Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Leonidas A. Baena Ricardo et al. v. Panama
Doc. Type:	Judgment (Competence)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Sergio Garcia Ramirez; Judges: Hernan Salgado Pesantes; Maximo Pacheco Gomez; Oliver Jackman; Alirio Abreu Burelli; Carlos Vicente de Roux Rengifo
Dated:	28 November 2003
Citation:	Baena Ricardo v. Panama, Judgment (IACtHR, 28 Nov. 2003)
Represented by:	APPLICANT: CEJIL

In the Baena Ricardo et al. case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in accordance with Article 25(1) of the Statute of the Court (hereinafter "the Statute") and with Articles 29, 55 and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following judgment on competence with regard to the allegation of the State of Panama (hereinafter "the State" or "Panama") that the Court lacks competence to monitor compliance with its judgments.

I. PROCEEDING BEFORE THE COURT

1. On January 16, 1998, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") referred to the Court a complaint against the Republic of Panama, arising from a petition (No. 11,325), received by the Secretariat of the Commission on February 22, 1994. The Commission submitted the case for the Court to decide whether Panama had violated Articles 1(1) (Obligation to Respect Rights); 2 (Domestic Legal Effects); 8 (Right to a Fair Trial); 9 (Freedom from Ex Post Facto Laws); 10 (Right to Compensation); 15 (Right of Assembly); 16 (Freedom of Association); 25 (Right to Judicial Protection), and 33 and 50(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. On November 18, 1999, the Court delivered a judgment on Preliminary objections in which it decided, unanimously:

1. To reject the Preliminary objections filed by the State.
2. To continue hearing the instant case.

3. On February 2, 2001, the Court delivered judgment on merits and reparations and costs, in which, unanimously, it:

1. Declare[d] that the State violated the principles of legality and non-retroactivity enshrined in Article 9 of the American Convention on Human Rights, to the detriment of the 270 workers mentioned in paragraph 4 of th[e] judgment.
2. Declare[d] that the State violated the rights to judicial guarantees and judicial protection provided for in Articles 8(1), 8(2) and 25 of the American Convention on Human Rights, to the detriment of the 270 workers mentioned in paragraph 4 of th[e] judgment.
3. Declare[d] that the State did not violate the right of assembly provided for in Article 15 of the American Convention on Human Rights, to the detriment of the 270 workers mentioned in paragraph 4 of th[e] judgment.
4. Declare[d] that the State violated the right to freedom of association enshrined in Article 16 of the American Convention on Human Rights, to the detriment of the 270 workers mentioned in paragraph 4 of th[e] judgment.
5. Declare[d] that the State failed to comply with the general obligations provided for in Articles 1(1) and 2 of the American Convention on Human Rights, in connection with the violations of the substantive rights pointed out in the preceding operative items of th[e] judgment
6. Decide[d] that the State must pay to the 270 workers mentioned in paragraph 4 of th[e] judgment, the amounts that correspond to unpaid salaries and other labor rights applicable according to its legislation, which payment must, in the case of deceased workers, be made to their beneficiaries. In accordance with the pertinent national procedures, the State shall fix the respective indemnification, in order for the victims and, if applicable, their beneficiaries, to receive it within a maximum term of 12 months from the date of notification of th[e] judgment.
7. Decide[d] that the State must reinstate the 270 workers mentioned in paragraph 4 of th[e] judgment in their positions, and should this not be possible, that it must provide employment alternatives where the conditions, salaries and remunerations that they had at the time that they were dismissed are respected. In the event that, likewise, the latter is not possible, the State shall proceed to pay the indemnity that corresponds to the termination of employment, in conformity with the internal labor law. In like manner, the State shall provide pension or retirement payment as applicable to the beneficiaries of victims who may have passed away. The State shall comply with the obligations established in this operative item within a maximum term of 12 months from the date of notification of th[e] judgment.
8. Decide[d], for the sake of equitableness, that the State must pay each of the 270 workers mentioned in paragraph 4 of th[e] judgment the amount of US$3,000 (three thousand U.S. dollars) for moral damages. The State shall comply with the obligations established in this operative item within a maximum term of 90 days from the date of notification of th[e] judgment.
9. Decide[d], for the sake of equitableness, that the State must pay the group of 270 workers mentioned in paragraph 4 of th[e] judgment the amount of US$100,000 (one hundred thousand U.S. dollars) as reimbursement for expenses generated by the steps taken by the victims and their representatives, and the amount of US$20,000 (twenty thousand U.S. dollars) as reimbursement for costs, from internal proceedings and the international proceeding before the Inter-American protection system. These amounts shall be paid through the Inter-American Commission on Human Rights.

10. Decide[d] that it shall supervise compliance with th[e] judgment and that it shall close the case only after such compliance.

4. On May 11, June 6, June 27 and September 3, 2001, and on February 20 and May 10, 2002, the State presented various briefs [FN1] concerning compliance with the judgment of February 2, 2001.

[FN1] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraphs 2, 10, 14, 23 and 33.

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5. On November 15, 2001, and on February 1, 2002, the Inter-American Commission forwarded briefs [FN2] concerning compliance with the judgment of February 2, 2001.

[FN2] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraphs 18 and 21.

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6. The victims and their legal representatives presented various communications on compliance with the judgment of February 2, 2001, on the following dates [FN3]: June 4, 5, 14, 18 and 21, 2001; July 30, 2001; August 14, 2001; October 19, 2001; January 11, 15 and 18, 2002; February 1, 2002; March 12, 21 and 25, 2002; April 12, 2002; May 3, 2002; and June 3, 13 and 19, 2002.

[FN3] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraphs 5-9, 12, 13, 19, 20, 22, 27-30, 32 and 34-36.

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7. On May 14 and 15, 2001, and on April 12, 2002, the Panamanian Ombudsman forwarded communications [FN4], in which he referred to compliance with the judgment of February 2, 2001.

[FN4] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraphs 3 and 31.

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8. On the morning of February 25, 2002, a meeting was held at the seat of the Court [FN5], attended by the President and the Vice President of the Court (hereinafter “the President” and “the Vice President”), two officials of the Secretariat of the Court (hereinafter “the Secretariat”), and six representatives of the State.

[FN5] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraph 24.

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9. On the afternoon of February 25, 2002, a meeting was held at the seat of the Court [FN6], attended by the President and the Vice President of the Court, two Secretariat officials, two representatives of the Center for Justice and International Law (hereinafter "CEJIL"), five victims, and one representative of the Office of the Panamanian Ombudsman. During the meeting, the five victims delivered a brief to the Court, to which they attached some documents and a cassette related to the case.

[FN6] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraph 25.

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10. On June 20, 2002, a meeting was held at the seat of the Court [FN7], attended by three Secretariat officials and three victims.

[FN7] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraph 39.

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11. On June 21, 2002, a meeting was held at the seat of the Court [FN8], attended by the President and the Vice President, four Secretariat officials, the Director of CEJIL Meso-America and two victims.

[FN8] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002, having seen paragraph 40.

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12. On June 21, 2002, the Court issued an Order on compliance with judgment, in which it decided:

1. That the State must present a detailed report to the Court, by August 15, 2002, at the latest, as established in the second and third considering paragraphs of the [...] Order.
2. That the victims or their legal representatives and the Inter-American Commission on Human Rights must present their comments on the State's report within six weeks of receiving it.

The report to be presented by the State, in accordance with the second considering paragraph of the said Order, should refer to:

a) The payment to the 270 workers or, if applicable, their successors, of the amounts corresponding to their unpaid salary and other corresponding employment benefits (sixth operative paragraph of the judgment of February 2, 2001);
b) The national procedure followed to establish the respective compensatory amounts, including the criteria or parameters used to determine them, the information obtained, and the legislation applied (sixth operative paragraph of the judgment of February 2, 2001);
c) Reinstatement of the 270 workers. If applicable, the Court should be informed whether they ha[d] been offered alternative employment which respected the conditions, wages and remunerations they had when they were dismissed. If this ha[d] not been possible either, the Court should be informed whether payment of the compensation corresponding to termination of employment had been made, in accordance with domestic labor legislation (seventh operative paragraph of the judgment of February 2, 2001);
d) Payment to the successors of the deceased victims of the appropriate amounts for pensions or retirement (seventh operative paragraph of the judgment of February 2, 2001); and
e) Payment of costs and expenses (ninth operative paragraph of the judgment of February 2, 2001).

13. On August 16, 2002, [FN9] the State presented the report on compliance with judgment requested by the Court in the Order of June 21, 2002.

[FN9] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraph 58.

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14. On June 28, September 23 and November 8, 2002, [FN10] the State submitted information on compliance with the sixth and ninth operative paragraphs of the judgment of February 2, 2001 (supra para. 3).

[FN10] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraphs 40, 69 and 83.

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15. On October 7, 2002, [FN11] the Inter-American Commission submitted its comments on the State's report of August 16, supra para. 13), and on October 14, 2002, [FN12] it forwarded a brief on compliance with the ninth operative paragraph of the judgment of February 2, 2001 (supra para. 3).

[FN11] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraph 78.
[FN12] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraph 81.

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16. On October 2, 5 and 7, 2002, the victims and their legal representatives submitted their comments [FN13] on the State's report of August 16, (supra para. 13).The victims and their legal representatives also forwarded various communications [FN14] on compliance with the judgment of February 2, 2001, on the following dates: June 28 and 30, 2002; July 6, 7, 10, 11, 22, 24, 25, 26, 27, 30 and 31, 2002; August 5, 16, 23 and 28, 2002; September 9, 17, 23, 24 and 25, 2002; October 7 and 18, 2002; and November 7 and 12, 2002.

[FN13] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraphs 73 and 75-77.
[FN14] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraphs 41-43, 45, 47-57, 62, 64-66, 68, 70, 72, 79, 82, 84 and 85.

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17. On July 1 and 5 and September 20, 2002 the Panamanian Ombudsman presented briefs [FN15] on compliance with the judgment delivered by the Court in this case.

[FN15] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraphs 44, 46 and 67.

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18. On June 24, 2002, a meeting was held at the seat of the Court [FN16], attended by three Secretariat officials and two representatives of the State.

[FN16] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraph 39.

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19. On August 28, 2002 a meeting was held at the seat of the Court [FN17], attended by three Secretariat officials and three victims.

[FN17] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraphs 39 and 63.

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20. On September 24, 2002, Miguel González presented an amicus curiae brief [FN18], on compliance with the judgment delivered by the Court on February 2, 2001 in this case.

[FN18] Cf. Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, having seen paragraph 71.

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21. On November 22, 2002, the Court issued a second Order on compliance with judgment, in which it decided:

1. That the State must determine again, in accordance with the applicable domestic legislation, the specific amounts for unpaid wages and other labor rights corresponding to each of the 270 victims, without excluding any of them. This new determination must be made observing the guarantees of due process and according to the legislation applicable to each victim, so that they may submit their arguments and evidence and be informed of the parameters and legislation used by the State to make the calculations.
2. That the procedure to execute the provisions of the seventh operative paragraph of the judgment of February 2, 2001, must be carried out observing the guarantees of due process and according to the legislation applicable to each victim, so that they may submit their arguments and evidence and be informed of the parameters and legislation used by the State.
3. That the State may not impose any existing or future tax, including income tax, on the compensation paid to the 270 victims or their successors.
4. That the State must pay the interest accrued over the time that it has delayed paying the compensation for non-pecuniary damage.
5. That the releases signed by some victims or their successors as a requirement to receive payment of the compensation decided in the sixth operative paragraph, which was calculated by the State, are only valid to the extent that they recognize payment of the amount of money stipulated in them. The waivers made in them, to the effect that the victims or their successors were satisfied with the payment, are invalid, so that these releases do not preclude the possibility of the victims or their successors submitting claims and proving that the State should pay them a different amount for the unpaid wages and other labor rights that correspond to them.
6. That this Court will consider that the sums of money which the State allegedly paid by cheque to 195 victims for the amounts it had calculated for unpaid wages and other labor rights are a down payment on the total pecuniary reparation owed; therefore, it should present to the Court a copy of the releases proving that the cheques have been delivered.
7. That the State has complied with the obligation to pay to all the 270 victims the sum of US$100,000.00 (one hundred thousand United States dollars) in reimbursement of expenses and the sum US$20,000.00 (twenty thousand United States dollars) in reimbursement of costs.
8. That, in order to reimburse the amounts paid by the State for costs and expenses, the Inter-American Commission on Human Rights must consider the expenses of all the victims and their representatives, taking into account that they are not all represented by CEJIL.
9. That the State must deliver the cheques for non-pecuniary damage when the competent authorities determine who are the successors of the deceased victims who have not yet received reparation, and must pay the amounts corresponding to the interest accrued because payment will be made after the 90-day time limit has expired.
10. That the State must present a detailed report to the Court by June 30, 2003, at the latest, with which it must forward a copy of the releases signed by some of the victims or their successors, and indicate all the progress made in compliance with the reparations ordered by this Court.
11. That the victims or their legal representatives and the Inter-American Commission on Human Rights must submit their comments on the State's report within three months of receiving it.

12. That it w[ould] continue monitoring full compliance with the judgment of February 2, 2001, and close the case, only when it had been complied with fully.

22. On December 19, 2002 CEJIL, the legal representative of most of the victims, forwarded a copy of a brief addressed to the Executive Secretary of the Inter-American Commission, and its attachment, concerning the reimbursement of costs and expenses.

23. On February 24, 2003, the Inter-American Commission forwarded a copy of a brief addressed to Rolando Gómez C. and to CEJIL, concerning compliance with the ninth operative paragraph of the judgment delivered by this Court on February 2, 2001 (supra para. 3).

24. On February 25, 2003, the Inter-American Commission forwarded a brief, in which it advised that it had received from Panama the amounts ordered by the Court for reimbursement of expenses and costs in the judgment of February 2, 2001, which had been distributed between the victims and their legal representatives. Consequently, the Commission requested the Court to "determine that the ninth operative paragraph of its judgment of February 2, 2001, and the stage relating to the payment of costs and expenses had been complied with."

25. On February 27, 2003, the Secretariat granted until March 28, 2003, for the victims or their legal representatives and the State to submit any comments they deemed pertinent on the said brief of the Commission (supra para. 24).

26. On February 27, 2003, the State presented a brief in which it referred to compliance with judgment and to the decisions of the Court in the Order of November 22, 2002, on compliance with judgment (supra para. 21). In this brief, the State referred, inter alia, to: the determination of the unpaid wages and other labor rights, the payment of interest accrued owing to the delay in paying the compensation for non-pecuniary damage, the tax on the compensation payments, and compliance with the seventh operative paragraph of the judgment of February 2, 2001. It also stated that the stage of monitoring compliance with judgment is a "post-judgment" stage that "is not included in the norms that regulate the jurisdiction and the procedure of the Court," and that in the Order of November 22, 2002, the Court interpreted its own judgment of February 2, 2001.

27. On March 4, 2003, the Secretariat advised that this brief of the State had been submitted to the consideration of the Court and granted the Inter-American Commission and the victims or their legal representatives until April 7, 2003, to submit any comments they deemed pertinent.

28. On March 26, 2003, the Panamanian Ombudsman presented an amicus curiae brief concerning compliance with the judgment delivered by the Court on February 2, 2001.

29. On April 4, 2003, CEJIL submitted its comments on the State's brief of February 27, 2003, (supra para. 26 and infra para. 56).

30. On April 4, 2003, Manrique Mejía, Ivanor Alonso, Juan O. Sanjur, Fernando Dimas, Miguel Prado, Andrés Guerrero, Rafael Tait Yepes, Estebana Nash and Marina Villalobos forwarded a brief and its attachments, in which they submitted their comments on the State's brief of February 27, 2003, (supra para. 26 and infra para. 57).

31. On April 4, 2003, Miguel González presented an amicus curiae brief concerning compliance with the judgment of February 2, 2001.

32. On April 7, 2003, the Commission submitted its comments on the State's brief of February 27, 2003, (supra para. 26 and infra para. 55), and on April 10, 2003, it forwarded the attachments to this brief with comments.

33. On April 7, 2003, Domingo De Gracia Cedeño presented two briefs with the comments of Fernando Del Río Gaona, José Santamaría Saucedo and himself to the State's brief of February 27, 2003, (supra para. 26 and infra para. 57). On April 8, 2003, he forwarded the originals of these two briefs and their attachments.

34. On April 21, 2003, Juan O. Sanjur sent an e-mail in which he referred to compliance with the judgment delivered by the Court on February 2, 2001.

35. On April 22, 2003, the State presented a copy of the documents called "releases," as requested by the Court in the sixth and tenth operative paragraphs of the Order of November 22, 2002 (supra para. 21).

36. On May 23, 2003, Juan O. Sanjur sent an e-mail concerning compliance with the judgment of February 2, 2001.

37. On June 6, 2003, la Corte issued a third Order on compliance with judgment, in which it decided:

1. To maintain the decisions made in its Order of November 22, 2002, and therefore the measures of reparation decided in the judgment of February 2, 2001, must be complied with as ordered by the Court in that Order on compliance with judgment.
2. That the State must present, by June 30, 2003, at the latest, a detailed report indicating all the progress made in compliance with the reparations ordered by this Court, as requested by the Court in the tenth operative paragraph of the Order of November 22, 2002.
3. That, when the State [has] forward[ed] this detailed report on compliance with judgment, the victims or their legal representatives and the Inter-American Commission on Human Rights must submit their comments on this report within three months of receiving it, as indicated in the eleventh operative paragraph of the Order of November 22, 2002.
4. That it w[ould] continue monitoring full compliance with the judgment of February 2, 2001.

38. On July 3, 2003, on the instructions of the President, the Secretariat requested the State to present forthwith the detailed report on progress in compliance with the reparations ordered by the Court, since the time limit for its presentation had expired on June 30, 2003 (supra para. 37).

39. On July 11, 2003, the State forwarded a brief in which it indicated that "it [would] soon make the pending payment to the remaining 75 workers in the case" and that "it [would] then

present an updated progress report on implementation of the [...] judgment, by July 30, 2003, at the latest."

40. On June 20 and July 21 and 24, 2003, Xiomara Lasco de Cárdenas, Juan O. Sanjur and Domingo De Gracia Cedeño, respectively, sent e-mails, with attachments, concerning compliance with the judgment delivered by the Court on February 2, 2001.

41. On July 30, 2003, the State forwarded a brief with "[c]omments [...] on the Order of June 6, 2003, […] and information on the process of implementing the judgment of February 2, 200[1]", delivered by the Court in the instant case. In this brief, Panama, inter alia, reiterated (supra para. 26 and infra para. 54) that it considered that, in the Orders of November 22, 2002, and June 6, 2003, the Court "ha[d] interpreted its own judgment,' and that the stage of monitoring compliance with judgment was 'a post-judgment stage' [,...] that did not fall within the judicial sphere of the Court, but strictly within the political sphere." Panama also referred to compliance with the measures of reparation. The State attached to this brief a document entitled "Ministerio de Economía y Finanzas, Dirección de Administración y Finanzas, Departamento de Tesorería Institucional, Sentencia de 2 de febrero de 2001, Corte Interamericana de Derechos Humanos, Informe de Ingresos y Egresos, 22 de julio de 2003" [Ministry of Economy and Finance, Administration and Finance Division, Institutional Treasury Department, Judgment of February 2, 2001, Inter-American Court of Human Rights, Report on Income and Expenditure, July 22, 2003], which contained 15 pages of attachments. On August 1, 2003, the State forwarded another copy of this document, but with 74 pages of attachments.

42. On August 4, 2003, on the instructions of the President and as stipulated in the third operative paragraph of the Order of June 6, 2003 (supra para. 37), the Secretariat granted a non-extendible period of three months for the victims or their legal representatives and the Inter-American Commission to submit their comments on the State's brief of July 30, 2003, (supra para. 41).

43. On September 3, 2003, Estebana Nash and Ivanor Alonso forwarded a brief and several attachments concerning compliance with the judgment in the instant case.

44. On October 28, 2003, Domingo De Gracia Cedeño, José Santamaría Saucedo and Fernando Del Río Gaona presented a brief in which they referred to compliance with judgment and submitted their comments on the State's report of July 30, 2003 (supra para. 41 and infra para. 57).

45. On October 30, 2003, Fernando Del Río Gaona and José Santamaría Saucedo presented additional comments on Panama's report of July 30, 2003 (supra paras. 41 and 44, and infra para. 57).

46. On November 12, 2003, Miguel González forwarded an de amicus curiae brief concerning Panama's report of July 30, 2003 (supra para. 41).

47. On November 12, 2003, Alfredo Berrocal A. Sent an e-mail in which he referred to compliance with the judgment of February 2, 2001. The same day, he forwarded the attachments to this communication by facsimile.

48. On November 12, 2003, Juan O. Sanjur sent two e-mails in which he referred to compliance with the judgment delivered by the Court on February 2, 2001, and submitted his comments on the State's report of July 30, 2003, (supra para. 41 and infra para. 57).

49. On November 13, 2003, the Inter-American Commission presented its comments on the State's report of July 30, 2003, (supra para. 41 and infra para. 55).

50. On November 13, 2003, CEJIL submitted its comments on the State's report of July 30, 2003, (supra para. 41 and infra para. 56).

51. On November 19, 2003, the Secretariat, on the instructions of the President, forwarded a communication to the Inter-American Commission requesting it to submit, by November 21, 2003, at the latest, certain information needed for the Court to consider compliance with the provisions of the ninth operative paragraph of the judgment of February 2, 2001, and the eighth operative paragraph of the Order of November 22, 2002 (supra paras. 3 and 21).

52. On November 21, 2003, the Inter-American Commission forwarded a brief in response to the said request, in which it submitted information on the reimbursement of expenses and costs that was supposed to be carried out through the Commission.

II. COMPETENCE OF THE COURT TO MONITOR COMPLIANCE WITH ITS DECISIONS: ARGUMENTS OF THE PARTIES

53. In a brief of February 27, 2003 (supra para. 26), the State referred to the decision of the Court in the Order of November 22, 2002, on compliance with judgment (supra para. 21). In this brief, Panama stated, inter alia, that the stage of monitoring compliance with judgment is a "post-judgment" stage that "is not included in the norms that regulate the jurisdiction and procedure of the Court," and that, in the said Order, the Court interpreted its own judgment of February 2, 2001.

54. On July 30, 2003 (supra para. 41), the State forwarded a brief with "[o]bservations […] on the Order of June 6, 2003, […] and information on the process of implementation of the judgment of February 2, 200[1]," delivered by the Court in the instant case. The following is a summary of Panama's objections to the competence of the Court to monitor compliance with its judgments:

a) The stage of monitoring compliance with judgment is a "post-judgment" stage, [...] that does not fall within the judicial sphere of the Court, but strictly within the political sphere, which, in this case [is] exclusive to the General Assembly of the Organization of American States." "It is precisely owing to its recognized political rather than judicial nature, that this post-judgment stage has never been included in the norms that regulate the jurisdiction and procedure of the international courts"; b) The American Convention and the Statute of the Court

establish clearly the limits of the jurisdiction and competence of the Court. Article 65 of the American Convention establishes clearly that only the General Assembly of the Organization of American States (hereinafter "the OAS") has the function of monitoring compliance with the judgments of the Inter-American Court of Human Rights. This norm only establishes obligations of the Court and does not establish any obligation for the States Parties, neither does it grant rights to the Court nor competence to monitor compliance with its judgments;

c) Moreover, when developing Article 65 of the Convention and referring to the competence and functions of the Court, the Statute of the Court does not anticipate or authorize a monitoring function for the Court. Article 30 of the Statute reiterates the provisions of Article 65 of the Convention, and the second part "is perhaps even more indicative of the jurisdictional limitations of the Court," since it establishes that the Court may only "submit to the OAS General Assembly proposals or recommendations [...] insofar as they concern the work of the Court." It is not possible for the Court, through its constant practice, to extend unilaterally its jurisdictional function to create a monitoring function with regard to its judgments, counter to the provisions of the Convention and its Statute, instead of submitting to the OAS General Assembly its "proposals and recommendations" on "improvements [...] insofar as they concern the work of the Court." Neither can the Court create this function under criteria of its "compétence de la compétence";

d) Article 65 of the Convention "is in keeping with the provisions of the juridical instruments that, for decades, have served as a foundation for the other international courts." In this respect, Article 94(2) of the Charter of the United Nations recognizes expressly that the function of monitoring the judgments of the International Court of Justice is the responsibility of the United Nations Security Council and not of this tribunal. The International Court of Justice has never tried to monitor compliance with its judgments, because it recognizes that this function is the exclusive competence of the Security Council. The European Convention on Human Rights grants the function of monitoring compliance with the judgments of the European Court of Human Rights to the Committee of Ministers. "The European Court of Human Rights has never interfered in the monitoring function of the Committee of Minister";

e) It is not possible to consider jurisprudential practice "a practice as recent as that of the Court, which has only had fourteen (14) years' experience in the matter";

f) "Since it has been created by the Court itself, in accordance with Article 2 of the Statute of the Court, the said monitoring function has no legal authority in the provisions of the American Convention";

g) The annual report that the Court must present to the OAS General Assembly should refer specifically to the annual work of the Court, but not to the work of the States Parties in the contentious cases;

h) The Court may invite the parties in a case to provide, on a voluntary basis, the information that it considers necessary to facilitate implementation of the administrative functions authorized and required in Articles 65 of the Convention and 30 of the Statute of the Court; namely, the obligation to indicate in the annual report to the OAS General Assembly "the cases in which a State has not complied with its judgments" and, if necessary, to make "any pertinent recommendations." It is for the OAS General Assembly, to consider the Court's annual report, "to evaluate the response, or lack of response, from a State that was a party in the respective case, to the Court's invitation to provide information that helps it complete this annual report." It is for the OAS General Assembly to adopt any actions it deems appropriate;

i) The invitation that the Court sends to the States Parties by regular correspondence is different from the insistence with which it has requested the Panamanian State to submit information, by means of Orders that are presented as the result of the monitoring function that is not established in either the American Convention or the Statute of the Court. It regretted learning ex post facto about the procedure applied by the Court, which led it to issue the Orders of November 22, 2002, and June 6, 2003;

j) No international tribunal similar to the Inter-American Court has tried to modify its jurisdiction alleging constant practice;

k) The application of the procedure described by the Court in the seventh considering paragraph of the Order of June 6, 2003, is not covered by the principle of due process of law, because this procedure had not been incorporated previously into the Convention, or into the Statute or Rules of Procedure of the Court;

l) "Regarding the nature of the "written procedure" described by the Court in the seventh point [of the Order of November 22, 2002 …,] the Panamanian State considers that it would be difficult to denominate as such a simple forwarding of reports and comments from the other party, in the absence of any type of judicial guarantees." The said procedure does not guarantee the "basic formalities of any process, which include debates, evidence, witnesses, experts, objections, challenges and exceptions." Moreover, it is not explained how this procedure may be exclusively in writing when Article 24 of the Statute of the Court requires that hearings be held;

m) In its Orders of November 22, 2002 and June 6, 2003, the Court "in effect interpret[ed] its own judgment, unsupported by Article 67 of the American Convention," since it "issued […] new decisions on aspects related to the merits and reparations, which had been considered in [the] judgment [of February 2, 2001]." The Orders of November 22, 2002, and June 6, 2003, "were issued by the Court in excès de pouvoir";

n) "None of the parties to the case […] requested an interpretation of the judgment of the Court within the 90 days indicated in Article 67, […] and this situation specifically impedes subsequent interpretations";

o) The State differs from the opinion expressed by the Court in the eighth considering paragraph of the Order of June 6, 2003 (supra para. 37). It finds no grounds in general international law, or in the Convention, or in the Statute of the Court for the Court's affirmation that "all international bodies with jurisdictional functions, [...] have the authority, inherent in their attributes, to determine the scope of their orders and judgments";

p) It does not share "with the Court, the interpretation of its compétence de la compétence with regard to functions that are not established in its constituent juridical instruments, such as the American Convention and the Statute";

q) "The compétence de la compétence of an international tribunal refers to the jurisdictional power to decide the matter in dispute, the case before the court, and not to issue subsequent 'decisions' that counteract directly the res judicata effect of the judgment on merits in the case";

r) "The Court seems to imply [...] that, since it is 'master of its jurisdiction', that jurisdiction is not subject to objections by the States";

s) "It is a principle recognized by the American Convention that, during judicial proceedings, nothing is assumed and much less an admission by any of the parties that has not been proved, so that [the] assumption [that the States that submit instruments accepting the optional clause on obligatory jurisdiction thereby accept the Court's right to resolve any dispute on its jurisdiction] runs very much counter to these fundamental principles";

t) Article 62(1) of the Convention refers to the competence of the Court in cases relating to the interpretation or application of the Convention. "[C]considering [the] objections [of the State] to the said 'monitoring function' of the Court as a case would be totally unrelated to the definition that is widely recognized in general international law, and also that of Article 62(3) of the American Convention";
u) Article 67 of the Convention indicates the three fundamental requirements for the Court to be able to consider its own judgment, "and this only to interpret it" and not to establish any other motive for which a judgment may be reconsidered by the Court;
v) The Order issued by the Court on November 22, 2002, referred to "aspects that did not form part of the dispute or case that had already been decided" in the judgment of February 2, 2001;
w) "Article 65 [of the Convention] is also specific when recognizing both the commitment assumed by the States Parties to the American Convention in its Article 68[, …] and the same principle of general international law that obliges States to comply with the judgments, not the orders and resolutions or any other type of ruling issued by the Court in cases to which they are parties." Articles 66 to 69 of the Convention refer specifically to "the judgment" of the Court and no article of this treaty refers to the orders of the Court; and
x) It is not possible to consider that a dispute exists from the simple reception of reports and comments, "without the formalities of any proceeding and in accordance with a proceeding that is not contemplated either in the American Convention or in the Statute of the Court." Moreover, these juridical instruments do not establish the possibility of a dispute with regard to the implementation of measures of reparation, but disputes should arise from matters "related to the specific norms of the American Convention".

55. In its comments (supra paras. 32 and 49) on the State's briefs of February 27 and July 30, 2003 (supra paras. 26 and 41), the Commission indicated, inter alia, that:

a) "The briefs presented by the State [...] do not constitute a detailed report on compliance with judgment in this case"; consequently it reserved the right to submit its comments on the report that Panama would subsequently present to the Court;
b) "In its Order of June 6, 2003, the Court has resolved clearly most of the State's allegations," so that "an additional ruling of the Court concerning the final and non-appealable nature of its judgments" is not justified. Accordingly, it requested the Court "to reject outright the arguments that try to reopen a discussion on matters that [it] has already decided";
c) The observations of the State attempt to question the competence of the Court, contest the contents of its orders, and bring about their review and reconsideration. However, the recourse of review is not admissible and the judgments of the Court are final and non-appealable;
d) "The presentation of arguments questioning the competence of the Court to issue orders on compliance with judgment is of no practical relevance and seeks to evade obligations acquired internationally in good faith." Seeking to divert the attention of the Court with matters that "reveal a lack of willingness to comply" with its judgment violates the pacta sunt servanda principle;
e) An international tribunal "has the competence to rule on its powers, in particular, on its competence to issue orders or resolutions";
f) The International Criminal Tribunal for the former Yugoslavia "decided that it had competence to issue [a specific] order or resolution, considering that this was necessary in order

to comply with its fundamental purpose and to function effectively," [FN19] and the decision was confirmed by the court of appeal;

g) The Court has competence to issue decisions on compliance with judgment, a power that "is fundamental for the exercise of its judicial functions." The competence of the Court is unquestionable and it is reflected in its constant case law;

h) "It is established by convention that the Inter-American Court, as an international tribunal, guarantees the injured party the enjoyment of his rights, which implies guaranteeing reparation of the consequences of the violations and the payment of a fair compensation." Accordingly, it is "evident that the Court has the authority to monitor compliance with its decisions, since it would be useless and illusory that, having the competence to determine the reparations, it did not have the competence to monitor" what it has ordered. To the contrary, "the victims would be left defenseless";

i) From Article 65 of the Convention, it can be inferred that the Court has competence to require the parties in a case to provide information on compliance with the judgments, and also to rule on this compliance;

j) "It did not share the interpretation of the State, according to which, Article 65 of the Convention merely grants obligations of an administrative nature to the Court." The inter-American protection system "does not consider, as in the case of the European system and the International Court of Justice (ICJ), that a political body should monitor compliance with the judgments of the Court." Moreover, the Convention does not indicate that the OAS General Assembly will supervise execution of the Court's judgments. The Court informs the said Assembly of non-compliance with its decisions by of a State, so that the Assembly "may take measures to insist on compliance";

k) The Court has competence to monitor compliance, "taking decisions" and can also "issue obligatory orders in that respect and, subsequently, in cases in which such orders are not respected, inform the General Assembly of this non-compliance and recommend actions";

l) The court of appeal of the International Criminal Tribunal for the former Yugoslavia indicated that it had competence to determine whether "a State complied or not" with its decisions, "in order to then inform the UN Security Council of this non-compliance." The "Tribunal indicated that this determination was an essential stage of the proceedings" [FN20];

m) It reiterated that Article 65 of the Convention "confirms the competence of the Court to issue resolutions on compliance, that this competence is not only embodied in the Convention, but has also been an extended and constant practice of the Court itself";

n) "When the Court determines the international responsibility of a State for violations of the Convention, the State must comply with the judgment of the Court and ensure reparations to the victims"; and

o) The "Court is competent to issue orders on compliance and [...] what it orders is perfectly compatible with its competence to monitor compliance with its decisions. Therefore, the doctrine of excès de pouvoir invoked by the State[,] applicable when a tribunal acts without having competence for such an act, is totally inapplicable."

[FN19] ICTY, Trial Chamber, BLASKIC (IT-95-14), "Lasva Valley" Decision on the Objection of the Republic of Croatia to the Issuance of Subpoenae Duces Tecum, 18 July 1997, paras. 29, 30 and 41.

[FN20] ICTY, Appeals Chamber, Judgment on the Request of The Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997, para. 33 et seq.
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56. In its comments (supra paras. 29 and 50) on the briefs of the State of February 27 and June 30, 2003, (supra paras. 26 and 41), CEJIL, the legal representative of most of the victims, indicated, inter alia, that:

a) The position of the State reveals a substantial lack of awareness of inter-American law;
b) The fact that the State paid the amount corresponding to non-pecuniary damage after the time limit had passed; that it established the pecuniary compensation without justification or normative support; that it disregarded the applicable domestic legislation (which would be the legislation in force at the time of the violations) when it established the compensation based on arbitrary criteria, and that it subtracted income tax from the compensation, caused the Court, in the Order of November 22, 2002, "to remind the State of the terms of the reparation that it had ordered in its judgment of February 2001";
c) Since "Panama questioned the authority of the Court to monitor compliance with its judgments," the latter "proceeded to ratify its decisions in the Order of June 6, 2003";
d) The Orders of the Court of November 22, 2002, and June 6, 2003, "did not modify the judgment of the Court, but clarified its scope in light of the State's conduct." The Court clarified how the reparations it had ordered should be executed, "they are orders to ensure compliance and were never intended to interpret the judgment of February 2001";
e) Article 68(1) of the Convention "refers to the fact that the decisions [Note: translated as "judgments" in the English version] of the Court are obligatory, without distinguishing whether they are judgments, provisional measures, or any other type of decisions, so that they may be extended to any type of resolution issued by the Court that explicitly entails some kind of obligation for the State";
f) The State's voluntary acceptance of the competence of the Court and its commitment to respect the American Convention, particularly Article 68 thereof, signifies that "States must adopt at the domestic level all those mechanisms of domestic law that ensure the faithful execution of the judgments of the Inter-American Court in order to comply with the purpose and goals of the Convention". That is to say, there is a State commitment that the treaty provisions will be effective in domestic law, and this affirmation is consequent with the pacta sunt servanda principle established in the Vienna Convention on the Law of Treaties.
g) Panama cannot interpret the Convention or the Order of the Court to the detriment of the rights of the victims. If the State fails to comply with the decisions of the Court in its orders of November 2002 and June 2003, "not only is it disregarding its express acceptance of the competence of the Court, but it is also incurring in a new violation of the American Convention, contained in Article 68(1)";
h) The Court "has the authority to determine any aspect relating to its own competence and this is an obligation imposed by the American Convention itself, so that it may exercise its functions as the supreme body for monitoring human rights in the region";
i) "The Court, as the maximum and only court of justice for human rights in the region, cannot waive this authority and, as part of it, has the obligation to monitor compliance with its judgments. This is why in its judgments, the Court has always decided to monitor compliance

with them and only then consider the case closed." Articles 33 and 62(3) of the Convention are cited in this respect;

j) There is considerable difference between the system of the American Convention and the system of the European Convention. The latter "establishes the need to grant the injured party fair satisfaction if the domestic law of the high contracting party only allows the partial elimination of the consequences of a decision or measures taken by that State that are contrary to the European Convention." The American normative is "broader and more protective of the victim of human rights violations" and "is more assertive in terms of reparation, because it grants the Inter-American Court authority, in the cases when it determines violations of [the American C]onvention, to decide that the injured party is guaranteed the enjoyment of the right or freedom that was violated";

k) "The practical manifestation of the Court's authority to monitor is not unique; other international instances responsible for monitoring respect for human rights have established their own mechanisms." For example, it cited the United Nations Human Rights Committee;

l) Monitoring implementation is considered essential "in order to do justice to the victims by applying corrective measures and upholding the authority of an important human rights body;

m) In addition to the State obligation to protect and respect the rights embodied in the Convention, "the States are obliged to ensure the integrity and effectiveness of the Convention." The American Convention also contained the collective guarantee of the States Parties to supervise genuine compliance with the decisions of the bodies of the inter-American system. In other words, "[t]his general protection obligation or collective guarantee is in the interest of each State and all of them as a whole";

n) The collective guarantee "can be manifested through the intervention of the political organs of the Organization of American State in case of non-compliance," pursuant to Article 65 of the Convention. However, "political control does not exclude juridical control";

o) The American Convention "establishes the Court's authority and obligation to monitor compliance with its decision in order to repair the damage caused and to protect the victims, and part of this authority is to inform the OAS General Assembly about the conduct of the States in this respect"; and

p) "It is to be hoped that the State of Panama will assume its international obligations arising from the American Convention and from having accepted the contentious jurisdiction of the Inter-American Court. Refusing to comply with the decisions [….] of this Court and questioning its authority to monitor compliance with its judgment of February 2001 jeopardizes the Panamanian State's credibility before the international community."

57. The other victims who presented comments (supra paras. 30, 33, 44, 45 and 48) on the briefs of the State of February 27 and July 30, 2003, (supra paras. 26 and 41), stated briefly that:

a) "The authority of the Inter-American Court to monitor compliance with the judgment of February 2, 2001, is stated in the tenth operative paragraph of the judgment and the State never contested it" [FN21];

b) Panama "has forgotten that the Order of November 22, 2002, originated from non-compliance with the judgment of February 2, 2001, and violations of due process" [FN22];

c) The State alleges that the Inter-American Court should consult it before issuing any opinion [FN23];

d) The State "tells the Inter-American Court of Human Rights what its functions and obligations are and in which situations it may not give an opinion; in other words, Panama knows more about the functions of the Court than the Court itself. Should what the State of Panama proposes be accepted as true, the inter-American juridical system would collapse and the peoples of the Americas would be defenseless with regard to their human rights" [FN24];

e) The State intends to create a unusual atmosphere of debate, which it not admissible at this stage of compliance with judgment [FN25];

f) Panama has questioned the competence of the Court as a mechanism to evade compliance with the judgment of February 2, 2001, and "confuse public opinion as regards this State obligation" [FN26];

g) The State "makes comments that make serious, reckless and unfounded accusations that reveal disregard or ignorance of the procedures of the Court to supervise full compliance with a judgment" [FN27];

h) By questioning the competence of the Court, the State "lessens its international prestige," disregards the pacta sunt servanda principle and does not act in good faith [FN28]; and

i) Panama attempts to leave the victims without protection and to discredit the Inter-American Court and the inter-American system for the protection of human rights. [FN29]

[FN21] Cf. Brief with comments on the State's report of July 30, 2003, submitted by Domingo De Gracia Cedeño, José Santamaría Saucedo and Fernando Del Río Gaona on October 28, 2003, (supra para. 44); and brief with comments on the State's brief of February 27, 2003, submitted by José Santamaría Saucedo and Domingo De Gracia Cedeño on April 7, 2003, (supra para. 33).

[FN22] Brief with comments on the State's brief of February 27, 2003, submitted by Fernando Del Río Gaona and Domingo De Gracia Cedeño on April 7, 2003, (supra para. 33).

[FN23] Cf. Brief with comments on the State's brief of February 27, 2003, submitted by Fernando Del Río Gaona and Domingo De Gracia Cedeño on April 7, 2003, (supra para. 33).

[FN24] Brief with additional comments on the State's report of July 30, 2003, submitted by Fernando Del Río Gaona and José Santamaría Saucedo on October 30, 2003, (supra para. 45).

[FN25] Cf. Attachment to the brief with comments on the State's brief of February 27, 2003, submitted by Manrique Mejía, Ivanor Alonso, Juan O. Sanjur, Fernando Dimas, Miguel Prado, Andrés Guerrero, Rafael Tait Yepes, Estebana Nash and Marina Villalobos on April 4, 2003, (supra para. 30).

[FN26] Cf. Brief with comments on the State's brief of February 27, 2003, forwarded by Juan O. Sanjur by e-mail on November 12, 2003, (supra para. 48); and attachment to the brief with comments on the State's brief of February 27, 2003, submitted by Manrique Mejía, Ivanor Alonso, Juan O. Sanjur, Fernando Dimas, Miguel Prado, Andrés Guerrero, Rafael Tait Yepes, Estebana Nash and Marina Villalobos on April 4, 2003, (supra para. 30).

[FN27] Brief with comments on the State's brief of February 27, 2003, submitted by Fernando Del Río Gaona and Domingo De Gracia Cedeño el April 7, 2003, (supra para. 33).

[FN28] Cf. Attachment to the brief with comments on the State's brief of February 27, 2003, submitted by Manrique Mejía, Ivanor Alonso, Juan O. Sanjur, Fernando Dimas, Miguel Prado, Andrés Guerrero, Rafael Tait Yepes, Estebana Nash and Marina Villalobos on April 4, 2003, (supra para. 30).

[FN29] Cf. brief with comments on the State's brief of February 27, 2003, submitted by Fernando Del Río Gaona and Domingo De Gracia Cedeño on April 7, 2003, (supra para. 33).

III. COMPETENCE OF THE COURT TO MONITOR COMPLIANCE WITH ITS DECISIONS: CONSIDERATIONS OF THE COURT

58. Panama has been a State Party to the Convention since June 22, 1978, and, in accordance with Article 62 of this treaty, it accepted the contentious jurisdiction of the Court on May 9, 1990. On February 2, 2001, the Court delivered judgment on merits, and the reparations and costs.

59. Given that this is the first time that a State Party in a case before the Inter-American Court questions the competence of the Court to monitor compliance with its judgments, a function carried out in all the cases on which judgment has been passed and invariably respected by the States Parties, this Court considers it necessary to refer to the obligation of the States to comply with the decisions of the Court in any case to which they are parties, and to the competence of the Inter-American Court to monitor compliance with its decisions and issue instructions and orders on compliance with the measures of reparations it has ordered.

60. When the Court has ruled on the merits and the reparations and costs in a case submitted to its consideration, the State must observe the norms of the Convention that refer to compliance with that judgment or those judgments. In accordance with the provisions of Article 67 of the American Convention, the State must comply with the judgments of the Court promptly and fully. Moreover, 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." The treaty obligation of the States Parties to comply promptly with the Court's decisions binds all the State's powers and bodies.

A) STATE OBLIGATIONS

a) Pacta sunt servanda

61. The obligation to comply with the provisions of the Court's decisions corresponds to a basic principle of the law on the international responsibility of the State, which is supported by international case law; according to this, 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. [FN30] As regards execution of the reparations ordered by the Court in the sphere of domestic law, the responsible State may not modify or fail to comply with them by invoking the provisions of domestic law.

[FN30] Cf. Bulacio case. Judgment of September 18, 2003. Series C No. 100, para. 117; Las Palmeras case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, paras. 68 and 69; El Caracazo case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of August 29,

2002. Series C No. 95, para. 119; Trujillo Oroza case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 106; Barrios Altos case. Interpretation of the judgment on merits. (Art. 67 of the American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para. 15; Barrios Altos case. Judgment of March 14, 2001. Series C No. 75, para. 41; The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 128; International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, sixth considering paragraph; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, forth considering paragraph; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, forth considering paragraph; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, forth considering paragraph; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, sixth considering paragraph; The “Street Children” case (Villagrán Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; Cantoral Benavides case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; Bámaca Velásquez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; The “White Van” case (Paniagua Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; Castillo Páez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; The Constitutional Court case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph; Hilaire, Constantine and Benjamin et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, sixth considering paragraph; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 9, 2003, third considering paragraph; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 6, 2003, forth considering paragraph; Neira Alegría et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph; “The Last Temptation of Christ” case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph; El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, third and fourth considering paragraphs; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, second and third considering

paragraphs; Castillo Páez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, third considering paragraph; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, third considering paragraph; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, eleventh considering paragraph; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, third considering paragraph; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, second and third considering paragraph; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, third considering paragraph; Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, third considering paragraph; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 13, 2002, third and fourth considering paragraphs; Castillo Páez, Loayza Tamayo, Castillo Petruzzi et al., Ivcher Bronstein and the Constitutional Court cases. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 1, 2001, first and second considering paragraphs; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 60, seventh and eighth considering paragraphs; and Castillo Petruzzi et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 1999, Series C No. 59, fourth and fifth considering paragraphs. Also, Cf. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988, para. 57; P.C.I.J., Case of the Free Zones of Upper Savoy and the District of Gex, Series A./B-Fasc. No. 46, June 7th, 1932, p. 167; P.C.I.J., Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Series A./B.-Fasc.No. 44, February 4th, 1932, p. 24; and P.C.I.J., The Greco-Bulgarian "Communities", Series B.-No. 17, July 31st, 1930, pp. 32-33.

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b) Obligation to repair

62. The obligation to repair, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law, may not be modified or not complied with by the State which has this obligation, by invoking provisions or difficulties of domestic law [FN31].

[FN31] Cf., inter alia, Bulacio case, supra note 30, para. 72; Juan Humberto Sánchez case. Judgment of June 7, 2003. Series C No. 99, para. 149; and Cantos case. Judgment of November 28, 2002. Series C No. 97, para. 68.

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63. In the inter-American system for the protection of human rights, the provisions applicable to reparations is Article 63(1) of the American Convention, which establishes that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedies and that fair compensation be paid to the injured party..

64. This norm grants the Inter-American Court a wide margin of judicial discretion to determine the measures that all the consequences of the violation to be repaired.

65. As the Court has stated, [FN32] Article 63.1 of the Convention reproduces the text of a customary law norm that is one of the fundamental principles of the law of the international responsibility of States. [FN33]And that is how this Court has applied it. When an unlawful act occurs that may be attributed to the State, this entails the latter's international responsibility for violating an international norm. Based on this responsibility, a new juridical relationship is born for the State consisting in the obligation to make reparation. [FN34]

[FN32] Cf., inter alia, Bulacio case, supra note 30, para. 71; Juan Humberto Sánchez case, supra note 31, para. 148; and "Five Pensioners" case. Judgment of February 28, 2003. Series C No. 98, para. 174.

[FN33] Cf. Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 184; Affaire relative à l'Usine de Chorzów (Demande en Indemnité) (Fond), Arrêt Nº 13, le 13 septembre 1928, C.P.J.I. Série A-Nº 17, p. 29; and Affaire relative à l'Usine de Chorzów (Demande en Indemnité) (Compétence), Arrêt Nº 8, le 26 juillet 1927, C.P.J.I. Série A-Nº 9, p. 21.

[FN34] Garrido and Baigorria case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 40; and cf., inter alia, Bulacio case, supra note 30, para. 71; Juan Humberto Sánchez case, supra note 31, para. 147; and "Five Pensioners" case, supra note 32, para. 174.

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c) Scope of "effet utile"

66. The States Parties to the Convention must guarantee compliance with treaty provisions and their effects (effet utile) at the level of their respective domestic laws. [FN35] This principle is applicable not only with regard to the substantive norms of the human rights treaties (namely, those that contain provisions on protected rights), but also with regard to the procedural norms, [FN36] such as those referring to compliance with the decisions of the Court (Articles 67 and 68(1) of the Convention). The provisions contained in the said articles must be interpreted and applied so as to ensure that the protected guarantee is truly practical and effective, recalling the special nature of human rights treaties and their collective implementation. [FN37]

[FN35] The Constitutional Court case. Competence. Judgment of September 24, 1999. Series C No. 55, para. 36; and Ivcher Bronstein case. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37. Also, Cf., inter alia, Bulacio case, supra note 30, para. 142; "Five Pensioners" case, supra note 32, para. 164; and Cantos case, supra note 31, para. 59.

[FN36] The Constitutional Court case. Competence, supra note 35, para. 36; and Ivcher Bronstein case. Competence, supra note 35, para. 37. Also, Cf. Klass and others v. Germany, (Merits) Judgment of 6 September 1978, ECHR, Series A no. 28, para. 34; and Permanent Court of Arbitration, Dutch-Portuguese Boundaries on the Island of Timor, Arbitral Award of June 25, 1914, The American Journal of International Law, volume 9, 1915, pp. 250 and 266.
[FN37] Cf. The Constitutional Court case. Competence, supra note 35, para. 36; and Ivcher Bronstein case. Competence, supra note 35, para. 37.
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67. Regarding the said principle of effet utile, in the Corfu Channel case, the International Court of Justice reiterated what the Permanent Court of International Justice had said, to the effect that:

[…] regarding the specific question on the competence pending decision, it may be sufficient to observe that, when determining the nature and scope of a measure, the Court must observe its practical effect instead of the predominant motive that it is believed inspired it. [FN38]

[FN38] Cf. Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 24; and P.C.I.J, Advisory Opinion No. 13 of July 23rd, 1926, Series B, No. 13, p. 19.

B) SCOPE OF THE COMPETENCE OF THE COURT TO DETERMINE ITS OWN COMPETENCE

68. The Court, as any body with jurisdictional functions, has the authority inherent in its attributions to determine the scope of its own competence (compétence de la compétence/ Kompetenz-Kompetenz). [FN39] The instruments accepting the optional clause on obligatory jurisdiction (Article 62(1) of the Convention) assume that the States submitting them accept the Court's right to settle any dispute relative to its jurisdiction, [FN40] such as the dispute in this case on the function of monitoring compliance with its judgments. An objection or any other action of the State intended to affect the competence of the Court has no consequence, because, in all circumstances, the Court retains the compétence de la compétence, as it is master of its own jurisdiction. [FN41]

[FN39] Cf. The Constitutional Court case. Competence, supra note 35, para. 31; Ivcher Bronstein case. Competence, supra note 35, para. 32; Hilaire, Constantine and Benjamin et al. case. Judgment of June 21, 2002. Series C No. 94, para. 17; Constantine et al. case. Preliminary objections. Judgment of September 1, 2001. Series C No. 82, para. 69; Benjamin et al. case. Preliminary objections. Judgment of September 1, 2001. Series C No. 81, para. 69; and Hilaire case. Preliminary objections. Judgment of September 1, 2001. Series C No. 80, para. 78.
[FN40] Cf. The Constitutional Court case. Competence, supra note 35, para. 33; Ivcher Bronstein case. Competence, supra note 35, para. 34; Hilaire, Constantine and Benjamin et al. case, supra note 39, para. 18; Constantine et al. case. Preliminary objections, supra note 39, para. 72;

Benjamin et al. case. Preliminary objections, supra note 39, para. 72; and Hilaire case. Preliminary objections, supra note 39, para. 81.
[FN41] Cf. The Constitutional Court case. Competence, supra note 35, para. 33; Ivcher Bronstein case. Competence, supra note 35, para. 34; Hilaire, Constantine and Benjamin et al. case, supra note 39, para. 18; Constantine et al. case. Preliminary objections, supra note 39, para. 72; Benjamin et al. case. Preliminary objections, supra note 39, para. 72; and Hilaire case. Preliminary objections, supra note 39, para. 81.
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69. When ruling on its compétence de la compétence, the International Criminal Tribunal for the former Yugoslavia stated that:

In finding that the International Tribunal has the competence to determine its own jurisdiction, the Appeals Chamber has adopted a similar approach. It recognized that such competence is part of the incidental or inherent jurisdiction of any judicial tribunal and, in particular, '[i]t is a necessary component in the exercise of the judicial function and does not need to be expressly provided for in the constitutive documents … although this is often done' [FN42].

[FN42] I.C.T.Y., Trail Chamber II, Decision on the Objection of the Republic of Croatia to the Issuance of Subpoena Duces Tecum, 18 July 1997, para. 29.
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70. The Court cannot abdicate the prerogative to determine the scope of its own jurisdiction, which is also an obligation imposed upon it by the American Convention in order to exercise its functions according to Article 62(3) thereof. [FN43] That provision reads as follows:

The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of th[e] Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration [...] or by a special agreement.

[FN43] Cf. The Constitutional Court case. Competence, supra note 35, para. 32; Ivcher Bronstein case. Competence, supra note 35, para. 33; Constantine et al. case. Preliminary objections, supra note 39, para. 71; Benjamin et al. case. Preliminary objections, supra note 39, para. 71; and Hilaire case. Preliminary objections, supra note 39, para. 80.
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71. As the Courts has stated in its constant case law, [FN44] acceptance of the contentious jurisdiction of the Court is a binding clause that does not admit limitations that are not included expressly in Articles 62(1) and 62(2) of the American Convention. Given the fundamental importance of this clause for the operation of the Convention's system of protection, it cannot be subject to unanticipated limitations invoked by States Parties for reasons of domestic policy.

[FN44] Cf. The Constitutional Court case. Competence, supra note 35, para. 35; Ivcher Bronstein case. Competence, supra note 35, para. 36; Constantine et al. case. Preliminary objections, supra note 39, paras. 73, 77-79; Benjamin et al. case. Preliminary objections, supra note 39, paras. 73 and 77-79; and Hilaire case. Preliminary objections, supra note 39, paras. 82, 86-88.

C) EFFECTIVENESS OF DECISIONS ON REPARATIONS

72. When it has determined the international responsibility of the State for violation of the American Convention, the Court proceeds to order measures designed to remedy this violation. Its jurisdiction includes the authority to administer justice; it is not restricted to stating the law, but also encompasses monitoring compliance with what has been decided. It is therefore necessary to establish and implement mechanisms or procedures for monitoring compliance with the judicial decisions, an activity that is inherent in the jurisdictional function. [FN45] Monitoring compliance with judgments is one of the elements that comprises jurisdiction. To maintain otherwise, would mean affirming that the judgments delivered by the Court are merely declaratory and not effective. Compliance with the reparations ordered by the Court in its decisions is the materialization of justice for the specific case and, ultimately, of jurisdiction; to the contrary, the raison d'être for the functioning of the Court would be imperiled.

[FN45] Cf. Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, first considering paragraph; "The Last Temptation of Christ" case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, first considering paragraph; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; The "Street Children" case (Villagrán Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Cantoral Benavides case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Bámaca Velásquez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; The "White Van" case (Paniagua Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; Castillo Páez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; The Constitutional Court case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph; and Hilaire, Constantine and

Benjamin et al.. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, first considering paragraph.

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73. The effectiveness of judgments depends on their execution. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling.

74. Compliance with judgment is strongly related to the right to access to justice, which is embodied in Articles 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention. [FN46]

[FN46] Cf. Cantos case, supra note 31, paras. 50, 52 and 77 (declaratory paragraph); El Caracazo case. Reparations, supra note 30, para. 107; and Las Palmeras case. Judgment of December 6, 2001. Series C No. 90, para. 54.

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75. Article 8(1) of the Convention establishes that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

76. Article 25 of the Convention provides that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
   […]
   c. to ensure that the competent authorities shall enforce such remedies when granted.

77. The Court has established that the formal existence of remedies is not sufficient; these must be effective; in other words, they must provide results or responses to the violations of rights included in the Convention. [FN47] In this respect, the Court has stated that:

[…] those remedies that, owing to the general conditions of the country or even the particular circumstances of a case, are illusory cannot be considered effective. This may occur, for example, when there uselessness has been shown in practice, because the jurisdictional body lacks the necessary independence to decide impartially or because the means to execute its decisions are lacking; owing to any other situation that establishes a situation of denial of justice, as happens when there is unjustified delay in the decision. [FN48]

[FN47] Cf. Juan Humberto Sánchez case, supra note 31, para. 121; "Five Pensioners" case, supra note 32, para. 126; and Hilaire, Constantine and Benjamin et al. case, supra note 39, para. 150.
[FN48] Cf. "Five Pensioners" case, supra note 32, para. 126; Hilaire, Constantine and Benjamin et al. case, supra note 39, para. 150; and Las Palmeras case, supra note 46, para. 58.

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78. "[T]he safeguard of the individual in the face of the arbitrary exercise of the power of the State is the primary purpose of the international protection of human rights" [FN49]; such protection must be genuine and effective.

[FN49] Cf. "Five Pensioners" case, supra note 32, para. 126; The Constitutional Court case. Judgment of January 31, 2001. Series C No. 71, para. 89; and Godínez Cruz case. Judgment of January 20, 1989. Series C No. 5, para. 174.

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79. States have the responsibility to embody in their legislation and ensure due application of effective remedies and guarantees of due process of law before the competent authorities, which protect all persons subject to their jurisdiction from acts that violate their fundamental rights or which lead to the determination of the latter's rights and obligations. [FN50] However, State responsibility does not end when the competent authorities issue the decision or judgment. The State must also guarantee the means to execute the said final decisions.

[FN50] Cf. Cantos case, supra note 31, paras. 59 and 60; The case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001. Series C No. 79, para. 135; and Durand and Ugarte case. Judgment of August 16, 2000. Series C No. 68, para. 121.

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80. In this respect, the Inter-American Court declared the violation of Article 25 of the Convention in "Five Pensioners" v. Peru, when it stated that the defendant State did not execute the judgments issued by the domestic courts for a long period of time. [FN51]

[FN51] Cf. "Five Pensioners" case, supra note 32, paras. 138 and 141.

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81. Likewise, when considering the violation of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the European Convention"), which embodies the right to a fair trial, the European Court established in Hornsby v. Greece, that:

"[…] that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. […] Execution of a

judgment given by any court must therefore be regarded as an integral part of the 'trial' […]"]. [FN52] (Emphasis added)

[FN52] Hornsby v. Greece judgment of 19 March 1997, ECHR, Reports of Judgments and Decisions 1997-II, para. 40; and Cf. Antonetto c. Italie, no. 15918/89, para. 27, CEDH, 20 juillet 2000; and Immobiliare Saffi v. Italy [GC], no. 22774/93, para. 63, ECHR, 1999-V.

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82. In light of the above, this Court considers that, in order to comply with the right to access to justice, it is not sufficient that a final ruling be delivered during the respective proceeding or appeal, [FN53] declaring rights and obligations, or provided protection to certain persons. It is also necessary that there are effective mechanisms to execute the decisions or judgments, so that the declared rights are protected effectively. The execution of such decisions and judgments should be considered an integral part of the right to access to justice, understood in its broadest sense, as also encompassing full compliance with the respective decision. The contrary would imply the denial of this right.

[FN53] Cf. "Five Pensioners" case, supra note 32, paras. 138 and 141; and Cantos case, supra note 31, para. 55.

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83. The above-mentioned considerations are applicable to international proceedings before the inter-American system for the protection of human rights. In the judgments on merits and reparations and costs, the Inter-American Court decides whether the State is internationally responsible and, when it is, orders the adoption of a series of measures of reparation to make the consequences of the violation cease, guarantee the violated rights, and repair the pecuniary and non-pecuniary damage produced by the violations. [FN54] As previously stated (supra paras. 61 and 62), the responsible States are obliged to comply with the provisions of the decisions of the Court and may not invoke provisions of domestic law in order not to execute them. If the responsible State does not execute the measures of reparations ordered by the Court at the domestic level, it is denying the right to access to international justice.

[FN54] Cf. Bulacio case, supra note 30, para. 72; Juan Humberto Sánchez case, supra note 31, paras. 149 and 150; and Las Palmeras case. Reparations, supra note 30, paras. 38 and 39.

D) LEGAL GROUNDS FOR MONITORING COMPLIANCE WITH THE DECISIONS OF THE COURT

84. With regard to the legal grounds for the competence of the Inter-American Court to monitor compliance with its decisions, it is necessary to consider the provisions of Articles 33, 6(1), 6(3) and 65 de the American Convention, and also those of Article 29(a); the provisions of

Article 30 of the Statute of the Court, and of Article 31(1) of the 1969 Vienna Convention on the Law of Treaties.

85. Article 33 of the Convention establishes that:

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

[…]
b. The Inter-American Court of Human Rights […]. (Emphasis added)

Likewise, Article 62(1) and 62(3) of the Convention stipulates that:

1. A State Party may, upon depositing its instrument of ratification or adherence to [the] Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of [the] Convention.
[…]
3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 65 of the Convention establishes that:

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Article 30 of the Statute of the Court states that:

The Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly,. It shall indicate those cases in which a state has failed to comply with the Court’s ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

86. The European Convention contains a different text with regard to the competence to monitor compliance with the judgments delivered by the European Court of Human Rights. Article 46(2) of this treaty establishes that:

The final judgment of the Court shall be transmitted to the Committee of Ministers, which will monitor its execution. [FN55]

[FN55] Within the framework of the European Convention on Human Rights, the provisions transcribed above, granting competence to the Committee of Ministers of the Council of Europe to monitor compliance with the judgments of the European Court, is currently being reconsidered, in the sense of authorizing this Court to intervene in that respect, and the way is being opened to the idea that the European Court should also play an active role in monitoring compliance with its judgments. (Cf. Ministerial Conference and Commemorative Ceremony of the 50th anniversary of the Convention, Control of the Execution of Judgments and Decisions under the European Convention of Human Rights, Rome 3-4 November 2000, Council of Europe, H/Conf (2000) 8; and European Commission for Democracy through Law (Venice Commission), Opinion on the Implementation of the Judgments of the European Court of Human Rights, Opinion No. 209/2002, adopted by the Venice Commission at its 53rd Plenary Session, Venice, 13-14 December 2002, Council of Europe, CDL-AD (2002) 34).

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87. Unlike the inter-American system for the protection of human rights, in the European system, the Committee of Ministers of the Council of Europe has adopted norms [FN56] that clearly establish the procedure that this body should use for monitoring compliance with the judgments of the European Court. Unlike the procedure in the inter-American protection system, the Committee of Ministers is the political body to which the responsible States submit their reports on the measures adopted to execute judgments.

[FN56] Cf. Council of Europe, Rules adopted by the Committee of Ministers for the Application of Article 46, paragraph 2, of the European Convention on Human Rights, approved on 10 January 2001 at the 736th meeting of the Ministers' Deputies.

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88. The American Convention does not establish a specific body responsible for monitoring compliance with the judgments delivered by the Court, as provided for in the European Convention. When the American Convention was drafted, the model adopted by the European Convention was followed as regards competent bodies and institutional mechanisms; however, it is clear that, when regulating monitoring compliance with the judgments of the Inter-American Court, it was not envisaged that the OAS General Assembly or the OAS Permanent Council would carry out a similar function to the Committee of Ministers in the European system.

89. The travaux préparatoires to the American Convention allow us to consult the wishes of the States, as regards monitoring compliance with the judgments of the Court, when they adopted this treaty. The draft convention [FN57] does not establish a provision similar to the actual Article 65. However, the Second Commission, responsible for studying and drafting the articles corresponding to the procedural part of the draft convention, [FN58] proposed the text of the actual Article 65 of the American Convention. In the Report on "Organs of Protection and General Provisions" of November 21, 1969, at the Inter-American Specialized Conference on Human Rights [FN59], the Second Commission indicated in its fifth session, held on November 17, 1969, that:

The delegations expressed their opinion that the Court should be granted a broad competence that would enable it to be an effective instrument for the jurisdictional protection of human rights. [FN60]

In this report, when explaining the wording of the provisions of the draft treaty corresponding to the Court, the Second Commission referred to the then draft of the actual Article 65 as follows:

Article 65, which is a new provision, establishes that the Court shall submit a report to the General Assembly of the Organization, which is contemplated in Article 52 of the Charter of the Organization, reformed by the Protocol of Buenos Aires.
But, the article also establishes the important concept that the Court must indicate the cases in which a State has not complied with its judgments, with the pertinent recommendations of the Court […]. [FN61]

[FN57] Draft Inter-American Convention on the Protection of Human Rights prepared by the Inter-American Commission on Human Rights and adopted as a "working document" by the Inter-American Specialized Conference on Human Rights, by a Resolution of the Council of the Organization of American States in the session held on October 2, 1968. Cf. OEA/Ser. K/XVI/1.2, Inter-American Specialized Conference on Human Rights, Proceedings and Documents, OEA Doc. 5, September 22, 1969, pp. 12-35.
[FN58] At the first plenary session of the Inter-American Specialized Conference on Human Rights, held on November 8, 1969, it was decided to create the Second Commission.
[FN59] The American Convention on Human Rights was adopted at the Inter-American Specialized Conference on Human Rights, held in San José, Costa Rica, from 7 to 22 November, de 1969.
[FN60] OEA/Ser. K/XVI/1.1, Doc. 71, November 21, 1969, p. 5.
[FN61] OEA/Ser. K/XVI/1.1, Doc. 71, November 21, 1969, p. 8.

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90. The Court considers that, when adopting the provisions of Article 65 of the Convention, the intention of the States was to grant the Court the authority to monitor compliance with its decisions, and that the Court should be responsible for informing the OAS General Assembly, through its annual report, of the cases in which the decisions of the Court had not been complied with, because it is not possible to apply Article 65 of the Convention unless the Court monitors compliance with its decisions.

91. To determine the scope of the provisions of Articles 33, 62(1), 62(3) and 65 of the American Convention, and also Article 30 of the Statute of the Court, and to comply adequately with the obligation to monitor compliance with its decisions, the Court has respected the interpretation guidelines established in the American Convention and in the 1969 Vienna Convention on the Law of Treaties, as well as taking into consideration the nature of the Convention and the superior common values which inspired it.

92. According to the provisions of Article 62(1) of the Convention, the Court has jurisdiction in all matters relating to the interpretation or application of the American Convention. In the

interests of greater clarity about the meaning of this provision, we should refer to the English version of this norm, which states that:

A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, ipso facto, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of [the] Convention. (Emphasis added)

93. From this, it is evident that, the matters relating to the application of the Convention encompass everything related to monitoring compliance with the judgments of the Court. Its obvious that, in the issues related with the application of the Convention, is included everything referring to the monitoring of the compliance of the judgments of the Court.

94. Article 31(1) of the 1969 Vienna Convention on the Law of Treaties states that:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

95. Moreover, Article 29(a) of the American Convention establishes that no provision of the Convention shall be interpreted as permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in the Convention or to restrict them to a greater extent than is provided for therein. An interpretation of the American Convention that did not allow any body to monitor compliance with judgments by the responsible States would run counter to the goal and purpose of this treaty, which is the effective protection of human rights, [FN62] and would deprive all the beneficiaries of the Convention of the guarantee of protection of those rights by the actions of its jurisdictional body, and the consequent execution of the latter's decisions. Allowing States to comply with the reparations ordered in the judgments without adequate monitoring would be equal to leaving the execution of the Court's decisions to their free will.

[FN62] Cf. Cantos case. Preliminary objections. Judgment of September 7, 2001. Series C No. 85, para. 37; Constantine et al. case. Preliminary objections, supra note 39, paras. 75 and 86; and Benjamin et al. case. Preliminary objections, supra note 39, para. 86.

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96. As the Court has indicated in the Constitutional Court and Ivcher Bronstein cases [FN63] the American Convention and other human rights treaties are inspired in superior common values (focused on the protection of the individual), are provided with specific monitoring mechanisms, are applied in accordance with the notion of collective guarantee, embody obligations of an essential objective character, and have a special nature distinguishing them from other treaties, which regulate reciprocal interests of States Parties.

[FN63] Cf. The Constitutional Court case. Competence, supra note 35, para. 41; and Ivcher Bronstein case. Competence, supra note 35, para. 42.

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97. In this respect, the International Court of Justice, in its Advisory Opinion on Reservations to the Convention for the Prevention and Punishment of the Crime of Genocide (1951), stated that "in this type of treaty, the contracting States do not have their own interests; they only have an overall common interest: to attain the purposes that are the raison d'etre of the Convention." [FN64]

[FN64] Cf. Reservations to the Convention on Genocide, Advisory Opinion: I.C.J. Reports 1951, p. 23.

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98. The European Court of Human Rights and the former European Commission on Human Rights, have also ruled similarly. In Austria v. Italy (1961), the European Commission stated that the obligations assumed by the States Parties to the European Convention on Human Rights "are essentially of an objective character, designed to protect the fundamental rights of human being from violations by the High Contracting Parties." [FN65] Similarly, in Ireland v. United Kingdom (1978), the European Court stated that:

[… u]nlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement'. [FN66]

Likewise, in Soering v. United Kingdom (1989), with regard to the European Convention, the European Court declared that "[i]n interpreting the Convention regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms […]. Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective […]." [FN67]

[FN65] European Commission of Human Rights, Austria vs. Italy, Decision as to the Admissibility of Application No. 788/60, European Yearbook of Human Rights, vol. 4, 1961, p. 140.
[FN66] Ireland v. the United Kingdom (Merits and just satisfaction), judgment of 18 January 1978, ECHR, Series A no. 25, p. 90, para. 239.
[FN67] Soering v. the United Kingdom (Merits and just satisfaction), judgment of 7 July 1989, ECHR, Series A no. 161, para. 87.

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99. This opinion coincides with the case law of the Court, which has stated in its Advisory Opinion OC-2/82 of September 24, 1982, entitled The Effect of Reservations on the Entry into Force of the American Convention on Human Rights, that:

[...] modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. [FN68]

[FN68] The Effect of Reservations on the Entry into Force of the American Convention on Human Rights. Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 29. Similarly cf. The Constitutional Court case. Competence, supra note 35, para. 42; Ivcher Bronstein case. Competence, supra note 35, para. 43; Constantine et al. case. Preliminary objections, supra note 39, para. 86; Benjamin et al. case. Preliminary objections, supra note 39, para. 86; and Hilaire case. Preliminary objections, supra note 39, para. 95.

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100. The scope of the provisions of Articles 33, 62(1), 62(3) and 65 of the American Convention, and also Article 30 of the Statute of the Court, has been interpreted by the Court in accordance with the purpose and goal of this treaty, which is the protection of human rights, [FN69] and, pursuant to the l'effet utile principle (supra paras. 66 and 67). The legal grounds for the authority of the Inter-American Court to supervise compliance with its decisions is to be found in the said articles. When the Court decides that there has been a violation of a right or freedom protected by the Convention, according to Article 63.1 of the Convention, it shall rule "that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party." In order to ensure that the State complies effectively with the obligation to ensure embodied in this provision of the convention, the Court must monitor full compliance with its decisions. Otherwise, they would be illusory.

[FN69] Supra note 62.

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101. In order to comply with the mandate established in these norms to monitor compliance with the commitment assumed by the States Parties to "comply with the judgment of the Court in any case to which they are parties" (Article 68(1) of the Convention) and, in particular, to inform the OAS General Assembly of the cases in which "a State has failed to comply with the Court's ruling", the Court must first know the degree of compliance with its decisions. To this end, the Court must monitor that the responsible States comply effectively with the reparations ordered by the Court, before advising the OAS General Assembly that they have failed to comply with a ruling.

102. Moreover, the Court's authority to monitor compliance with its judgments and the procedure adopted to this end, are also grounded in the constant and standard practice of the Court and in the resulting opinio juris communis of the States Parties to the Convention, with regard to whom the Court has issued various orders on compliance with judgment. The opinio juris communis means the expression of the universal juridical conscience [FN70] through the observance, by most of the members of the international community, of a determined practice because it is obligatory. [FN71] This opinio juris communis has been revealed because these States have shown a general and repeated attitude of accepting the monitoring function of the Court, which has been clearly and amply demonstrated by their presentation of the reports that the Court has asked for, and also their compliance with the decisions of the Court when giving them instructions or clarifying aspects on which there is a dispute between the parties regarding compliance with reparations. [FN72]

[FN70] Cf. Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, Separate Opinion of Judge A.A. Cançado Trindade, para. 81.

[FN71] Cf. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, paras. 71 and 73; North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, paras. 73, 74, 76, 77 and 78; and Haya de la Torre case, Order of January 3rd, 1951: I.C.J. Reports 1951, p. 131.

[FN72] Cf. inter alia, Velásquez Rodríguez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 10, 1996; Godínez Cruz case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 10, 1996; Gangaram Panday case. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 4, 1997; Aloeboetoe et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 5, 1997; Genie Lacayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of August 29, 1998; Neira Alegría et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of August 29, 1998; Gangaram Panday case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 1998; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 1999; Castillo Petruzzi et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 1999; El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 20, 2000; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 20, 2000; Castillo Paéz, Loayza Tamayo, Castillo Petruzzi et al., Ivcher Bronstein and the Constitutional Court cases. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 1, 2001; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 13, 2002; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002; Barrios Altos case. Compliance with judgment. Order of the Inter-

American Court of Human Rights of November 22, 2002; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Castillo Paéz case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002; Neira Alegría et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002; "The Last Temptation of Christ" case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 9, 2003; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; The "Street Children" case (Villagrán Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Cantoral Benavides case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Bámaca Velásquez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; The "White Van" case (Paniagua Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Castillo Páez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; The Constitutional Court case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Hilaire, Constantine and Benjamin et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003; and "The Last Temptation of Christ" case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003.

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103. Moreover, in all the cases before the Court, the Inter-American Commission and the victims or their legal representatives have accepted its monitoring function, have forwarded their comments on the reports submitted by the States to the Court, and have abided by the decisions of the Court regarding compliance with judgment. Thus, the activity of the Court and the conduct of both the States, and the Inter-American Commission and the victims or their legal representatives, have been complementary in relation to monitoring compliance with judgments,

so that the Court has exercised the function of carrying out this monitoring and, in turn, the States, the Inter-American Commission and the victims or their legal representatives have respected the decisions issued by the Court in the exercise of this supervisory function.

104. Contrary to what Panama has affirmed (supra para. 54(e)), as regards the lapse of time required in order to consider that constant practice exists, this Court considers that the important point is that the practice is observed without interruption and constantly, and that it is not essential that the conduct should be practiced over a specific period of time. This is how it has been understood by international legal writings and case law. [FN73]International case law has even recognized the existence of customary norms that were developed over very short periods. [FN74]

[FN73] Cf. North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, paras. 73 and 74; and Free City of Danzig and International Labour Organization, Advisory Opinion, 1930, P.C.I.J., Collection of Advisory Opinions, Series B.-No. 18, pp. 12-13.
[FN74] Cf. Free City of Danzig and International Labour Organization, Advisory Opinion, 1930, P.C.I.J., Collection of Advisory Opinions, Series B.-No. 18, pp. 12-13.

E) PROCEDURE APPLIED TO MONITORING COMPLIANCE WITH THE DECISIONS OF THE COURT

105. Neither the American Convention, nor the Statute and Rules of Procedure of the Court indicate a procedure that should be observed for monitoring compliance with the judgments delivered by the Court, or with regard to other matters, such as urgent and provisional measures. The Court has carried out this monitoring using a written procedure, which consists in the responsible State presenting the reports that the Court requests, and the Inter-American Commission and the victims or their legal representatives forwarding comments on these reports. Likewise, with regard to the stage of monitoring compliance with judgments, the Court has adopted the constant practice of issuing orders or sending communications to the responsible State in order, inter alia, to express its concern in relation to aspects of the judgment pending compliance, to urge the State to comply with the Court's decisions, [FN75] to request detailed information on the measures taken to comply with specific measures of reparation, [FN76] and to provide instructions for compliance, as well as to clarify aspects relating to execution and implementation of the reparations about which there is a dispute between the parties. [FN77]

[FN75] Cf. inter alia, El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002, sixth considering paragraph and second operative paragraph; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, eighth considering paragraph and second operative paragraph; and Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002, sixth considering paragraph, and first and second operative paragraphs.

[FN76] Cf. inter alia, “The Last Temptation of Christ” case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002, tenth considering paragraph and second operative paragraph; Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, fifth considering paragraph and first operative paragraph; Neira Alegría et al. case. Compliance with judgment. Order of November 28, 2002, ninth considering paragraph and second operative paragraph; and Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001, having seen paragraphs 5 and 6, and operative paragraphs.
[FN77] Cf. Benavides Cevallos case. Compliance with judgment. Order of September 9, 2003, sixth and seventh considering paragraphs and first operative paragraph; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001, having seen paragraphs 4, 5 and 7 and operative paragraphs; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 13, 2002, having seen paragraph 4, second considering paragraph and second operative paragraph; and Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001, having seen paragraph 3, second considering paragraph and first operative paragraph.
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106. This written procedure allows the Courts to monitor compliance with its judgments and guarantees respect for the adversarial principle, since both the State and the Inter-American Commission and the victims or their legal representatives are able to provide the Court with all the information they deem relevant concerning compliance with the Court’s decisions. Hence, the Court does not issue an order or, through another act, consider the status of compliance with its judgment without first examining the reports presented by the State and the respective comments forwarded by the Commission and the victims or their legal representatives. However, it should be explained that, although the stage of monitoring compliance with judgment has been developed through this written procedure and a public hearing has never been convened during this stage, if, in the future, the Court considers it appropriate and necessary, it can convene the parties to a public hearing to listen to the arguments on compliance with the judgment. [FN78] There is no provision in the Convention or in the Statute and the Rules of Procedure of the Court that requires the latter to hold public hearings to decide on the merits of a case and order reparations, so it may be inferred that neither is it necessary to hold hearings to consider compliance with judgments, unless the Court considers it essential.

[FN78] In the El Amparo case, in its Order of November 20, 2000, the Court indicated that “it considered it necessary” to convene the parties to a public hearing on compliance with the judgment. Cf. El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 20, 2000, second, fourth and fifth considering paragraphs.
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107. Since it issued its first judgments on reparations in 1989, the Court has monitored compliance with the judgments delivered in the contentious cases through this written procedure constantly and without interruption – even in the cases in which the defendant States

acknowledged their international responsibility – and, to this end, has issued communications and orders on compliance with its judgments in all the cases, [FN79] in order to ensure the full and effective implementation of its decisions.

[FN79] Cf. inter alia, Velásquez Rodríguez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 10, 1996; Godínez Cruz case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 10, 1996; Gangaram Panday case. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 4, 1997; Aloeboetoe et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 5, 1997; Genie Lacayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of August 29, 1998; Neira Alegría et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of August 29, 1998; Gangaram Panday case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 1998; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 1999; Castillo Petruzzi et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 1999; El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 20, 2000; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 20, 2000; Castillo Paéz, Loayza Tamayo, Castillo Petruzzi et al., Ivcher Bronstein and the Constitutional Court cases. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 1, 2001; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 13, 2002; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 21, 2002; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002; Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; Castillo Paéz case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2002; El Amparo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002; Neira Alegría et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002; "The Last Temptation of Christ" case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2002; Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 6,

2003; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of September 9, 2003; Suárez Rosero case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Garrido and Baigorria case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Blake case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Benavides Cevallos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; The "Street Children" case (Villagrán Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Loayza Tamayo case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Cantoral Benavides case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Bámaca Velásquez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; The "White Van" case (Paniagua Morales et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Castillo Páez case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; The Constitutional Court case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Hilaire, Constantine and Benjamin et al. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 27, 2003; Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003; and "The Last Temptation of Christ" case (Olmedo Bustos et al.). Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003.

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108. When monitoring compliance in one case, [FN80] the Court authorized the parties to make the payments of compensation to beneficiaries who were minors through an investment in term deposit certificates, instead of setting up a trust fund as ordered in the judgment on reparations, because the investment in term deposit certificates was the most favorable for the minor beneficiaries. The Court even called upon the State to take "the necessary measures so that, in future, the interests of the minors w[ould] not be affected by inflation." In another case, [FN81] in order to comply with the judgment on reparations delivered by the Court, the State asked its opinion on whether the administrative and financial expenses arising from the trust funds ordered in the said judgment as a form of payment for the minor beneficiaries could be deducted, to the detriment of the capital deposited and of the interests of the said beneficiaries. In this respect, the Court responded that the said expenses must be paid by the State, which was not allowed to deduct any percentage of the compensation due to the minors, to the detriment of the capital deposited in trust. [FN82]

[FN80] Cf. Caballero Delgado and Santana case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of 29 de enero de 1997. Series C No. 31, para. 61 and first operative paragraph; Caballero Delgado and Santana case. Compliance with judgment. Order of the Inter-American Court of Human Rights of December 4, 2001, having seen paragraph 3; and Note CDH-10.319/643 de January 20, 1999.

[FN81] Cf. Barrios Altos case. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of November 30, 2001. Series C No. 87, para. 35 and second operative paragraph in fine; and Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, having seen paragraph 15.
[FN82] Barrios Altos case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2003, seventh to thirteenth considering paragraphs and second operative paragraph.
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109. Lastly, another example that reveals the acceptance by the States of the competence of the Court to monitor compliance with its decisions occurred when a State consulted the Court about whether filing the investigation into the facts that constituted the matter of the case at the domestic level relieved it of the responsibility established in the Court's judgment. [FN83] In its reply to this State communication, the Court decided that the State must "continue to investigate the facts and prosecute and punish those responsible; consequently, reopening the respective judicial proceeding." [FN84]

[FN83] Cf. Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 13, 2002, having seen paragraph 4.
[FN84] Cf. Durand and Ugarte case. Compliance with judgment. Order of the Inter-American Court of Human Rights of June 13, 2002, second operative paragraph.

F) POSITION OF THE OAS GENERAL ASSEMBLY ON MONITORING COMPLIANCE WITH THE DECISIONS OF THE COURT

110. Added to the above, it should be emphasized that, as of the very first cases heard by the Court, when presenting its annual report, the Court has informed the OAS General Assembly of the procedure followed to monitor compliance with judgments and their compliance status. [FN85] If monitoring compliance with the judgments of the Court were the "exclusive [competence] of the General Assembly of the Organization of American States" (supra para. 54(a)), this political body would already have ruled in this respect, and this has not happened. It is not possible to suppose that, since 1989, the Court has been exercising a function that belongs to the maximum political body of the OAS and that the latter, knowing this, has allowed it.

[FN85] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1990, OEA/Ser.L/V/III.23 doc.12, pp. 15 and 16; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1991, OEA/Ser.L/V/III.25 doc.7, p. 9; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1994, OEA/Ser.L/V/III.31 doc.9, pp. 18 and 19; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1996, OEA/Ser.L/V/III.35 doc.4, p. 27; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1997, OEA/Ser.L/V/III.39 doc.5, pp. 29 and 30; Inter-American Court of Human Rights. Informe Anual de la Corte

Interamericana de Derechos Humanos, 1998, OEA/Ser.L/V/III.43 Doc.11, pp. 32-35; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1999, OEA/Ser.L/V/III.47 Doc.6, pp. 37-45; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 2000, OEA/Ser.L/V/III.50 Doc.4, pp. 39-44; Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 2001, OEA/Ser.L/V/III.54 Doc.4, pp. 46-55; and Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 2002, OEA/Ser.L/V/III.57 Doc.5, pp. 21, 25, 26, 32, 35, 45 and 46.

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111. A clear example of the position of the OAS General Assembly was its reaction when, in the 1994 Annual Report, [FN86] the Court stated that it had not received any official communication from the State regarding compliance with the judgments in the Aloeboetoe et al. and Gangaram Panday cases, and requested it to urge the State to provide information on the status of compliance with the judgment on reparations in the Aloeboetoe et al. case and comply with the judgment of January 21, 1994, in the Gangaram Panday case. As a result of these requests, the OAS General Assembly adopted the following recommendation with regard to this Annual Report of the Court:

[…]
3. To urge the Government […] to inform the Inter-American Court of Human Rights about compliance with the judgments in the Aloeboetoe et al. and Gangaram Panday cases.
[…] [FN87].

[FN86] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1994, OEA/Ser.L/V/III.31 doc.9, pp. 18 and 19.
[FN87] Cf. AG/RES.1330 (XXV-O/95) of June 9, 1995; and Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1995, OEA/Ser.L/V/III.33 doc.4, p. 15.
[FN88] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1990, OEA/Ser.L/V/III.23 doc.12, pp. 15 and 16.

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112. Previously, the Court had applied Article 65 of the Convention in the Velásquez Rodríguez and Godínez Cruz cases. [FN88] Subsequently, it applied this norm in the Neira Alegría et al., [FN89] Castillo Páez, Loayza Tamayo and Castillo Petruzzi et al. cases. [FN90] With regard to provisional measures, the Court also applied Article 65 of the Convention in the James et al. case. [FN91]

[FN89] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1997, OEA/Ser.L/V/III.39 doc.5, p. 30.
[FN90] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1999, OEA/Ser.L/V/III.47 Doc.6, p. 45; and Inter-American Court of

Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 2000, OEA/Ser.L/V/III.50 Doc.4, pp. 41, 42, 421, 422 and 423.
[FN91] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1998, OEA/Ser.L/V/III.43 Doc.11, pp. 35-37; and Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1999, OEA/Ser.L/V/III.47 Doc.6, p. 41.
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113. More recently, the Court delivered two judgments on competence in the Ivcher Bronstein and the Constitutional Court cases, [FN92] faced with the attempted withdrawal, with immediate effect, from the acceptance of the contentious jurisdiction of the Inter-American Court by the State of Peru. In addition to issuing these two judgments on competence, the Court, in a communication addressed to the OAS Secretary-General, César Gaviria Trujillo, on September 28, 1999, stated that:

[…]
The step taken by Peru sets a serious precedent that directly affects the protection system established by the American Convention on Human Rights. Since this Court is entrusted with the defense of the totality of the system, we respectfully request that, as the depositary of the Convention, you take the measures that you consider appropriate in view of the conduct of the Peruvian State. [FN93]

Therefore, it is 1999 Annual Report, the Court exercised the authority established in Article 65 of the Convention to inform the OAS General Assembly so that it would urge the State of Peru to comply with all the judgments delivered by the Court. [FN94]

In Notes CDH-S/768 and CDH-S/788 of November 12 and 24, 2000, respectively, addressed to the OAS Secretary-General, César Gaviria Trujillo, the Court once again referred to the non-compliance with its decisions by Peru. [FN95] The OAS General Assembly ruled in this respect when it adopted the Annual Report of the Court for 2000 in Resolution AG/RES. 1827 (XXXI-O/01). [FN96]

[FN92] Ivcher Bronstein case. Competence, supra note 35; and The Constitutional Court case. Competence, supra note 35.
[FN93] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1999, OEA/Ser.L/V/III.47 Doc.6, appendix XL, pp. 793 and 794.
[FN94] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 1999, OEA/Ser.L/V/III.47 Doc.6, pp. 43-45.
[FN95] Cf. Inter-American Court of Human Rights. Informe Anual de la Corte Interamericana de Derechos Humanos, 2000, OEA/Ser.L/V/III.50 Doc.4, p. 34 and appendix XXXIV (pp. 421-423).
In Legislative Resolution No. 27401 of January 18, 2001, the State “re-established fully” the contentious jurisdiction of the Inter-American Court and acknowledged the valid and executable nature of the judgments and orders issued by the Court.
[FN96] General Assembly resolution AG/RES. 1827 (XXXI-O/01) resolved:

[…]
2. To acknowledge with satisfaction that on January 31, 2001, the Government of Peru deposited with the OAS General Secretariat an instrument by which it reaffirmed that the recognition of the contentious jurisdiction of the Inter-American Court of Human Rights issued by Peru on October 20, 1980, was fully in effect and binding in all senses on the Peruvian state, and that the effectiveness of that declaration of recognition should be understood to have been uninterrupted since its deposit with the OAS General Secretariat on January 21, 1981.
[…]
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114. Consequently, the OAS General Assembly's position concerning monitoring compliance with the judgments of the Court has been to consider that this supervision falls under the authority of the Court and that the latter should indicate the cases in which a State has not complied with its judgments in its annual report.

115. Thus, in the inter-American system, unlike the European system (supra paras. 86 and 87), the OAS General Assembly itself has considered that the State reports on compliance with the Court's decisions should be submitted to the Court itself (supra para. 111).

116. Lastly, this Court considers it is important to refer to the resolutions adopted by the OAS General Assembly in 2000, 2001, 2002 and 2003, in which this body reiterated "that the judgments of the Inter-American Court of Human Rights are final and may not be appealed and that the States Parties to the Convention undertake to comply with the rulings of the Court in all cases to which they are party." [FN97]

[FN97] AG/RES. 1918 (XXXIII-O/03) of June 10, 2003, Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights, third operative paragraph; and cf. AG/RES. 1850 (XXXII-O/02) of June 4, 2002, Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights, second operative paragraph; AG/RES. 1827 (XXXI-O/01) of June 5, 2001, Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights, fourth operative paragraph; and AG/RES. 1716 (XXX-O/00) of June 5, 2000, Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights, second operative paragraph.

G) ACCEPTANCE BY THE STATE OF THE AUTHORITY OF THE COURT TO MONITOR COMPLIANCE WITH ITS DECISIONS

117. In the tenth operative paragraph of its judgment of February 2, 2001, the Court "decide[d] to monitor compliance with [the] judgment." On May 11, June 6, June 27 and September 3, 2001 and on February 20 and May 10, 2002, the State presented various briefs (supra para. 4), in which it provided information on the measures taken to execute the judgment delivered by the Court. In these briefs, the State did not question the Court's competence to monitor compliance with the judgment of February 2, 2001.

118. Subsequently, on June 21, 2002, the Court issued the first order on compliance with judgment in this case, requesting the State to present to the Court by August 15, 2002, at the latest, a detailed report on compliance with the reparations ordered in the sixth, seventh and ninth operative paragraphs of the judgment of February 2, 2001 (supra para. 12). On August 16, 2002, the State submitted the report on compliance with judgment requested by the Court in its Order of June 21, 2002 (supra para. 13). In this report, the State did not question the competence of the Court to monitor compliance with the judgment. Added to this, on June 28, September 23 and November 8, 2002 (supra para. 14), Panama presented information on compliance with the sixth and ninth operative paragraphs of the judgment of February 2, 2001, and in these briefs it abstained from any questioning of the competence of the Court to monitor compliance with the judgment.

119. On November 22, 2002, the Court issued a second order on compliance with judgment (supra para. 21), based on the examination of the information presented by the State and the comments submitted by the victims or their legal representatives and by the Inter-American Commission. In this order, the Court confirmed that the State had complied with the obligation stipulated in the ninth operative paragraph of the judgment. It also indicated certain general guidelines in order to resolve issues relating to the execution of the measures of reparation ordered in the judgment, with regard to which there was a dispute between the parties, and requested the State to present another report by June 30, 2003, at the latest, on the progress made in complying with the reparations so that the Court would have information to assess the degree of compliance with the judgment of February 2, 2001. Among the general guidelines for the execution of the measures of reparation, the Court referred to the determination of labor rights by the State in order to comply with the sixth operative paragraph and to the procedure for the execution of the provisions of the seventh operative paragraph of this judgment, which should be carried out "observing the guarantees of due process of law and according to the legislation applicable to each victim," as had been ordered in the judgment of February 2, 2001. [FN98]

[FN98] Cf. Baena Ricardo et al. case. Judgment of February 2, 2001. Series C No. 72, paras. 125, 204, 205 and sixth and seventh operative paragraphs; and Baena Ricardo et al. case. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, sixth, seventh and ninth considering paragraphs, and first and second operative paragraphs.

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120. It was following this second order that the State, in a brief of February 27, 2003, (supra para. 26), first questioned the Court's competence to monitor compliance with its judgments. In this brief, Panama expressed its disagreement with the decisions of the Court in the Order of November 22, 2002, and indicated that the stage of monitoring compliance with judgment was a "post-judgment" stage, that "was not included in the norms that regulate the jurisdiction and procedure of the Court" and that, by issuing that order, the Court had interpreted its judgment of February 2, 2001. Similarly, it presented a brief on July 30, 2003, (supra paras. 41 and 54), in which it once again questioned the Court's competence to monitor compliance with its judgments.

121. The Court observes that the State first questioned its competence to monitor compliance with its judgments more than two years after the Court had delivered the judgment on merits and reparations and costs – in which it stated that it would monitor compliance with the judgment. Since that judgment was rendered, Panama has presented 14 briefs on compliance with that decision to the Court (supra paras. 4, 13, 14, 26, 35, 39 and 41), in which it has kept the Court informed about the different measures taken in order to comply with this judgment of the Court. Likewise, the State has manifested "its intention to comply with the judgment of February 2, 2001." After the Court had issued a second order, in which it referred to the general parameters that the State should respect when complying with the reparations ordered in this case, Panama questioned the Court's competence to monitor compliance with its decisions. However, it in no way questioned the first order issued by the Court.

122. Even though Panama submitted two briefs (supra paras. 26, 41, 53 and 54) in which it contested the Court's competence to monitor compliance with its judgments, in these same briefs, the State informed the Court about different measures taken to comply with the decisions of the Court.

123. Besides presenting various reports in the context of the unregulated monitoring procedure, the State requested three meeting between its representatives and members of the Court, which the latter agreed to and delegated its President and Vice President or the Secretariat to attend. These meetings were held at the seat of the Court, as follows:

a) On February 25, 2002, at 8:30 a.m., a meeting was held between the President and Vice President of the Court; two Secretariat officials, and the following representatives of the State: Ambassador Virginia Burgoa Solanas, Embassy of Panama in Costa Rica; Ambassador Alfredo Castillero Hoyos, Director General of Foreign Policy of the Ministry for Foreign Affairs of Panama; Jaime Moreno, Vice Minister of Labor of Panama; Eduardo Quiroz, Vice Minister of Economy and Finance of Panama; Luis Enrique Martínez Cruz, Counselor of the Embassy of Panama in Costa Rica, and Doris Sosa de González, Attaché of the Embassy of Panama in Costa Rica. On this occasion, the representatives of the State manifested, inter alia, their willingness to comply with the judgment issued by the Court and provided information on the measures taken to comply with the judgment. At the request of the President, the Secretariat gave the State officials a detailed explanation of the procedure applied to monitor compliance with the Court's decisions;
b) On June 24, 2002, at 11:35 a.m., three Secretariat officials met with the following representatives of the State: Ambassador Virginia Burgoa Solanas, Embassy of Panama in Costa Rica, and Luis Enrique Martínez Cruz, Counselor of the Embassy of Panama in Costa Rica. On that occasion, the State officials consulted the Secretariat about how to comply with the judgment in the instant case. The Secretariat officials told them that it could not "give an opinion on the State's compliance with the judgment" of February 2, 2001; and
c) On February 27, 2003, a delegation of the State visited the Court to deliver a brief (supra paras. 26 and 53) on compliance with the judgment of February 2, 2001.

124. Furthermore, Panama not only complied with its obligation to present reports to the Court and carry out acts that reveal its acknowledgment of the Court's monitoring function, but also it never mentioned its disagreement about the meaning or scope of the judgment delivered in this

case; specifically with regard to the Court's competence to monitor compliance with this judgment and, accordingly, it abstained from filing a request for interpretation of judgment.

125. To this end, it should be recalled that according to Article 67 of the Convention:

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

And in paragraph 213 of the judgment of February 2, 2001, the Court "reserve[d] the power to supervise the overall compliance with th[e] judgment", and in the tenth operative paragraph of this judgment "it decided[d] that it [would] supervise compliance with th[e] judgment [...]."

126. After examining the measures taken by the State in its different briefs, the Court concludes the following: a) although it had the authority to request an interpretation of the judgment, owing to disagreement on the meaning and scope of the provisions relating to the Court's competence to monitor compliance with the judgment, the State did not use the procedural measures established in Article 67 of the Convention; b) the State presented numerous reports on compliance with the judgment; c) the State did not contest the first order issued by the Court on compliance with the judgment of June 21, 2002 (supra para. 12); d) the constant conduct of the State implied a recognition of the Court's authority to monitor compliance with the judgment on merits and reparations and costs delivered in this case; e) Panama only contested the Court's authority to monitor compliance with its judgments after the Court issued a second order on compliance with judgment on November 22, 2002. It is worth emphasizing that this occurred two years after delivery of the judgment on merits and reparations and costs in the case; and f) despite questioning the Court's monitoring function, the State has continued to provide the Court with information on the measures taken to comply with its judgment, which reveals its recognition of the Court's competence to monitor compliance with its decisions.

127. In conclusion, the Court considers that there is no doubt that the State's conduct reveals that it recognized the Court's competence to monitor compliance with its decisions, and, in consequence, it has behaved thus during almost all the monitoring procedure.

IV. CONCLUSIONS WITH REGARD TO MONITORING COMPLIANCE WITH THE DECISIONS OF THE COURT

128. The Court, like any body with jurisdictional functions, has the authority, inherent in its attributions, to determine the scope of its own competence, and also of its orders and judgments, and compliance with the latter cannot be left to the discretion of the parties, because it would be inadmissible to subordinate the mechanism established in the American Convention to restrictions that make the Court's function and, consequently, that of the human rights protection system embodied in the Convention inoperable. [FN99]

[FN99] Cf. Luis Uzcátegui case. Provisional Measures. Order of the Inter-American Court of Human Rights of February 20, 2003, thirteenth considering paragraph; Hilaire, Constantine and Benjamin et al. case, supra note 39, para. 19; Constantine et al. case. Preliminary objections, supra note 39, para. 73; Benjamin et al. case. Preliminary objections, supra note 39, para. 73; and Hilaire case. Preliminary objections, supra note 39, para. 82.
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129. Monitoring compliance with judgments is one of the elements of jurisdiction. The effectiveness of the judgments depends on compliance with them.

130. Likewise, compliance with the decisions and judgments should be considered an integral part of the right of access to justice, understood it is broadest sense.The contrary would presume the very denial of this right. If the responsible State does not execute the measures of reparation ordered by the Court at the national level, this would deny the right of access to international justice.

131. The Court has the authority inherent in its jurisdictional function to monitor compliance with its decisions. The States undertake to comply with "the judgment of the Court in any case to which they are parties," according to Article 68(1) of the Convention. To this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.

132. The Court has the authority inherent in its jurisdictional function to issue, at the request of a party or motu proprio, instructions for the compliance with and implementation of the measures of reparation that it has ordered, so as to comply effectively with the function of supervising genuine compliance with its decisions. The decisions issued by the Court in the procedure for monitoring compliance relate directly to the reparations ordered by the Court, so that they do not modify its judgments, but clarify their scope in light of the State's conduct, and try to ensure that compliance and implementation of the reparations is carried out as indicated in the said decisions and so as to best protect human rights.

133. The legal grounds for the competence of the Inter-American Court to monitor compliance with its decisions are established in Articles 33, 62(1), 62(3) and 65 of the Convention, and also in Article 30 of the Statute of the Court. The Court must exercise the authority that is inherent and non-discretional in its attributions to monitor compliance with its decisions, in order to comply with the mandate established in the said norms of the American Convention, specifically in order to comply with the provisions of Article 65 of the Convention, in order to inform the General Assembly when a State fails to comply with its decisions.

134. Monitoring compliance with the orders of the Court implies, first, that the Court requests information from the State on the activities carried out to ensure this compliance, and also to receive the comments of the Commission and the victims or their legal representatives. When the Court has this information, it can assess whether its decisions have been complied with, guide the corresponding actions of the State, and comply with its obligation to inform the General Assembly in the terms of Article 65 of the Convention.

135. The position of the OAS General Assembly on the monitoring of compliance with the judgments of the Court has been to consider that this monitoring is a function of the Court itself.

136. With regard to the instant case, this Court considers that the three orders on compliance with judgment (supra paras. 12, 21 and 37) were issued within its sphere of competence to monitor compliance with the judgment of February 2, 2001, in order to obtain information that would allow it to determine the degree of compliance with this judgment and to indicate certain general guidelines that would allow resolving matters relating to execution of the measures of reparation ordered in this judgment, regarding which there was a dispute between the parties.

137. The conduct of the Panamanian State implies recognition of the Court's authority to monitor compliance with its decisions, and the objection that the State now makes to this authority, to the detriment of the general principle of legal certainty, is inadmissible. Furthermore, the States Parties to the Convention with regard to whom the Court has issued orders on compliance with judgment have established an opinio juris communis by exhibiting a general and repeated attitude of acceptance of the Court's monitoring function (supra para. 102).

138. For the above reasons, this Court has the authority to continue monitoring full compliance with the judgment of February 2, 2001, in the Baena Ricardo et al. case.

V. OPERATIVE PARAGRAPHS

139. Therefore,

THE COURT

DECLARES

unanimously,

1. That the Inter-American Court of Human Rights is competence to monitor compliance with its decisions.
2. That, in the exercise of its competence to monitor compliance with its decisions, the Inter-American Court of Human Rights is authorized to request the responsible States to submit reports on the steps they have taken to implement the measures of reparation ordered by the Court, to assess the said reports, and to issue instructions and orders on compliance with its judgments.

AND DECIDES

unanimously,

3. To reject as inadmissible the State's questioning of the competence of the Court to monitor compliance with its judgments.
4. To continue monitoring full compliance with the judgment of February 2, 2001, in the Baena Ricardo et al. case.

5. To notify this judgment to the State, the Inter-American Commission on Human Rights and the victims or their legal representatives.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez
Hernán Salgado-Pesantes
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary