

**Order of the
Inter-American Court of Human Rights
of November 17, 2004
Case of Cantoral-Benavides v. Peru
(Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, delivered August 18, 2000, where the Court decided the following in operative paragraphs twelve and thirteen:

12. [...] that the State should order an investigation to determine the persons responsible for the violations of human rights referred to in this judgment, and punish them.

[...]

13. [...] that the State should make reparations for the injury caused by the violations.

[...]

2. The Judgment on reparations that the Court delivered on December 3, 2001, wherein it decided the following:

1. that the State [was to] pay the following in pecuniary damages:

a) to Luis Alberto Cantoral Benavides, in the form and under the conditions stipulated in paragraphs 49, 50, 51 a) and b) and 52 of this Judgment, the sum of US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Peruvian currency.

b) to Gladys Benavides López, in the form and under the conditions stipulated in paragraphs 51 c) and d) and 52 of this Judgment, the sum of US\$ 2,000.00 (two thousand United States dollars) or the equivalent in Peruvian currency.

c) to Luis Fernando Cantoral Benavides, in the form and under the conditions stipulated in paragraphs 51 f) and 52 of this Judgment, the sum of US\$ 3,000.00 (three thousand United States dollars) or the equivalent in Peruvian currency.

2. that the State [was to] pay the following in non pecuniary damages:

a) to Luis Alberto Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of this Judgment, the sum of US\$60,000.00 (sixty thousand United States dollars) or the equivalent in Peruvian currency.

b) to Gladys Benavides López, in the form and under the conditions stipulated in paragraph 62 of this Judgment, the sum of US\$40,000.00 (forty thousand United States dollars) or the equivalent in Peruvian currency.

c) to Luis Fernando Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of this Judgment, the sum of US\$20,000.00 (twenty thousand United States dollars) or the equivalent in Peruvian currency.

d) to Isaac Alonso Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of this Judgment, the sum of US\$ 5,000.00 (five thousand United States dollars) or the equivalent in Peruvian currency.

e) to José Antonio Cantoral Benavides, in the form and under the conditions stipulated in paragraph 62 of this Judgment, the sum of US\$3,000.00 (three thousand United States dollars) or the equivalent in Peruvian currency.

3. that the State [was to] pay the victim's representatives the sum of US\$ 8,000.00 (eight thousand United States dollars) or the equivalent in Peruvian currency in costs and expenses, in the form and under the conditions stipulated in paragraph 87 of [the] Judgment.

4. that through the procedures dictated by its domestic laws, the State [was to] reverse the verdict of conviction that the Peruvian Supreme Court delivered against Luis Alberto Cantoral Benavides, pursuant to the provisions of paragraph 77 of [the] Judgment.

5. that the State [was to] nullify any court, government, criminal or police proceedings there may be against Luis Alberto Cantoral Benavides in connection with the events in this case and shall expunge the corresponding records, pursuant to the provisions of paragraph 78 of [the] Judgment.

6. that the State [was to] provide Luis Alberto Cantoral Benavides with a fellowship to pursue advanced or university studies, in order to defray the costs of the professional degree that the victim elect[ed] to pursue, as well as his living expenses for the duration of the victim's studies, at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, in furtherance of paragraph 80 of [the] Judgment.

7. that the State [was to] publish, at least one time, in the Official Gazette and another newspaper with nationwide circulation, the operative part of the judgment the Court delivered on the merits on August 18, 2000, and make a public apology acknowledging its responsibility in this case, in order to prevent a repetition of these events, in furtherance of paragraphs 79 and 81 of the [...] Judgment.

8. that the State [was] to provide medical treatment and psychotherapy to Mrs. Gladys Benavides López, in Peru, in furtherance of paragraph 51 e) of the [...] Judgment.

9. that the State [was] to investigate the facts of the present case and identify and punish the responsible parties, in furtherance of paragraph 70 of the [...] Judgment.

[...]

3. Paragraph 97 of the Judgment on reparations (*supra* Having Seen 2), which states that "[s]hould the State default on its obligation, it will pay interest on the balance owed, at the banking interest rate in effect in Peru for overdue payments."

4. The briefs from the State of Peru (hereinafter "the State" or "Peru"), from the Inter-American Commission on Human Rights (hereinafter "the Commission"), from Luis Alberto Cantoral Benavides and from the representatives of the victim and his next of kin (hereinafter "the representatives"), submitted in the time period between January 2002 and November 2003 in connection with compliance with the judgments in the present case.

5. The Order issued by the Court on November 27, 2003, concerning compliance with the judgments in this case, wherein it considered:

[...]

6. That from monitoring compliance with the judgments on merits and reparations delivered in this case, and having examined the information provided by the State, the Inter-American Commission and the victim's representatives, the Court ha[d] verified that the State ha[d] complied with:

- a) Payment of the amounts corresponding to compensation for pecuniary damages ordered in favor of Luis Alberto Cantoral Benavides, Gladys Benavides López and Luis Fernando Cantoral Benavides (*first operative paragraph of the judgment on reparations of December 3, 2001*);
- b) Payment of the amounts corresponding for non pecuniary damages ordered in favor of Luis Alberto Cantoral Benavides, Gladys Benavides López, Luis Fernando Cantoral Benavides, Isaac Alonso Cantoral Benavides and José Antonio Cantoral Benavides (*second operative paragraph of the judgment on reparations of December 3, 2001*);
- c) Payment of the amounts corresponding to the reimbursement of the costs and expenses ordered in favor of the representatives of the victim (*third operative paragraph of the judgment on reparations of December 3, 2001*);
- d) Publication in the official gazette of the operative paragraphs of the judgment on merits of August 18, 2000 (*seventh operative paragraph of the judgment on reparations of December 3, 2001*);
- e) Organization of an act of public apology acknowledging the State's responsibility for the violations of the human rights of Luis Alberto Cantoral Benavides (*seventh operative paragraph of the judgment on reparations of December 3, 2001*); and
- f) Annulment of any judicial or administrative, criminal or police proceedings there may be against Luis Alberto Cantoral Benavides, in relation to the facts of this case and cancellation of the corresponding records (*fifth operative paragraph of the judgment on reparations of December 3, 2001*).

7. That, having examined the information provided by the State, the Commission and the victim's representatives in their briefs on compliance with the judgment on reparations, the Court consider[ed] it essential that the State of Peru provide the Court with information on:

- a) payment of the interest accrued owing to the delays in the original payments (*paragraph 97 of the judgment on reparations of December 3, 2001*);
- b) publication in a national newspaper of the operative paragraphs of the judgment on merits of August 18, 2000 (*seventh operative paragraph of the judgment on reparations of December 3, 2001*);
- c) the medical treatment psychotherapy being provided to Gladys Benavides López (*eighth operative paragraph of the judgment on reparations of December 3, 2001*);
- d) the measures needed to annul the verdict convicting Luis Alberto Cantoral Benavides delivered by the Supreme Court of Peru (*fourth operative paragraph of the judgment on reparations of December 3, 2001*); and
- e) the measures it ha[d] taken to award Luis Alberto Cantoral Benavides a grant for university studies in an establishment of acknowledged academic quality, chosen by mutual agreement between the State and the victim, which cover[ed] the costs of the university career of the latter's election, and also maintenance expenses during the period of these studies (*sixth operative paragraph of the judgment on reparations of December 3, 2001*).

8. That in the judgment of August 18, 2000, the Court [had] decided [the following in operative paragraph twelve]:

[...] that the State [was to] order an investigation to determine the persons responsible for the human rights violations referred to in [the] judgment, and punish them.

9. That in the judgment on reparations of December 3, 2001, the Court decided [the following in operative paragraph nine]:

[...] that the State [was] to investigate the facts of the present case, and identify and punish the responsible parties.

10. That, after examining the documentation submitted by the parties, the Court ha[d] verified that, to date, those responsible for the violations of the human rights of Luis Alberto Cantoral Benavides ha[d] not been identified. In this respect, the victim's representatives advised that the office of the 3rd Criminal Provincial Prosecutor of Lima had declared the criminal proceedings statute-barred and the definitive filing of the complaint lodged against those allegedly responsible for the violations of the victim's human rights [...].

[...]

12. Based on the above, the Court consider[ed] that the State [could] not invoke the statute of limitations in its domestic law to fail to comply with the obligation established in the 12th and 9th operative paragraphs of the judgments of August 18, 2000, and December 3, 2001, respectively. Moreover, the State [was to] provide information on the different measures taken by the Office of the Attorney General or by the pertinent authorities in this respect.

13. That the Court [would] consider the general status of compliance with the judgments on merits (*supra* eighth considering paragraph) and on reparations (*supra* ninth considering paragraph) when it ha[d] received the State's report and the respective comments of the parties.

In that order, the Court resolved the following:

1. To urge the State to adopt all necessary measures to comply promptly and effectively with the judgments on merits and reparations of August 18, 2000 and December 3, 2001, respectively, delivered by the Inter-American Court of Human Rights in the *Case of Cantoral-Benavides*, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To call upon the State to present to the Inter-American Court of Human Rights, by April 1, 2004, a detailed report indicating all the measures adopted to comply with the decisions of the Court in the judgment on reparations of [December 3, 2001], as stipulated in the seventh and twelfth considering paragraphs of [the] Order on compliance..

3. To call upon the representatives of the victim and [his] next of kin and the Inter-American Commission on Human Rights to submit their comments on the State's report mentioned in the preceding operative paragraph within two months of receiving it.

[...]

6. The communication from Luis Alberto Cantoral Benavides, dated February 20, 2004, wherein he reported that the State:

- a) had paid the amounts owed for pecuniary and non pecuniary damages 12 months late, which meant that he was owed interest for delinquency, which had not been paid;
- b) had not given him the grant for studies, as a result of which he [was] having to defray, out of pocket, the costs of the studies he [was] pursuing;
- c) had not published the operative paragraphs of the judgment on the merits in a newspaper with nationwide circulation;
- d) had shown no interest in punishing those responsible for the events that occurred, and
- e) had not nullified any court, administrative, criminal or police proceedings.

7. The communication from Luis Alberto Cantoral Benavides, dated March 18, 2004, wherein he repeated the information reported in his previous communication. He also emphasized the State's failure to pay the expenses resulting from his studies, as the Court had ordered in its judgment on reparations. He informed the Court that he was paying for his studies with the money that was intended for his psychotherapy.

8. The brief from the State, dated April 2, 2004, wherein it provided general information on the status of compliance with the judgments on merits and reparations. The State informed the Court that:

- a) with regard to the Court's instruction in operative paragraph 12 of the Judgment on merits and operative paragraph nine of the Judgment on reparations, on November 7, 2003 the Office of the Third Provincial Criminal Prosecutor of Lima issued a resolution wherein it declared that "there [were] no grounds for bringing criminal action for the crimes of coercion, abuse of authority, battery and torture committed against Luis Alberto Cantoral Benavides owing to the fact that such criminal action [was] now statute-barred. The case relating to complaint No. 546-2000 [was] therefore definitively closed." The State pointed out that the decision was based on the laws then in force; it reasoned that the physical and mental mistreatment to which Luis Alberto Cantoral Benavides was subjected in 1993 did not, under Peru's domestic legal system, qualify as torture, since it was not until 1998 that torture was "introduced into Peru's Criminal Code as a crime against humanity." The State argued that this law did not, therefore, apply to this case, as it was enacted subsequent to the 1993 events. It added that the crimes of coercion, abuse of authority and battery were time-barred, as the maximum sentence for those crimes was only two years' imprisonment. The State went on to say that "for purposes of statutory limitations, the calculation is made as of the date of the commission of the crimes, but not from the date of the Court's judgment [on the merits], and certainly not from the date of the judgment on reparations, as Mr. Cantoral would seem to argue in the brief he filed challenging the decision of the Peruvian Prosecutor's Office." Finally, the State added that the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity entered into force in Peru on November 9, 2003, which meant that it could not be invoked in relation to events that occurred prior to that date;
- b) concerning operative paragraphs four and five of the Judgment on reparations, on January 13, 2004 the National Chamber on Terrorism sent the State's Agent notification of a resolution it had issued wherein it determined that "in accordance with Legislative Decree No. 926, the verdict [of conviction handed down by the Supreme Court of Peru] was nullified save in the case of Luis Alberto Cantoral, among others, due to the fact that the person in question had been pardoned and later rehabilitated, which meant that the pardon had rendered the conviction null and voided and automatically nullified [Mr. Cantoral Benavides'] criminal record;"

- c) as for operative paragraph seven of the Judgment on reparations, once the necessary administrative and budgetary arrangements were made, the operative part of the August 18, 2000 Judgment was published on page 13 of the November 10, 2003 edition of the newspaper, *El Comercio*;
 - d) concerning the eighth operative paragraph of the Judgment on reparations, in April 2002 the State complied with the order to meet with the victims and their representatives. There, the representative from the Ministry of Health pledged to begin steps to make it easier for Mrs. Gladys Benavides de Cantoral to obtain the medicines needed for her physical treatment and psychotherapy. On March 4, 2003, the Minister of Health reported on the supposed fulfillment of that commitment;
 - e) with regard to operative paragraph six of the Judgment on reparations, the State asked FEDEPAZ to send to it all documentation, duly certified, relating to Luis Alberto Cantoral's enrollment in Universidad Particular de Sao Paulo, in Brazil, so as to begin the necessary coordination with the Ministry of Education to comply with the operative paragraph in question, and
 - f) concerning the payment of interest on delinquent payments, between September and November 2003 the Executive Secretariat of the National Human Rights Council requested the Special Fund to Administer Monies Recovered from Corruption (FEDADOI) to pay the interest due.
9. The brief of June 25, 2004 wherein the Commission submitted its comments on the State's previous report and pointed out that:
- a) concerning the interest owed for delinquent payment, although on November 6, 2003 the State requested FEDADOI to pay the interest owed for delinquency in payment, more than 14 months after payment was due Mr. Cantoral has still not received that payment. The Commission therefore asked the Court to order the State to comply in full and as soon as possible;
 - b) the State has complied with the Court's instruction concerning publication of the operative part of the Judgment on merits in a newspaper with nationwide circulation, by publishing it in the November 10, 2003 edition of the newspaper *El Comercio*;
 - c) as for Mrs. Gladys Benavides López' medical treatment and psychotherapy, while she has been provided with medical care, that care has not included access to medications. Full compliance with the Judgment must include the treatments and medications prescribed following the respective diagnosis; it also involves close monitoring of her health. The Commission therefore asked the Court to order the State to provide updated information on the steps taken to comply fully and as quickly as possible with what the Court ordered;
 - d) concerning the obligation to render null and void the judgment of conviction entered against the victim, the State reported on the

decision of Peru's National Chamber on Terrorism not to nullify Mr. Cantoral's conviction. Peru has thus failed to comply with the obligation to render that judgment null and void;

- e) as for the grant to pursue higher studies or a university education, Mr. Cantoral was interested in coming to some agreement with the State on this point, but no such agreement materialized. Mr. Cantoral therefore returned to Brazil, where he is studying law. The Commission agrees with the beneficiary that he must be reimbursed the expenses he has incurred in studying in Brazil. The Commission hopes that the steps taken on March 25, 2004 to begin coordination with the Ministry of Education will develop quickly and in good faith, and
- f) Concerning the investigation, prosecution and punishment of the responsible parties, the decision issued by the Peruvian Public Ministry to definitively close the case was done by alleging the laws in force. In this regard, the Commission asked the Court to remind the State of the Court's case law to the effect that a State cannot allege provisions of its domestic law to avoid compliance with its international obligations. Consequently, the Commission insisted that the investigations must be carried out speedily and with objectivity and impartiality so that those responsible for the facts of this case do not go unpunished.

10. The June 25, 2004 brief in which the representatives submitted their comments on the State's previous report (*supra* Having Seen 8), where they point out that:

- a) Concerning payment of the interest owed in arrearages,
 - i. The State must pay the interest corresponding to the period of arrearages, i.e., from the date on which the six-month period following notification of the Judgment (June 14, 2001) expired to the date on which payment was made (March 25, 2003), and
 - ii. They acknowledge the efforts the State made up to November 6, 2003, to effect payment of the sum of US\$ 1,936.00; however, as of this date the State is not in compliance with this point.
- b) The representatives consider that the order to publish the operative paragraphs of the Judgment on merits of August 18, 2000 has been fully complied with;
- c) Concerning Mrs. Gladys Benavides López' medical treatment and psychotherapy,
 - i. The Ministry of Health authorized free medical care and medications from the stock available in health establishments. However, because the State is only allowing her access to the medications that are in stock at health establishments, which are in short supply, the State has failed to provide the

- medications prescribed by the doctors and Mrs. Benavides has had to pay the costs of the medications;
- ii. The State cannot establish any restriction or limitation on the medications it will supply for medical treatment, as that treatment must include all the medications considered necessary;
 - iii. If the medications are not in stock in the State hospitals, then their cost must be defrayed or reimbursed by the Ministry of Health, and
 - iv. They requested that the Court call upon the State to take full charge of Mrs. Benavides Lopez' medical treatment, which has to include all the medications that her physicians prescribe, either by reimbursing the cost of the medication or through some other mechanism that ensures that the State pays the full cost.
- d) Concerning the measures needed to render the judgment of conviction null and void,
- i. The decision of the National Chamber on Terrorism was not reported to either the victim or to his representatives;
 - ii. The decision of that Chamber disregards what the Court ordered: while it is true that the pardon prevents execution of the guilty verdict, by the time the Court issued its Judgment on reparations Mr. Cantoral had already been pardoned and this did not stop the Court from ordering the State to render the conviction null and void. Irrespective of whether Mr. Cantoral was pardoned, a judgment based on laws that violate the Convention cannot have effects in law and must be nullified;
 - iii. They contend that the State has not complied with this point, and
 - iv. They request that the Court order the State to render null and void, by means of a court decision to that effect, the judgment of conviction entered against Mr. Cantoral, as it was delivered on the basis of a law that was in violation of the American Convention.
- e) Concerning the grant to pursue a higher education,
- i. The Ministry of Justice sent a letter to the Rector of the Universidad Nacional Mayor de San Marcos in which he requested that Mr. Cantoral be automatically admitted to the Law School, and that he be fully exempt from the fees for administrative and academic costs. The Secretary General of the University answered by stating that this manner of admission was improper, as applicants had to conform to university law and to the rules for admissions. The Secretary suggested that an item be included in the institutional budget for a fellowship program to cover the costs incurred in pursuing a university degree once the interested party is admitted. Neither the victim nor his mother was informed of those communications;

- ii. Mr. Cantoral expected a concrete answer about the fellowship in Peru. However, when he received no answer from the State, he returned to Brazil to study, and
 - iii. They requested that the State reimburse the money that the victim had spent thus far, in the amount of US\$590.70 per month since January 2004, in order to cover his educational and living expenses in Brazil, and that by mutual agreement with Mr. Cantoral, the State settle on a sum that it must pay him each month, until he completes his studies.
- f) Concerning the obligation to investigate, identify and punish the responsible parties,
- i. The State is attempting to evade its obligation to investigate and punish the responsible parties by invoking rules and provisions of its own domestic laws;
 - ii. The argument the Peruvian State makes claiming that the specific crime of torture did not exist in its legal system is without merit, since the criminal prosecution of that crime was the State's duty under conventional and customary international law;
 - iii. The State's argument that the crimes committed at the time of the events were now statute-barred, constitutes "a new challenge to the Court," which has already held that provisions that attempt to thwart the investigation and punishment of those responsible for human rights violations are, under its case law, inadmissible. This also constitutes noncompliance with the Court's Order of November 27, 2003 (*supra* Having Seen 5). The State has not complied with the obligation to pursue the measures taken by the Public Ministry; instead, it persists in putting up arguments that the Court has already discredited and rejected; therefore, the State is not in compliance with this point, and
 - iv. Concerning the statement of interpretation that the Peruvian State filed when it acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity to the effect that the Convention would only apply to crimes committed subsequent to the date on which the Convention entered into force for Peru, the representatives contend that the statement has no force in law and cannot be used to avoid judicial prosecution and punishment of the torture committed against Mr. Cantoral or any other investigation into other "grave crimes" committed during the internal armed conflict.

CONSIDERING THAT:

1. Oversight for compliance with its decisions is an authority inherent in the Court's jurisdictional functions.
2. Peru has been a State Party to the American Convention since July 28, 1978 and recognized the Court's binding jurisdiction on January 21, 1981.

3. Article 68(1) of the American Convention stipulates that “The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” States Parties’ obligations under the Convention are binding upon all branches of government and functions of the State.

4. Because judgments of the Court are final and not subject to appeal, as provided in Article 67 of the American Convention, the State’s compliance with the Court’s judgments must be swift and thorough.

5. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.¹ The States Parties’ obligations under the Convention are binding upon all branches of government and State agencies.

6. The States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic laws. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning compliance with the Court’s judgments. These obligations must be interpreted and applied in such a way that the protected guarantee is truly practical and effective, given the special nature of international human rights treaties.²

7. As the Court verified in its Order of November 27, 2003, the State has complied with a number of the obligations imposed in the Judgments on merits and reparations in the instant case (*supra* Having Seen 5).

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¹ Cf., *inter alia*, *Case of Barrios Altos. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 28, 2003, sixth considering paragraph; *Case of Cantoral-Benavides. Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph, and *Case of Bámaca-Velásquez. Compliance with judgment*. Order of the Inter-American Court of Human Rights of November 27, 2003, fifth considering paragraph. See also, *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. para. 35.

² Cf. *Matters of: Liliana Ortega et al., Luisiana Ríos et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez. Provisional Measures*. Order of the Inter-American Court of Human Rights of May 4, 2004, twelfth considering paragraph; *Case of Baena-Ricardo et al.. Competence, supra* note 1, para. 66; *Constitutional Court Case. Competence*. Judgment of September 24, 1999. Series C No. 55, para. 36; and *Case of Ivcher-Bronstein. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37. See also, *inter alia*, “*Juvenile Detention Center*” *Case*. Judgment of September 2, 2004. Series C No. 112, para. 205; *Case of the Gómez-Paquiyaury Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraphs 150 and 151; and *Case of Bulacio*. Judgment of September 18, 2003. Serie C No. 100, para. 142. In this regard, see also *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*.

8. Having monitored compliance with the judgments on merits and reparations delivered in the present case, and after examining the information supplied by the State, by the Commission and by the representatives between the November 27, 2003 Order and the present, the Court has established that the State has complied with the obligation to publish the operative part of the August 18, 2000 Judgment on merits in a newspaper with nationwide circulation (*supra* Having Seen 2.7, 9.b and 10.b).

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* * *

9. As for the duty to take the measures necessary to render null and void the conviction that the Supreme Court of Peru handed down against Luis Alberto Cantoral Benavides, in accordance with operative paragraph four of the December 3, 2001 Judgment on reparations (*supra* Having Seen 2), the State reported that the National Chamber on Terrorism issued a resolution to the effect that “in accordance with Legislative Decree No. 926, the verdict [of conviction handed down by the Supreme Court of Peru against a number of persons] was nullified save in the case of Luis Alberto Cantoral, among others, due to the fact that the person in question was pardoned and later rehabilitated.” In the State’s view, this meant that the pardon “had rendered the conviction null and void and automatically nullifies [Mr. Cantoral Benavides’] criminal record.” (*supra* Having Seen 8.b).

10. Supreme Resolution No. 078-97-JUS of June 24, 1997, which was the instrument through which Mr. Cantoral Benavides was pardoned, states that “Law No. 26655 created an *Ad Hoc* Commission charged with evaluating and proposing to the President of the Republic, as an exceptional measure, the grant of a pardon to those convicted of crimes of terrorism or treason based on insufficient evidence, thereby enabling the *Ad Hoc* Commission to reasonably presume that there was no type of association with terrorist elements, activities or organizations; and [...] that, pursuant to Article 118 of the Constitution of Peru, the President of the Republic has the authority to grant pardons [...].”³ These facts were established in the proceedings on the merits of the present case.

11. The pardon granted to Mr. Cantoral Benavides did not nullify the conviction that the Supreme Court of Justice of Peru entered against him, as was pointed out in the merits phase of the proceedings,⁴ which, in the reparations phase, was the reason why the Court ordered that the conviction be rendered null and void (*supra* Having Seen 2.4). Moreover, it has been established that in application of Legislative Decree No. 926 the National Chamber on Terrorism nullified the sentence of conviction issued by the Supreme Court in the case of a number of people, but not in the case of Luis Alberto Cantoral, among others, on the grounds that he had already been pardoned. In other words, for purposes of the present case, the pardon was one means of exonerating Luis Alberto Cantoral Benavides of all criminal responsibility. Hence, and on the understanding that the pardon granted has had substantially that effect, the Court considers that the State has complied with the obligation to render null and void the conviction in question.

³ *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, para. 121.

⁴ *Case of Cantoral Benavides*, *supra* note 2, paragraphs 118-122.

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12. After examining the information supplied by the State, by the Commission and by the victim and his representatives in their briefs on compliance with the Judgment on reparations, the Court has confirmed that, despite the efforts made, the State has not paid the interest it owes for its delinquency in paying the compensation. The State was notified of the Judgment on reparations on December 14, 2001, so that the time period for paying the compensation ordered for pecuniary and non pecuniary damages expired on June 14, 2002. Because Peru did not make the payment until March 26, 2003, under paragraph 97 of the Judgment on reparations the period of delinquency must be from June 15, 2002 to March 25, 2003. The information supplied by the State, and not contested by either the Commission or the representatives, is that the interest owed for delinquency totals US\$ 1,936.00 (one thousand nine hundred thirty-six United States dollars). This figure must be divided proportionally, according to the amount of compensation already paid, among the beneficiaries of the reparations.

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13. Concerning the sixth operative paragraph of the Judgment on reparations (*supra* Having Seen 2(6)), the Court has verified that 33 months after the issuance of the Judgment on reparations, the State has still not given Luis Alberto Cantoral a grant to pursue university studies in an establishment of acknowledged academic quality, chosen by mutual agreement between the State and the victim, which grant must cover the costs of the university degree of the latter's election, and also living expenses during the period of these studies. Furthermore, from the information provided by the parties, the Court observes that Mr. Cantoral Benavides is currently pursuing a degree in law at a private university in Brazil. It is essential, therefore, that this Court's order be carried out in the manner best suited to the beneficiary inasmuch as he currently resides in Brazil and is pursuing his studies at a university in that country.

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14. With regard to the medical treatment and psychotherapy that, under operative paragraph eight of the December 3, 2001 Judgment on reparations (*supra* Having Seen 2.8), is to be provided to Mrs. Gladys Benavides López, the parties agree that the treatment has been provided. However the Commission and the representatives allege that even though the Ministry of Health authorized free medical care, the medications she can receive are limited to those available at the State's health establishments. To be in full compliance with this obligation, treatment must be provided fully and effectively, by mutual agreement with the victim.

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15. From the analysis of the documentation provided by the parties, the Court has established that thus far, those responsible for the human rights violations

committed against Luis Alberto Cantoral Benavides have not been identified or punished.

16. In this regard, the State, the Commission and the representatives reported that on November 7, 2003, the Office of the Third Provincial Criminal Prosecutor of Lima issued a resolution wherein it declared that "there are no grounds for bringing criminal action for the crimes of coercion, abuse of authority, battery and torture committed against Luis Alberto Cantoral Benavides owing to the fact that such criminal action is now statute-barred. The case relating to complaint No. 546-2000 is therefore definitively closed." The State pointed out that the crimes of coercion, abuse of authority and battery were statute-barred since the maximum penalty they carry is two years' imprisonment. It added that "for purposes of statutory limitations, the calculation is made as of the date of the commission of the crimes, but not from the date of the Court's judgment [on the merits], and certainly not from the date of the judgment on reparations (*supra* Having Seen 8(a)).

17. In its case law, the Court has held that the State must guarantee that those responsible for the facts in a case are investigated, prosecuted and punished in domestic court proceedings; it has held further that amnesties, time-barring and the establishment of circumstances under which there would be no criminal liability should be avoided, as should measures whose purpose is to prevent criminal prosecution or void the effects of a conviction.⁵ The Court's reasoning is consistent with the letter and the spirit of the Convention and with general principles of law; one such principle is *pacta sunt servanda*, which requires that the provisions of a treaty will have the corresponding *effet utile* in the States Parties' domestic laws.⁶

18. It would be illogical for a criminal prosecution and the statute of limitations to run simultaneously and the consequences would be utterly unacceptable. To achieve the object and purpose of the American Convention, the time lapsed while international proceedings are pending must not be counted for purposes of extinguishment of criminal prosecution. Otherwise, the Commission and the Court would be exercising their jurisdiction in a vacuum and those responsible for crimes would go unpunished, which is utterly unacceptable. The Court has held that:

the statute of limitations is suspended while a case is pending before a body of the inter-American system for protection of human rights [...] Moreover, if the time elapsed while a case is being heard by the inter-American system were taken into account for purposes of extinguishment, this would assign the international proceeding a consequence radically opposed to its intention: rather than promoting justice, it would bring with it impunity of those responsible for the violation.⁷

19. In the *cas d'espece*, the crimes committed against Luis Alberto Cantoral Benavides occurred between February 6, 1993 and June 25, 1997. The petition was filed with the Inter-American Commission on April 18, 1994; on August 24 of that year, the Commission sent the State the pertinent parts of the petition; the application was submitted to the Court on August 8, 1996, and the Court delivered

⁵ Cf., *inter alia*, *Case of Tibi*. Judgment of September 7, 2004. Series C no. 114, para. 259; *Case of Gómez-Paquiyaury Brothers*, *supra* note 2, para. 232, and *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 262.

⁶ Cf., *inter alia* "*Juvenile Detention Center*" *Case*, *Supra* note 2, para. 205; *Case of the Gómez-Paquiyaury Brothers*. *Supra* note 2, para. 151, and *Case of Baena-Ricardo et al.*. Competence, *Supra* note 2, para. 61.

⁷ *Case of Las Palmeras*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 69.

its Judgment on the merits on August 18, 2000 and its Judgment on reparations on December 3, 2001. Consequently, the statute of limitations for prosecution of the crimes committed against the victim is suspended as of the date on which the petition was filed with the Commission.

20. The State argued that the November 7, 2003 decision of the Office of the Third Criminal Prosecutor of Lima, mentioned previously, was based on the laws then in force; it reasoned that the physical and mental mistreatment to which Luis Alberto Cantoral Benavides was subjected in 1993 did not, under Peru's domestic legal system, qualify as torture, since it was not until 1998 that torture was "introduced into Peru's Criminal Code as a crime against humanity." The State argued that this law does not, therefore, apply to the facts of this case, as it was enacted subsequent to the 1993 events. The State went on to argue that the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity entered into force in Peru on November 9, 2003, so that it could not be applied to events that occurred prior to that date (*supra* Having Seen 8.a).

21. Should the Court deliver a judgment of conviction against a State, as happened in the *cas d'espece*, it is obvious that the possibility of that judgment's compliance must be preserved, under the terms of the obligations undertaken by the State on becoming Party to the American Convention. Under Article 2 of the American Convention, the duty to fully observe the Court's judgments carries with it the obligation to remove whatever obstacles there may be internally to fulfillment of this international obligation. Therefore, it is unacceptable that the criminal investigation into the facts of the present case was closed because torture was not classified as a crime in Peru's domestic laws, since the same acts could have been prosecuted and punished under other criminal laws on the books in Peru at the time the events in the case occurred. Those responsible for the violations committed against Luis Alberto Cantoral Benavides have to be identified, prosecuted and punished, so that these acts do not go unpunished.

22. Given the foregoing, and as this Court held in its Order of November 27, 2003 (*supra* Having Seen 5(12)), the Court considers that the State may not invoke the statute of limitations in its domestic law to avoid compliance the obligation established in the 12th and 9th operative paragraphs of the judgments of August 18, 2000, and December 3, 2001, respectively.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

1. That the State has fully complied with the following obligations imposed under operative paragraphs one, two, three, four, five and seven of the Judgment on reparations issued in the present case on December 3, 2001:

- a) payment of the pecuniary damages ordered for Luis Alberto Cantoral Benavides, Gladys Benavides López and Luis Fernando Cantoral Benavides;
 - b) payment of the non pecuniary damages ordered for Luis Alberto Cantoral Benavides, Gladys Benavides López, Luis Fernando Cantoral Benavides, Isaac Alonso Cantoral Benavides and José Antonio Cantoral Benavides;
 - c) payment of the amounts ordered for reimbursement of the costs and expenses of the representatives of the victim and his next of kin;
 - d) through the procedures dictated by its domestic laws, reversal of the verdict of conviction that the Peruvian Supreme Court delivered against Luis Alberto Cantoral Benavides;
 - e) nullification of any court, government, criminal or police proceedings there may be against Luis Alberto Cantoral Benavides in connection with the events in this case and expungement of the corresponding records;
 - f) publication of the operative paragraphs of the August 18, 2000 judgment on merits in the Official Gazette and another newspaper with nationwide circulation, and
 - g) staging of a public apology in which the State acknowledges its responsibility for the violations of human rights committed against Luis Alberto Cantoral Benavides.
2. That it will keep open the procedure to monitor compliance with the obligations not yet fully complied with, specifically:
- a) payment of the interest owed because of delinquency, in accordance with paragraph 97 of the Judgment on reparations and pursuant to the observation made in the twelfth considering paragraph of the present Order;
 - b) medical treatment and psychotherapy for Mrs. Gladys Benavides López, pursuant to operative paragraph eight of the Judgment on reparations and the observation made in the fourteenth considering paragraph of the present Order;
 - c) a fellowship to Luis Alberto Cantoral Benavides to pursue advanced or university studies, in order to defray the costs of the professional degree that the victim elects to pursue, as well as his living expenses for the duration of the victim's studies at a center of recognized academic excellence selected by mutual agreement between the victim or his representatives and the State, as was ordered in operative paragraph six of the Judgment on reparations and as per the Court's observation in the thirteenth Considering paragraph of the present Order, and
 - d) the obligation to investigate the facts of the present case and punish those responsible for the violations committed against Luis Alberto Cantoral Benavides, pursuant to operative paragraphs twelve and nine of the Judgments on merits and reparations, respectively, and as established in the fifteenth and twenty-second Considering paragraphs of this Order.

AND DECIDES:

1. To call upon the State to adopt all measures necessary to comply promptly and effectively with the pending obligations under the judgments on the merits and reparations which the Inter-American Court of Human Rights delivered in the Cantoral Benavides Case on August 18, 2000 and December 3, 2001, respectively, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To call upon the State to present to the Inter-American Court of Human Rights, by January 31, 2005 at the latest, a detailed report indicating all the measures adopted to comply with its unfulfilled obligations under the Judgments on merits and reparations, as enumerated in declarative point two of this Order.
3. To call upon the representatives of Mr. Luis Alberto Cantoral Benavides and his next of kin to submit their comments on the State's report within four weeks, and to call upon the Inter-American Commission on Human Rights to submit its comments within six weeks, both counted from the date on which the report in question is received.
4. To send notice of this Order to the State, the Inter-American Commission on Human Rights and the representatives of Mr. Luis Alberto Cantoral Benavides and his next of kin.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary