

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 28, 2003**

“THE LAST TEMPTATION OF CHRIST” CASE (OLMEDO BUSTOS *ET AL.*)

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits and reparations delivered by the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) in “The Last Temptation of Christ” case on February 5, 2001, in which the Court decided:

unanimously,

1. [...] that the State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes.

2. [...] that the State did not violate the right to freedom of conscience and religion embodied in Article 12 of the American Convention on Human Rights, to the detriment of Juan Pablo Olmedo Bustos, Ciro Colombara López, Claudio Márquez Vidal, Alex Muñoz Wilson, Matías Insunza Tagle and Hernán Aguirre Fuentes.

3. [...] that the State failed to comply with the general obligations of Article 1(1) and 2 of the American Convention on Human Rights in relation to the violation of the right to freedom of thought and expression indicated in decision 1 of this judgment.

4. [...] that the State must amend its domestic law, within a reasonable period, in order to eliminate prior censorship to allow exhibition of the film “The Last Temptation of Christ”, and must provide a report on the measures taken in that respect to the Inter-American Court of Human Rights, with six months of the notification of this judgment.

5. [...] that, the State must pay the amount of US\$4.290 (four thousand two hundred and ninety United States dollars), as reimbursement of the expenses arising from the steps taken by the victims and their representatives in the domestic proceedings and in the international proceeding before the inter-American protection system. This amount to be paid through the Inter-American Commission on Human Rights.

6. [...] that it [would] monitor that this judgment [was] complied with and only then [would] it close the case.

2. The first report of the State of Chile (hereinafter “the State” or “Chile”) of August 7, 2001, in which it described the measures adopted to comply with the Court’s decisions in its judgment, and indicated that “the plenary session of Congress [had adopted] the draft constitutional reform designed to establish the right to freedom of artistic creation and to eliminate cinematographic censorship.” Chile also advised that “the Executive submitted to the National Congress a [...] draft law on classification of cinematographic production, [...] [which was] undergoing the first constitutional steps,” and that the “Cinematographic Classification Council (CCC) ha[d] started to reclassify some previously rejected cinematographic productions so as to pave the way for their public exhibition.” The original of this report and its attachments was received by the Secretariat on August 24, 2001.

3. The brief of October 12, 2001, in which the victims and their representatives

presented their comments on the State's first report. In this respect, they indicated that the State had not amended its domestic laws and had not complied by eliminating prior censorship in order to allow exhibition of the film "The Last Temptation of Christ." They also stated that "[i]n view of the gravity of non-compliance with the judgment by the State of Chile [...] and to avoid aggravating international responsibility and another fundamental rights violation by the Chilean Legislature relating to the impaired rights," they requested the Court to adopt provisional measures.

4. The brief with comments by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") of October 15, 2001, in which it requested the Court: to declare that the State had not adopted the necessary measures to amend its domestic laws; to remind the State of its obligation to do so; to request the State to provide information in this respect, and to order it to allow exhibition of the film "The Last Temptation of Christ."

5. Note CDH-11,803-137 of October 30, 2001, in which the Secretariat of the Court (hereinafter "the Secretariat"), on the instructions of the President of the Court (hereinafter "the President"), informed the victims and their representatives, with regard to the request for provisional measures (*supra* third having seen paragraph), that "the President of the Court [,] having consulted all the judges, consider[ed] that, in addition to not being in the presence of a case of extreme gravity and urgency and of irreparable damage (Article 63(2) of the American Convention on Human Rights), this request [was] not a matter for provisional measures but [formed] part of compliance with the judgment on merits and reparations [...]"

6. The brief of the State of November 14, 2001, in which it reported "on progress concerning the measures adopted by the Chilean Government in order to comply with the judgment of the Court." In this respect, it indicated that "on August 25, 2001, the constitutional reform eliminating cinematographic censorship and substituting it by a system of classification for the exhibition of cinematographic productions, to be regulated by law, was published in the Official Gazette."

7. Note CDH-11,803/144 of December 6, 2001, in which the Secretariat, on the instructions of the whole Court, requested the State to indicate in its second report on compliance, whether its domestic laws had been amended in order to eliminate prior censorship so as to allow exhibition of the film "The Last Temptation of Christ."

8. The second report of the State of January 16, 2002, in which it referred to the measures taken to reform the Chilean Constitution so as to establish the right to freedom of artistic creation and to eliminate cinematographic censorship, and indicated that "it [would] take all pertinent steps to ensure[,], using legal and constitutional means, that the draft law on Cinematographic Classification becomes law as soon as possible [...], without this signifying interference in the activities of any other power of the State, such as the Legislature[,], thereby guaranteeing appropriate independence between the two Powers."

9. The brief of February 15, 2002, and is attachment, in which the Commission presented its comments on the State's second report. In this respect, it requested the Court: to declare that the State had not complied with the judgment of February 5, 2001; to remind the State of its obligation to amend its domestic laws; to request Chile to present information on the measures taken to that effect, and to allow exhibition of the film "The Last Temptation of Christ."

10. The third report of the State of February 22, 2002, in which it referred to the measures adopted to comply with the judgment of February 5, 2001, among which, it mentioned: the "constitutional reform ending prior censorship," the "draft law on Classification of Cinematographic Production, derogating [...] Decree Law No. 679 of 1974," and the reclassification and immediate exhibition of the film "The Last Temptation of Christ."

11. The brief of February 27, 2002, in which the victims presented their comments on the State's third report. In this respect, they considered that "none of the terms of the fourth operative paragraph of the judgment had been complied with[,] cinematographic censorship ha[d] not been eliminated, exhibition of the film "The Last Temptation of Christ" ha[d] not been permitted and [...] [t]he law had not been amended in order to achieve these objectives, and it was evident that a reasonable period for achieving [them] had elapsed some time previously."

12. The brief of April 9, 2002, of Juan Pablo Bustos, victim in this case, in which he stated that "the State of Chile has made no substantial progress" to comply with the judgment.

13. The brief of April 11, 2002, in which the Commission presented its comments on the State's third report (*supra* tenth having seen paragraph). In this respect, it indicated that "there ha[d] been no progress in compliance with the terms of the fourth operative paragraph of the judgment" and "that the censorship preventing exhibition of the film "The Last Temptation of Christ" ha[d] not been lifted, and the necessary amendments to the law to eliminate cinematographic censorship in the Republic of Chile ha[d] not entered into force."

14. The fourth report of the State of August 20, 2002, in which it declared that the "draft law on Classification of Cinematographic Production [...] was adopted by the Senate on July 10, 2002, and must now be submitted to the Chamber of Deputies so that they [can] decide whether to adopt it [...]".

15. The brief of September 24, 2002, and its attachment, in which the Commission presented its comments on the State's fourth report. In this respect, it indicated that a year and a half had elapsed since the judgment of the Court, and the State had not adopted the necessary legislative measures to comply with the fourth operative paragraph of this judgment.

16. The brief of September 24, 2002, and its attachment, in which the victims presented their comments on the State's fourth report. In this respect, they indicated that the State had not complied with the fourth operative paragraph of the judgment delivered by the Court (*supra* first having seen paragraph) regarding the obligation to "amend its domestic law, within a reasonable period, in order to eliminate prior censorship so as to allow exhibition of the film "The Last Temptation of Christ"[...]." Likewise, they indicated that the Executive had not attended to requests to allow exhibition of the film and that "the excessive delay in processing the draft law also entail[ed] flagrant non-compliance with the Court's decisions and aggravate[d] the damage already suffered by the victims and petitioners in this case, depriving them of effective and timely protection of their rights."

17. The documentation presented by the victims on October 21, 2002, specifically official documents Nos. 3909 and 3601 of the Chamber of Deputies and official

document No. 20271 of the Senate. These documents contain the legislative reforms related to prior censorship.

18. The Order of the Court of November 28, 2002, in which, among other matters, it decided:

That the State ha[d] the obligation to take all necessary measures to give effect to and comply promptly with the judgment of February 5, 2001, delivered by the Inter-American Court of Human Rights in "*The Last Temptation of Christ*" case, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
[...]

19. The fifth report of the State of March 19, 2003, in which it declared that "on July 10, 2001, the National Congress adopted the draft constitutional reform designed to establish the right to freedom of artistic creation and the elimination of cinematographic censorship, substituting this by a classification system which w[ould] be regulated by law"; this draft was promulgated and incorporated into the Constitution [*Carta Fundamental*] on August 25, 2001, by publication of Act No. 19,742 in the Official Gazette of Chile. Chile also advised that Act No. 19,846 (the Classification of Cinematographic Production Act) was published and entered into force on January 4, 2003; its first article established a system to classify cinematographic productions by age groups, designed to guide the adult population with regard to the contents of cinematographic productions and to protect children and adolescents, pursuant to the contents of various international treaties concluded by the State.

20. The additional report of the State of April 7, 2003, in which it indicated that on January 9, 2003, the film "The Last Temptation of Christ" had been reclassified by the new Classification Council and was included in the category "over 18 years of age." The company responsible for distributing the film "The Last Temptation of Christ" in Chile, *United International Pictures*, had organized the *avant premier* on March 11, 2003, in the Cine Arte Alameda in Santiago, where it has been exhibited "since then for all those over 18 years of age."

21. The brief of Juan Pablo Olmedo Bustos of May 12, 2003, and its attachments, in which he indicated that even though the State had amended the Constitution and published Act No. 19,846 on Classification of Cinematographic Production, which was decisive for exhibition of the film "The Last Temptation of Christ," "it ha[d] still not fully complied [...] [with] amending the law so as to eliminate prior censorship in Chile." He stated that, according to transitory article 3 of Act No. 19,846, the Act's provisions would be complemented by regulations that "[would be] issued within 90 days of its publication in the Official Gazette," and, although this period had elapsed, the State had not issued the regulations. He added that the regulations were particularly important, because they regulated and determined the content of the legislation and had to be in harmony with the principles regulating the American Convention on Human Rights.

22. The brief of May 22, 2003, and its attachments, in which the Commission submitted its comments on the State's additional report of April 7, 2003. In this respect, it indicated that "[i]n view of the report presented by Chile, the press communiqués announcing exhibition of the film "The Last Temptation of Christ," and the report presented by the victims in this case, "the State had complied substantially with the fourth operative paragraph of the judgment."

23. The brief of the State of September 22, 2003, and its attachment, forwarding Supreme Educational Decree No. 18 of January 6, 2003, adopting the Regulations on Classification of Cinematographic Production, which had been published in the Official Gazette of the Republic of Chile on July 11, 2003. This "terminated the process of amending the domestic law [of Chile], in order to eliminate prior censorship of cinematographic productions."

24. Notes CDH-11,803/214, 215 and 216 of September 23, 2003, in which the Secretariat, on the instructions of the President, informed the victims, their representatives and the Commission that: "they [had] until October 22, 2003, and this time limit could not be extended, to [...] present their comments [on the State's brief of September 22, 2003], if they deemed it pertinent."

25. The brief of Juan Pablo Olmedo Bustos of October 21, 2003, presenting his comments on the State's brief of September 22, 2003. In this respect, he indicated that "with the entry into force of the Regulations on Cinematographic Classification of July 11, 2003, the State of Chile had complied with the provisions of the fourth operative paragraph of the judgment of [the] Court of February 5, 2001, as it has amended domestic law and allowed the film "The Last Temptation of Christ" to be exhibited."

26. The brief of October 27, 2003, in which the Commission presented its comments on the State's brief of September 22, 2003, and accepted that "the obligations established in the fourth operative paragraph of the judgment of the Court of February 5, 2001 (*supra* first having seen paragraph), had been fulfilled.

27. Note CDH-11,803/225 of October 30, 2003, in which the Secretariat, on the instructions of the President of the Court, requested the State, the victims, their representatives and the Inter-American Commission to provide information on compliance with the fifth operative paragraph of the judgment on merits in this case (*supra* first having seen paragraph).

28. The brief of November 4, 2003, in which the Commission referred to compliance the fifth operative paragraph of the judgment on merits in this case, and indicated that it understood that the cheque with the amount established by the Court had effectively been "handed over to the *Asociación de Abogados por las Libertades Públicas* [Lawyers for Public Freedoms Association]."

29. The brief of November 11, 2003 and its attachments, in which the State informed that on "June 21, 2002 paged the sum of US\$4,290.00 by check addressed to the *Asociación de Abogados por las Libertades Públicas*." It also requested the Court to "close the file in the said case."

30. The brief of November 11, 2003, in which the *Asociación de Abogados por las Libertades Públicas* confirmed "that the Republic of Chile has duly complied with payment of the sum of US\$4,290 (four thousand two hundred and ninety dollars) ordered in the fifth operative paragraph of the judgment of the Inter-American Court of Human Rights of February 5, 2001, in "The Last Temptation of Christ" case.

CONSIDERING:

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

2. That, according to the information provided by the State (*supra* twenty-third having seen paragraph), Juan Pablo Olmedo Bustos (*supra* twenty-fifth having seen paragraph), and the Inter-American Commission on Human Rights (*supra* twenty-sixth having seen paragraph), the State had complied with the fourth operative paragraph of the judgment of February 5, 2001 (*supra* first having seen paragraph).

3. That, according to the information provided by the State (*supra* twenty-ninth having seen paragraph), the representatives of the victims (*supra* thirtieth having seen paragraph), and the Inter-American Commission on Human Rights (*supra* twenty-eighth having seen paragraph), the State had paid the sum of US\$4,290 (four thousand two hundred and ninety United States dollars), corresponding to the provisions of the fifth operative paragraph of the judgment of February 5, 2001 (*supra* first having seen paragraph).

4. That, from examining the statements of the parties and the other documentation in the case file, it can be inferred that the State of Chile has complied fully with the judgment delivered by the Court on February 5, 2001, in "The Last Temptation of Christ" case, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights, which imposes on the States the obligation to comply with the judgments of the Court.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority to monitor compliance with its decisions and pursuant to Articles 67 and 68 of the American Convention on Human Rights, Article 25(1) of its Statute, and Article 29(2) of its Rules of Procedure,

DECIDES:

1. To declare that the State of Chile has complied fully with the judgment of the Inter-American Court of Human Rights of February 5, 2001.
2. To consider "The Last Temptation of Christ" case closed and file the case dossier.
3. To notify this Order to the victims, their representatives, the Inter-American Commission on Human Rights and the State of Chile.
4. To communicate this Order to the General Assembly of the Organization of American States at its next regular session through the Court's Annual Report for 2003.

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