

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF FEBRUARY 2, 2006**

RICARDO CANESE V. PARAGUAY

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter "the Court") on August 31, 2004, in which it unanimously declared that:

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

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

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

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

5. [The] judgment constitutes *per se* a form of reparation, in the terms of its paragraphs 205 and 211.

6. The State shall pay the sum of US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Paraguayan currency, to compensate the non-pecuniary damage caused to Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 206 and 207 of [the] judgment.

7. The State shall pay Ricardo Nicolás Canese Krivoshein the total amount of US\$5,500.00 (five thousand five hundred United States dollars), for costs and expenses. Of this total, the sum of US\$1,500.00 (one thousand five hundred United States dollars) shall correspond to the expenses which Mr. Canese Krivoshein incurred before the Inter-American Commission, and the amount of US\$4,000.00 (four thousand United States dollars) to the costs and expenses that Mr. Canese Krivoshein must reimburse to his

* Judge Diego García-Sayán informed the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this Order. Also, Judge Cecilia Medina Quiroga disqualified herself from hearing this case, pursuant to Articles 19 of the Statute and 19 of the Rules of Procedure of the Court; consequently she did not take part in the delivery of the judgment or in the issue of this Order.

representatives for the expenditure they assumed in the international proceeding before the Inter-American System for the protection of human rights, in the terms of paragraphs 214, 215 and 217 of [the] judgment.

8. The State shall publish once in the Official Gazette and in another newspaper with national circulation the chapter on the proven facts in [the] judgment, without the corresponding footnotes, and its operative paragraphs, in the terms of paragraph 209 of [the] judgment.

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

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

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

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

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

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

2. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of September 16, 2004, in which it notified the judgment delivered by the Court in this case (*supra* Having seen paragraph 1) to the State of Paraguay (hereinafter "the State" or "Paraguay"), the representatives of the victim, and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission").

3. The note of the Secretariat of August 19, 2005, in which, on the instructions of the President of the Court (hereinafter "the President"), it reminded the State that the time granted for submitting the report requested in the fourteenth operative paragraph of the judgment (*supra* Having seen paragraph 1) had expired, and required it to submit this report forthwith.

4. The brief of October 5, 2005, and its attachment in which the State submitted its first report on compliance with the judgment, in response to the requirement established in the fourteenth operative paragraph. In brief, the State indicated that:

- a) It was taking the necessary steps before the Ministry of Foreign Affairs, the Ministry of Finance, and the National Congress to obtain authorization for the budgetary funds to make the payment due to Mr. Canese;

- b) The most recent meeting on this issue had been held on Monday, September, 12, 2005, with members of the Human Rights and Budget Committee of the Senate Chamber of the National Congress; and
- c) The Attorney General (*Procurador General*) has issued opinions urging the Ministers of Finance and Foreign Affairs to continue facilitating the procedures to comply with the judgment.

5. The note of the Secretariat of November 16, 2005, in which, on the instructions of the President, it reminded the representatives of the victim that on November 3, 2005, the period of four weeks granted by the President for submitting their observations on the State's report on compliance with the judgment had expired and therefore requested them to transmit their observations forthwith. The representatives did not submit their observations.

6. The brief of November 16, 2005, in which the Inter-American Commission submitted its observations on the State's report of October 5, 2005 (*supra* Having seen paragraph 4) and indicated that:

- a) More than a year had elapsed since the judgment had been delivered, but the State had not complied with any of the operative paragraphs, even though the time established for compliance was six month from notification of the judgment;
- b) Regarding compliance with the obligation to make reparation and to pay costs and expenses, the information presented by the State did not clarify whether the funds to make the payment established in the sixth and seventh operative paragraphs of the judgment had really been authorized. In this regard, the State has not presented appropriate information showing that there had been significant results in the process of complying with these paragraphs of the judgment;
- c) The obligation to pay the compensation and the costs and expenses, increased by the amounts corresponding to interest on arrears, as established in the judgment, was still pending; and
- d) The State had not complied with the publication of the proven facts of the judgment.

CONSIDERING

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions
2. That Paraguay has been a State Party to the American Convention since August 24, 1989, and accepted the compulsory jurisdiction of the Court on January 8, 1993.
3. That, Article 68(1) of the American Convention establishes 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.” Consequently, the State must ensure the implementation of the decisions in the Court’s judgments at the domestic level.¹

4. That in view of the final and unappealable character of the judgments of the Court established in Article 67 of the American Convention, the State must comply with them fully and promptly.

5. That 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.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

7. That the States Parties to the Convention that have accepted the Court’s compulsory jurisdiction must comply with the obligations established by the Court. In this regard, Paraguay must adopt all necessary measures to comply effectively with the decisions of the Court in the judgment on merits, reparations and costs of August 31, 2004, as well as in this Order on the status of compliance with that judgment. This obligation includes the State’s duty to report on the measures adopted to comply with the rulings of the Court in the judgment. The prompt implementation of the State’s obligation to report to the Court on how each element ordered by the Court is being fulfilled is essential to assess the status of compliance in the case.

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8. That, to monitor full compliance with the judgment delivered in this case, the Court has examined the information provided by the State and by the Inter-American Commission in their briefs on compliance with the reparations. The Court has verified

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

² Cf. *Case of Cantos*. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2005, fifth considering paragraph; *Case of the Gómez Paquiyauri Brothers*. Compliance with judgment. Order of the Inter-American Court of Human Rights of November 17, 2005, fifth considering paragraph; and *Case of Baena Ricardo et al.* Compliance with judgment. Order of the Inter-American Court of Human Rights of November 28, 2005, fifth considering paragraph.

³ Cf. *Case of Cantos*. Compliance with judgment, *supra* note 2, sixth considering paragraph; *Case of the Gómez Paquiyauri Brothers*. Compliance with judgment, *supra* note 2, sixth considering paragraph; and *Case of Baena Ricardo et al.*, *supra* note 2, sixth considering paragraph. Also, *cf., inter alia, the case of YATAMA*. Judgment of June 23, 2005. Series C No. 127, para. 170; *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 101; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 64.

that, although Paraguay has reported on various measures taken to comply with the judgment, the State has not complied with any of the reparations ordered in the judgment. In this regard, the Court observes that more than ten months have elapsed since the time granted to Paraguay to comply with these reparations expired.

9. That the Court considers it essential that the State adopt all necessary measures to comply promptly with the reparations ordered by the Court in the judgment and that it submit detailed current information on compliance.

10. That the Court emphasizes the particular importance of the information provided by the State, and also the observations of the Commission and the representatives of the victims on this information. In this regard, since the President had to repeat to the representatives of the victim that they should submit their observations on the State's report of October 5, 2005 (*supra* Having seen paragraphs 4 and 5), and the observations were not presented, the Court considers it necessary to indicate that these observations are essential for assessing the State's implementation of the measures to comply with the judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions conferred by Article 33, 62(1), 62(3), 65, 67 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, pursuant to the eighth considering paragraph of this Order, the State has not complied with the decisions in the operative paragraphs of the judgment on merits, reparations and costs delivered by the Court on August 31, 2004.

AND DECIDES:

1. To require the State to adopt all necessary measures to give effect and comply promptly with all the reparations that were ordered by the Court in the judgment on merits, reparations and costs delivered by the Court on August 31, 2004, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, by May 24, 2006, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court that are pending compliance, in accordance with the contents of the eighth and ninth considering paragraphs of this Order.

3. To request the representatives of the victim and the Inter-American Commission on Human Rights to submit observations on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, from the date they receive the report.

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

5. To require the Secretariat to notify this Order to the State, the Inter-American Commission, and the representatives of the victim.

Sergio García Ramírez
President

Alirio Abreu Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Manuel E. Ventura Robles

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary