

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

HAVING SEEN:

1. The January 31, 2001 Judgment of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in which it:

1. f[ound] that the State violated the right to a fair trial embodied in Article 8 of the American Convention on Human Rights, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

2. f[ound] that the State violated the right to judicial protection embodied in Article 25 of the American Convention on Human Rights, with regard to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

3. f[ound] that the State failed to comply with the general obligation of Article 1(1) of the American Convention on Human Rights, with regard to the violation of the substantive rights indicated in the previous operative paragraphs of th[e] judgment.

4. decide[d] that the State [should] order an investigation to determine the persons responsible for the human rights violations referred to in th[e] judgment and also publish the results of this investigation and punish those responsible.

5. decide[d] that the State [should] pay the amounts corresponding to the arrears of salary and other benefits that, by law, correspond to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano [...].

6. decide[d] that, in fairness, the State [should] reimburse the victims in the instant case, for costs and expenses [...] the following amounts: Manuel Aguirre Roca, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; Guillermo Rey Terry, US\$25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made; and Delia Revoredo Marsano, US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Peruvian money when the payment is made.

7. decide[d] that it will monitor that th[e] judgment is complied with and only then w[ould] it close the case.

2. The November 27, 2003 Order of the Court on compliance with the judgment in the instant case, in Whereas seven and eight of which it ordered:

7. [...] in supervising comprehensive compliance with the judgments on the merits and on reparations issued in the instant case, and after analyzing the information supplied by the State, by the victims, and by the Inter-American Commission, the Court [...] verif[ied] that the State ha[d] paid the compensations for legal costs and expenses of the victims before the Court, pursuant to operative paragraph six of the Judgment on reparations.

8. [...] after analyzing the information supplied by the State, by the victims and by the Inter-American Commission, the Court deem[ed] it indispensable for the State to report to the Court on the following with respect to compliance:

f) the outcome of the investigation to identify and punish the persons responsible for the human rights violations committed against the victims in this case [...] (*Operative paragraph four of the November 27, 2003 Judgment*); and

b) payment of the back pay and other benefits owed, according to domestic legislation, to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano (*Operative paragraph five of the November 27, 2003 Judgment*).

In this regard, the Court decided:

6. To urge the State to take such measures as m[ight] be necessary to make those reparations ordered in the January 31, 2001 Judgment with which compliance [wa]s pending effective and to promptly comply with them, pursuant to Article 68(1) of the American Convention on Human Rights.

3. The April 2, 2004 brief, in which the State asserted that a complaint regarding the facts of the instant case was transferred to the Prosecutor's Office Specializing in Unlawful Enrichment and Constitutional Complaints on September 4, 2002. On April 1, 2003, according to a March 29, 2003 order, said complaint was forwarded to the Congress of the Republic, and it was subsequently transferred to the Presidency of Congress. On April 23, 2003 the Directorate ordered said complaint shelved, and up to the date when the brief by the State was drafted, there had been no report on what was agreed. However, the State expressed that it would ask Congress to reconsider said decision, given the judgment by the Court. The State also reported that it had requested –and would do so once again– that the necessary administrative steps be taken to effect “the payment ordered in the judgment of the Court” through the Special Fund for Management of Monies Unlawfully Obtained to the Detriment of the State, bearing in mind the provisions of Law No. 27,775, which regulates the procedure to implement judgments issued by international courts.

4. The May 18, 2004 brief, in which Delia Revoredo Marsano de Mur reported that Guillermo Rey Terry, one of the victims in the instant case, died on May 2, 2004.

5. The May 25, 2004 brief in which Manuel Aguirre Roca stated that there had been no progress in the investigation, identification, and punishment of those responsible for the violation of the human rights of the three justices. On the other hand, regarding payment of the back pay and other benefits due to them, Mr. Aguirre Roca explained that the amount of compensation set by the State was based on Law No. 27,775. However, he deemed that said law is not pertinent, as it did not exist when the Court issued the January 31, 2001 Judgment. Therefore, the intention to subject payment to said law is unacceptable, as it “eludes” payment of the interest that should be paid after the sixth month, since once that term expired, the State should have deposited the amount, guaranteeing payment of the interest. Therefore, he concluded that payment of the compensation cannot be subject to or conditioned by said Law; instead, payment should be made in accordance with the provision in force at the time said Judgment was issued.

6. The June 14, 2004 brief, in which the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”)

pointed out that “since November 27, 2003 there ha[d] been no progress in compliance with the judgment in the [...] case.”

7. The August 17, 2004 brief, in which Herlinda Ibáñez reported that her husband, Manuel Aguirre Roca, one of the victims in the instant case, died on June 20, 2004.

WHEREAS:

1. Oversight of compliance with its decisions is an authority inherent to the judicial functions of the Court.

2. Peru has been a State Party to the American Convention (hereinafter “the American Convention” or “the Convention”) since July 28, 1978, and it accepted the adjudicatory jurisdiction of the Court on January 21, 1981.

3. Article 68(1) of the American Convention sets forth 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.” For this, the States must ensure domestic implementation of the orders issued by the Court in its rulings.¹

4. In view of the final and unappealable nature of the judgments of the Court, pursuant to Article 67 of the American Convention, the State must fully and promptly comply with them.

5. The obligation to comply with the orders issued by the Court in its rulings is in accordance with a basic principle of Law regarding the international responsibility of the State, backed by international jurisprudence, according to which the States must carry out their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has stated and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they may not refuse to undertake the international responsibility already set forth by arguing domestic reasons.² The treaty obligations of the States Party are binding for all the branches and bodies of the State.

6. The States Party to the Convention must ensure compliance with the treaty provisions and their effective application (*effet utile*) in their respective domestic legal systems. This principle applies not only to substantive provisions of the human rights treaties (that is, those containing provisions regarding the rights protected), but also with respect to the procedural provisions, such as those pertaining to compliance with the decisions of the Court. These obligations must be interpreted

¹ See *Case of Baena-Ricardo et al.. Competence*. November 28, 2003 Judgment. *Series C* No. 104, *para.* 131.

² See *Matters of: Liliana Ortega et al., Luisiana Ríos et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez*. Provisional Measures. May 4, 2004 Order of the Inter-American Court of Human Rights, *Whereas seven*; *Case of Baena-Ricardo et al., supra* note 1, *para.* 128; and *Case of Barrios Altos*. Compliance with Judgment. November 28, 2003 Order of the Inter-American Court of Human Rights, *Whereas six*.

and applied in a manner that ensures that the right protected is truly practical and effective, taking into account the special nature of human rights treaties.³

7. The States Party to the Convention that have accepted the adjudicatory jurisdiction of the Court have the duty to obey the obligations established by the Court. In this regard, Peru must take such steps as may be necessary to comply with the orders issued by the Court in the January 31, 2001 Judgment (*supra* Having Seen 1).

8. In the process of overseeing comprehensive compliance with the January 31, 2001 Judgment, and after analyzing the documents supplied by the State, by the representatives of the victim and by the Commission in their briefs on compliance with reparations (*supra* Having Seen 3, 5 and 6), the Court notes that it does not have sufficient information on the following points currently pending compliance:

- f) The current status of the investigations to identify and punish the persons responsible for the human rights violations committed against the victims in the case (*operative paragraph four of the January 31, 2001 Judgment*); and
- g) Payment of the back pay and other benefits due, according to domestic legislation, to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano (*operative paragraph five of the January 31, 2001 Judgment*).

9. This Court has asserted that the State that is found responsible and is in arrears regarding payment of the compensation ordered by the Court must pay interest on the amount owed.⁴ It is an obligation of the State found responsible to pay the compensation ordered by the Court within the term set for this purpose, and non-compliance with this obligation entails consequences for the State. When it pays after the deadline, the State incurs the obligation to pay interest on the amount owed, so as to maintain the value of the compensation and ensure that that said amounts retain their purchasing power. The Court has declared that the States have said obligation to pay interest even when the judgment in which the Court ordered the reparations did not explicitly state said obligation.⁵

³ See *Matters of: Liliana Ortega et al., Luisiana Rios et al., Luis Uzcátegui, Marta Colomina and Liliana Velásquez*. Provisional Measures. May 4, 2004 Order of the Inter-American Court of Human Rights, Whereas twelve; *Case of Baena-Ricardo et al.*. Competence, *supra* note 1, para. 66; *Case of Constantine et al.*. Preliminary Objections. September 1, 2001 Judgment. Series C No. 82, para. 74; *Case of Benjamin et al.*. Preliminary Objections. September 1, 2001 Judgment. Series C No. 81, para. 74; *Case of Hilaire. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 80, para. 83; *Case of the Constitutional Court. Competence*. September 24, 1999 Judgment. Series C No. 55, para. 36; and *Case of Ivcher-Bronstein. Competence*. September 24, 1999 Judgment. Series C No. 54, para. 37. Also see, *inter alia*, *Case of the "Juvenile Reeducation of Institute"*. September 2, 2004 Judgment. Series C No. 112, para. 205; *Case of the Gómez-Paquiyaury Brothers*. July 8, 2004 Judgment. Series C No. 110, paras. 150 and 151; and *Case of Bulacio*. September 18, 2003 Judgment. Series C No. 100, para. 142. Likewise, see *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*.

⁴ See *Case of Tibi*. September 7, 2004 Judgment. Series C No. 114, para. 278; *Case of the "Juvenile Reeducation Institute"*, *supra* note 3, para. 338; and *Case of Ricardo Canese*. August 31, 2004 Judgment. Series C No. 111, para. 221.

⁵ See *Case of Baena-Ricardo et al.*. *Compliance with Judgment*. November 22, 2002 Order of the Court, Whereas 12; *Case of Velásquez-Rodríguez. Interpretation of the Judgment on Compensation* (Art. 67 American Convention on Human Rights). August 17, 1990 Judgment. Series C No. 9, para. 40,

6. The Court will consider the general status of compliance with its January 31, 2001 Judgment, as well as with its November 27, 2003 Order and the instant Order, once it receives the respective information on the measures with respect to which compliance is pending.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

FINDS:

1. That it will continue to oversee compliance with the points currently pending compliance in the instant case, namely:
 - f) investigation to identify and punish the persons responsible for the human rights violations committed against the victims in this case; and
 - g) payment of the back pay and other benefits due, according to domestic legislation, to Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.

AND DECIDES:

1. To order the State to take such measures as may be necessary to put into effect and promptly comply with those points currently pending compliance that were ordered by the Court in the January 31, 2001 Judgment, as well as the provisions of the November 27, 2003 Order and the instant Order, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To order the State to fix and pay, in accordance with the domestic legislation most favorable to the victims and respecting due process guarantees, the interest due from the time it incurred in arrears regarding payment of the back pay and other benefits of Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano.
3. To ask the State to submit a detailed report, no later than January 31, 2005, on the current status of investigations to identify and punish the persons responsible for the human rights violations committed against the victims in this case –as well as regarding steps taken to pay the back pay, other benefits and interest due, according to domestic legislation, to Manuel Aguirre Roca, Guillermo Rey Terry and

operative paragraph 4; and *Case of Godínez-Cruz. Interpretation of the Judgment on Compensation* (Art. 67 American Convention on Human Rights). August 17, 1990 Judgment. Series C No. 10, para. 40, operative paragraph 4.

Delia Revoredo Marsano – as set forth in Whereas eight and nine of the instant Order.

4. To ask the Inter-American Commission, as well as Delia Revoredo Marsano and the next of kin and/or representatives of the deceased victims, to submit their comments on the report by the State mentioned in the previous operative paragraph, within six and four weeks, respectively, of the date when they receive said report.

5. To continue overseeing compliance with the January 31, 2001 Judgment.

6. To notify the instant Order to the State, to the Inter-American Commission, and to Delia Revoredo Marsano and the next of kin and/or representatives of the deceased victims.

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