

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS\*  
OF SEPTEMBER 22, 2006**

**CASE OF RICARDO CANESE V. PARAGUAY  
MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

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

1. The State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 96 to 108 of [said] judgment.

2. The State violated the right to freedom of movement embodied in Article 22 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 119 to 135 of [said] judgment.

3. The State violated the principle of reasonable time, the right to presumption of innocence and the right to defense embodied, respectively in Article 8(1), 8(2) and 8(2)(f) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 139 to 167 of [said] judgment.

4. The State violated the principle of the retroactivity of the most favorable penal norm embodied in Article 9 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 182 to 187 of [said] judgment.

5. This 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 [said] judgment.

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Judge Oliver Jackman did not take part in deliberations nor affixed his name to this Order, as he informed the Court that, for reasons beyond his control, he could not take part in the Seventy-second Regular Session of the Court. Furthermore, Judge Cecilia Medina Quiroga advised the Court of her disqualification, pursuant to the terms of Article 19 of the Court's Statute and Article 19 of the Court's Rules of Procedure and, therefore, she did not take part in the issuance of the Judgment or this present Order.

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 [said] 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 [said] judgment.

9. The State shall comply with the measures of reparation and reimbursement of costs and expenses ordered in operative paragraphs 6, 7 and 8 of this judgment, within six months of its notification, in the terms of paragraph 216 of [said] judgment.

10. The State shall comply with its obligations of a pecuniary nature by payment in United States dollars or the equivalent in Paraguayan currency, using the exchange rate between the two currencies in force on the market in New York, United States, the day before the payment to make the respective calculation, in the terms of paragraph 218 of [said] judgment.

11. The payment for non-pecuniary damage, and costs and expenses established in this judgment may not be encumbered, reduced or conditioned by any current or future fiscal measures, in the terms of paragraph 220 of [said] judgment.

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

13. If, due to causes attributable to the beneficiary of the compensation, it should not be possible for him to receive it within the established term of six months, the State shall deposit the amount in favor of the beneficiary in an account or a deposit certificate of a solvent Paraguayan banking institution, in United States dollars or the equivalent in Paraguayan currency, and in the most favorable financial conditions permitted by law and banking practice in Paraguay. If, after ten years, the compensation has not been claimed, the amount shall be returned to the State, with the interest earned.

14. It shall monitor full compliance with this judgment. The case shall be filed once the State has fully complied with the operative paragraphs of this judgment. Within six months from notification of this judgment, Paraguay shall provide the Court with a first report on the measures taken to comply with [said] judgment.

## 2. The Court's Order of February 2, 2006, in which the Court—

Declared:

1. That, in accordance with the statements of Considering clause No. 8 of [said] order, the State has not complied with the operative paragraphs of the Judgment on the merits, reparations and costs issued by the Court on August 31, 2004.

And Resolved:

1. To order the State to adopt all the measures necessary to effectively and promptly fulfill the reparations ordered by the Court in its Judgment on the merits, reparations and costs of August 31, 2004, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To order the State to submit to the Inter-American Court of Human Rights, not later than May 24, 2006, a report describing all the measures adopted so as to fulfill the reparations ordered by this Court which are still pending compliance, pursuant to the provisions of Considering clause No. 8 and 9 of the [...] Order.

3. To request that the representatives of the victims and the Inter-American Commission on Human Rights submit their observations to the State's report referred to in the preceding paragraph, within a term of four and six weeks, respectively, next following receipt of said report.

4. To continue monitoring the points pending compliance contained in the Judgment on the merits, reparations and costs of August 31, 2004.  
[...]

3. The note of the Court's Secretariat (hereinafter, the "Secretariat") of June 1, 2006, in which, following the instructions of the President of the Court, it reminded the State of Paraguay (hereinafter the "State" or "Paraguay") that the term for submission of the report on compliance with Judgment had expired on May 24, 2006, and that such submission had been required under Order of February 2, 2006 (*supra* Having Seen clause No. 2). Therefore, the State was required to submit such report as soon as practicable.

4. The note of the Secretariat of July 12, 2006, in which, following the instructions of the President of the Court, the State was required once again to submit the report on compliance with judgment as soon as possible, as such submission had been required by the Court by way of Order of February 2, 2006, and again required by way of note of June 1, 2006 (*supra* Having Seen clauses No. 2 and 3).

5. The submission of September 13, 2006, in which Paraguay filed its report on compliance with Judgment, in response to the provisions of operative paragraph No. 2 of the Court's Order of February 2, 2006 (*supra* Having Seen clauses No. 2, 3 and 4). The State argued as follows:

a) "at present arrangements are being made with the Ministry of Foreign Affairs, the Ministry of Treasury and the National Congress, so that budgetary funds are released and applied to due payment in favor of [Mr.] Canese," and

b) "copies of Directives Nos. 456 and 457 passed by the General Prosecutor's Office "impelling the Minister of the Treasury and the Minister of Foreign Office to continue proceedings in order to fulfill the orders contained in the Judgment" had been timely submitted."<sup>1</sup>

**CONSIDERING:**

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions;

2. That Paraguay has been a State Party to the American Convention on Human Rights (hereinafter the "American Convention") since August 24, 1989, and that pursuant to Article 62 of said convention, the State acknowledged the contentious jurisdiction of the Court on March 26, 1993. On August 31, 2004, the Court passed Judgment on the merits, reparations and costs (*supra* Having Seen clause No. 1).

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

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<sup>1</sup> The State submitted copies of said directives on October 5, 2005, as Exhibits to its first report.

case to which they are parties.” The treaty obligations of the States Parties are binding for all the powers and organs of the States.<sup>2</sup>

4. That, in view of the final and non-appealable character of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly.

5. That in its Resolution AG/RES. 2223 (XXXVI-O/06),<sup>3</sup> the General Assembly of the OAS reiterated—

[...] the need for states parties to provide, in a timely fashion, the information requested by the Court in order to enable it to fully meet its obligation to report to the General Assembly on compliance with its judgments.

6. That the obligation to comply with the decisions of the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.<sup>4</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.

7. 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 is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>5</sup>

8. That by Order of February 2, 2006, *inter alia* the Court ordered the State to submit to the Inter-American Court of Human Rights, not later than May 24, 2006, a report describing all the measures adopted to fulfill the reparations ordered under the Court’s judgment, and stated—

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<sup>2</sup> Cf. Case of the “Five Pensioners”. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006; Considering clause No. 3; *Case of the Constitutional Court*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 7, 2006; Considering clause No. 3; and *Case of the 19 Tradesmen*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 2, 2006; Considering clause No. 3.

<sup>3</sup> Resolution adopted at the fourth plenary session, held on June 6, 2004, entitled “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, Operative paragraph No. 4.

<sup>4</sup> Cf. *Case of the “Five Pensioners”*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 7; *Case of the Constitutional Court*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 5; and *Case of the 19 Tradesmen*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 5.

<sup>5</sup> Cf. *Case of the “Five Pensioners”*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 8; *Case of the Constitutional Court*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 6; and *Case of the 19 Tradesmen*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 6.

8. That [...] [the court] has found that, although Paraguay has reported several actions taken in order to comply with the Judgment, none of the reparations contained in said Judgment has been fulfilled by the State. In this respect, the Court leaves record of the fact that over ten months have passed since the expiry date of the terms granted within which Paraguay had to fulfill said reparations.

9. That the Court deems it indispensable that the State should adopt all the measures necessary to fulfill the reparations ordered by this Tribunal in its Judgment, and that the State should provide updated and detailed information on such compliance.

9. That the Secretariat, following first the instructions of the President and then the instructions of the Court, sent notes to the State reminding it that May 24, 2006, had been the due date of the term for submission of the referenced report on compliance with Judgment, and therefore it requested that the State should file said report as soon as practicable. The State filed said report on September 13, 2006, — approximately three and a half months after its due date for submission.

10. That the Court has found that the submission made by the State on September 13, 2006 (*supra* Having Seen clause No. 5), in response to the command of this Court by means of its Order of February 2, 2006, (*supra* Having Seen clause No. 2), repeats the same information filed by the State with this Court on October 5, 2006. In other words, the State has failed to provide updated and detailed information as requested by Order of February 2, 2006. In said submissions, Paraguay has reported that certain actions —without further details— have been implemented in order to comply with said Judgment. However, none of the reparations ordered in Judgment of August 31, 2004 (*supra* Having Seen clause No. 1) has been fulfilled by the State.

11. That this Court is concerned that approximately three and a half months after the due date for submission of the State's report on compliance with judgment, the State provided this Court with the same information contained in the State's previous report.

12. That the Court is concerned that the State has not fulfilled the reparations ordered in said Judgment, although the term for compliance expired on March 17, 2005.

13. That the State Parties to the Convention which have acknowledged the binding jurisdiction of the Court have the duty to comply with the obligations imposed by this Tribunal. In this respect, Paraguay has to adopt all the measures necessary to effectively comply with the orders passed by the Court in its Judgment of August 31, 2006 (*supra* Having Seen clauses No. 1 and 2) and in this Order. This obligation includes the duty on the part of the State to report to the Court on the measures adopted to comply with the orders contained in the Court's Judgment. Timely compliance with the State's obligation to report to the Court on how the State is complying with each of the orders passed by the Court is fundamental to assess the status of compliance in the case under review.

14. That the obligation to inform the Court about compliance with judgment is an obligation that, to be fulfilled effectively, requires the formal presentation of a

document within the allotted time with specific, true, current and detailed information on the issues to which the obligation refers.<sup>6</sup>

15. That based on the foregoing considerations the Courts deems it urgent that Paraguay send a report on compliance with judgment, with current and detailed information needed to assess whether the State has fulfilled the reparations ordered by this Court, which are still pending compliance.

**THEREFORE:**

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

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

**DECLARES:**

1. That in accordance with the provisions of Considering clauses No. 8, 10 and 12 of this present Order, the State has not fulfilled the obligations contained in the operative paragraphs of the Judgment on the merits, reparations and costs, issued by the Tribunal on August 31, 2004.

**AND DECIDES:**

1. To require the State to adopt the necessary measures to comply promptly and effectively with the decisions of the Court in the judgment on merits reparations and costs of August 31, 2004, that are pending fulfillment, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To order the State to submit to the Inter-American Court of Human Rights, not later than September 1, 2006, a report describing all the measures adopted to comply with the reparations ordered by the Court that are pending fulfillment, pursuant to Considering clauses No. 8 and 15 of this Order.

3. To request that the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights submit their observations on the State's report mentioned in the preceding operative paragraph within a term of four and six weeks, respectively, next following receipt of such report.

4. To continue monitoring the aspects of the judgment on merits, reparations and costs of August 31, 2004, which are pending compliance.

5. 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 victims and their next of kin.

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<sup>6</sup> Cf. *Case of Five Pensioners*. Monitoring Compliance with Judgment, *supra* note 2, Considering clause No. 14.

Sergio García-Ramírez  
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Sergio García-Ramírez  
President

Pablo Saavedra-Alessandri  
Secretary