives of the victim (hereinafter, "the representatives") mentioned that Mr. Canese informed them of "his will to demand the full compliance with the Judgment [...] until the full payment of the sum the State of Paraguay was ordered to pay, including the interests resulting from the payment of overdue interest".

5. The communication of April 1, 2008 whereby the Secretariat of the Inter-American Court (hereinafter, the "Secretariat"), following the instructions of the President of the Tribunal, requested the State to forward the information on the payment of overdue interests no later than June 2, 2008.

6. The brief of June 2, 2008 and its appendix whereby the State forwarded information on the steps taken in order to pay the overdue interests.

7. The communication of June 5, 2008 whereby the Secretariat, following the instructions of the President of the Tribunal, requested the forwarding of information on the progress of the measures adopted in said brief no later than August 4, 2008.

8. The briefs of June 13 and 26, 2008 and their corresponding appendixes, whereby the State forwarded information and referred to the Tribunal for its opinion regarding the amount owed on which basis the estimation of the interests on arrears should be done in order to comply with the payment.

9. The communication of July 4, 2008 whereby the Secretariat answered the consultation of the State regarding the amount owed over which the estimation of the interest on arrears should be calculated.

10. The brief of July 8, 2008 and its appendix, whereby the representatives forwarded a letter in which the victim stated "its decision to waive its right to collect the overdue interests, considering them totally paid" and requested the Court to let the State know "its wish to allocate the corresponding sum of money for overdue interests to the promotion of freedom of expression in the country".

11. The brief of July 29, 2008 whereby the State requested the Tribunal, considering the statement made by the victim, "to issue a final order of full compliance" with the Judgment.

CONSIDERING:

1. That it is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. That Paraguay has been a State Party to the American Convention since August 24, 1989 and that in accordance with Article 62 thereof, Paraguay has accepted the binding jurisdiction of the Court on March 26, 1993.

3. That article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any

case to which they are parties". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

4. That, in consideration of section 67 of the American Convention which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape from their pre-established international responsibility. The treaty obligations of States Parties are binding on all State powers and organs.²

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.³

7. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Tribunal. This obligation includes the State's duty to report on the measures adopted to comply with such decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the later is essential to evaluate the whole status of compliance in this case⁴.

¹ *Case of Baena Ricardo et al v. Panamá*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of May 7, 2008; third Considering Clause; and *Case of Gómez-Paquiyaury Brothers v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 3, 2008, Considering Clause three.

² *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (articles 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994, para. 35; *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. *Supra* note 1; considering clause five; and *Case of Gómez-Paquiyaury Brothers*. Monitoring Compliance with Judgment, *supra* note 1, considering clause five.

³ *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with judgment. *Supra* note 1; considering clause six; and *Case of Gómez-Paquiyaury Brothers*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause six.

⁴ *Case of Barrios Altos v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005; Considering Clause seven; *Case of Baldeón García v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 6, 2008; Considering Clause five; *Case of Gómez Palomino v. Perú*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering Clause five.

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8. That, in accordance with the Order of this Tribunal of February 6, 2008, the payment of the interest on arrears resulted from the delay in the payment of compensation for the non-pecuniary damage and reimbursement of the expenses and costs was the only issue pending compliance with the Judgment (*supra* Having Seen 3).

9. That in the private hearing to monitor compliance, the State requested the Court the exemption from paying the corresponding interests and that the Inter-American Commission and the representatives agreed that it was essential to know the corresponding victim's opinion in that regard.

10. That, at the same time that the State was taking the corresponding steps to pay in full the overdue interests, Mr. Canese informed its final decision to waive his right to collect such interests "considering them fully paid" and requested the Court to let the State know "his wish to allocate the corresponding sum of money for overdue interests to the promotion of freedom of expression in the country."

11. That, considering the statement made by the victim, the Court considers it is appropriate to consider closed the procedure to monitor compliance with the Judgment on the merits, reparations and costs delivered by the Inter-American Court of Human Rights on August 31, 2004 in the case of Ricardo Canese V Paraguay and, in time, file the case file.

12. That, finally, the Court has considered the request made by the victim (*supra* Having Seen clause 10) through the timely forwarding of his note to the State and by means of this Order.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

1. That in accordance with the terms of Considering clauses 8 to 12 of this Order, the State has fully complied with the Judgment on the merits, reparations and costs issued by the Inter-American Court of Human Rights on August 31, 2004 in the case of Ricardo Canese *v.* Paraguay according to the provisions of Article 68(1) of the American Convention on Human Rights that imposed on the States Parties the obligation to comply with the judgments delivered by the Court.

AND DECIDES:

1. To consider closed the case of Ricardo Canese *v.* Paraguay based on the reasons set forth above.

2. To file the proceeding of the instant case.

3. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victim.

4. To communicate this Order to the General Assembly of the Organization of American States in its next period of regular sessions by means of the Annual Report of the Inter-American Court of Human Rights for the year 2008.

Diego García - Sayán
President

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García - Sayán
President

Pablo Saavedra Alessandri
Secretary