

**ORDER OF THE
THE INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF SEPTEMBER 22, 2006**

CASE OF FERMÍN RAMÍREZ V. GUATEMALA

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits and reparations delivered on June 20, 2005 by the Inter-American Court of Human Rights (hereinafter, the "Court" or the "Inter-American Court"), notified in full to the State on July 15, 2005, whereby it unanimously decided:

1. The State violated to the detriment of Fermín Ramírez the Right to a Fair Trial enshrined in Articles 8(2)(b) and 8(2)(c) of the American Convention on Human rights, in relation to Article 1(1) thereof, as set forth in paragraphs 62, 63, 65, 66 to 68, 70 to 76 and 78 to 80 of [the] Judgment.
2. It has not been proven that the State violated to the detriment of Fermín Ramírez the Right to Judicial Protection enshrined in Article 25 of the American Convention on Human Rights, for the reasons set forth in paragraphs 82 and 83 of [the] Judgment.
3. The State violated to the detriment of Fermín Ramírez the Freedom from Ex Post Facto Laws enshrined in Article 9 of the American Convention on Human rights, in relation to Article 2 thereof, as set forth in paragraphs 81 to 90 to 98 of [the] Judgment.
4. The State violated to the detriment of Fermín Ramírez the right to request a pardon or commutation of sentence enshrined in Articles 4(6) of the American Convention on Human rights, in relation to Articles 1(1) and 2 thereof, as set forth in paragraphs 105 to 110 of [the] Judgment.
5. The State violated to the detriment of Fermín Ramírez the Right to Humane Treatment enshrined in Articles 5(1) and 5(2) of the American Convention on Human rights, in relation to Article 1(1) thereof, as set forth in paragraphs 117 to 119 of [the] Judgment.
6. This Judgment is in and of itself a form of reparation.

And unanimously rule[d]:

* Judge Oliver Jackman informed the Court that, due to reasons beyond his control, he was unable to attend the Seventy-second Regular Session of the Court and, therefore, he did not participate in the deliberations and signature of this Order.

7. The State must hold, within a reasonable period of time, a new trial against Mr. Fermín Ramírez, satisfying the demands of the due process of law, with all the guarantees of hearings and defense for the accused. If he is charged with the crime of murder, classification that was in force when the facts that he was charged with occurred, the current criminal legislation must be applied with the exclusion of the reference to dangerousness, in the terms of the following Operative Paragraph.

8. The State must refrain from applying the part of Article 132 of the Criminal Code of Guatemala that refers to the dangerousness of the agent and modify it within a reasonable period of time, adjusting it to the American Convention, pursuant to the established in Article 2 of the same, thus guaranteeing the respect for freedom from ex post facto laws, enshrined in Article 9 of the same international instrument. The reference to the dangerousness of the agent included in this stipulation must be eliminated.

9. The State must refrain from executing Mr. Fermín Ramírez, whichever the result of the trial referred to in Operative Paragraph seven.

10. The State must adopt, within a reasonable period of time, the legislative and administrative measures necessary to establish a procedure that guarantees that every person sentenced to death has the right to request pardon or commutation of the sentence, pursuant to a regulation that determines the authority with the power to grant it, the events in which it proceeds and the corresponding procedure; in these cases the sentence must not be executed while the decision regarding the pardon or commutation of the sentence requested is pending.

11. The State must provide Mr. Fermín Ramírez, prior manifestation of his consent for these effects, as of the notification of the present Judgment and for the time necessary, without any cost and through the national health services, with an adequate treatment, including the supply of medications.

12. The State must adopt, within a reasonable period of time, the measures necessary so that the conditions of the prisons adjust to the international norms of human rights.

13. The State must pay the reimbursement of expenses within the one-year term as of the notification of the present judgment, in the terms of paragraphs 131 through 137 of this Judgment.

14. The obligations of the State within the framework of the provisional measures ordered are replaced by those ordered in this Judgment, once the State ensures compliance of Operative Paragraphs 7, 8, and 9 of the present Judgment.

15. It will supervise compliance of this Judgment in an integrated manner, in the exercise of its powers and in compliance of its duties pursuant to the American Convention, and will consider this case closed once the State has fully implemented that stated in it. Within one year of notification of this Judgment, the State must present to the Court a report of the measures adopted for its execution.

2. The brief of July 27, 2005, whereby the *Instituto de Estudios Comparados en Ciencias Penales* (Institute of Comparative Studies of Criminal Sciences) of Guatemala, representative of Fermín Ramírez (hereinafter "the representatives"), submitted an "article published in the Guatemalan newspaper "Siglo XXI" on June 26, 2005 on the judgment delivered by the [...] Inter-American Court" in the instant case and informed that said Institute asked the newspaper to recant the allegations for being "fallacious and inaccurate."

3. The Order of the Court of September 9, 2005, whereby it decided to rescind the provisional measures ordered in favor of Fermín Ramírez on December 21, 2004 by the President and ratified by the Court on March 12, 2005, and whereby it:

[CONSIDERED]:

4. That the provisional measures were ordered in a case submitted to the jurisdiction of the Court as regards the merits, reparations and costs, with the purpose of protecting the rights to life and humane treatment of Fermín Ramírez, who was sentenced to the death penalty and whose execution was imminent. Said measures would also prevent, *inter alia*, any reparation ordered by the Court in favor of the alleged victim from rendering ineffective.

[...]

6. That in delivering said Judgment on the merits, reparations and costs, the Court ordered, *inter alia*, that "the State must abstain from executing Mr. Fermín Ramírez, whichever the result of the [new] trial referred to in Operative Paragraph seven" of said Judgment. Therefore, the obligation to respect the rights to life and humane treatment of Fermín Ramírez, initially imposed by means of the order of provisional measures, stems from the set of reparations ordered in the Judgment, which must be complied with from the date it is served upon the State. Thus, the State's obligations deriving from the provisional measures shall be superseded by the provisions of the above-mentioned Judgment and, consequently, their fulfillment and compliance shall not be regarded in connection with the provisional measures but with the monitoring of compliance with the Judgment.

[AND RULED:]

1. To rescind the provisional measures ordered by the Inter-American Court of Human Rights in favor of Fermín Ramírez by Order of March 12, 2005, for the obligations of the State derived from the provisional measures were superseded by the provisions of the Judgment on the merits, reparations and costs delivered by the Court on June 20, 2005 [...]

4. The brief of November 17, 2005, whereby the State submitted information relative to the compliance with the above-mentioned judgment (*supra* Having Seen clause No. 1). In said brief, the State asserted that, as regards Operative Paragraph eleven of the Judgment, the *Dirección General del Sistema Penitenciario* (General Directorate of the Penitentiary System) "through the *Directora de Salud Integral* (Director of Integral Health) informed that the professionals of the *Centro de Alta Seguridad Escuintla* (Escuintla Maximum Security Center) provide medical assistance [...] and psychological support to Ramírez." The State alleged that the medical reports contained information about the diseases and disorders of Ramírez as well as his general health condition. Moreover, it stated that "the psychological report concludes that Ramírez was not mentally disordered."

5. The brief of December 19, 2005, whereby the State submitted information relative to the compliance with the Judgment as regards payment of US\$5,000.00 (five thousand United States dollars) as costs reimbursement. It particularly informed that "it reinforces its commitment [...] to effectively reimburse the costs and expenses by means of a money transfer to the account of *Instituto de Estudios Comparados en Ciencias Penales* (Institute of Comparative Studies of Criminal Sciences) before the end of [2005].

6. The brief of July 04, 2006, whereby the State submitted a new report on the compliance with the Judgment and stated:

a) As regards the provisions of Operative Paragraph seven of the Judgment concerning the institution of new proceedings against Fermín Ramírez "the Supreme Court of Justice rendered Agreement No. 96-2006, whereby it instructed the *Tribunal de Sentencia Penal, Narcoactividad y*

Delitos contra el Ambiente (Court for Criminal, Drug-trafficking and Environmental Offenses) in and for Escuintla to hear over the case [...] against Fermín Ramírez, charged with the crime of aggravated rape." Said court ordered that the trial be conducted on April 24, 2006 and then adjourned the hearing to May 9. "From said [last] date on, the new trial was conducted as ordered by the Court, but there were certain complications in localizing witnesses and expert witnesses," as it happened with late forensic doctor De León-Barrera. Said court delivered a conviction on June 21, 2005 for the crime of aggravated rape and sentenced defendant to 40 years imprisonment. The conviction "is not final, for it may be appealed against under [domestic] laws by any of the parties."

b) As regards Operative Paragraph ten "the legal framework of the measure of grace or pardon has been addressed in order to redress the legal vacuums of [its] laws in force." The "Committee of Legislation and Constitutional Affairs of the National Congress issued a supporting report containing amendments to Bill number 32045, which provides for the approval of the *Ley Reguladora del Recurso de Gracia* (Framework Law on the Measure of Grace).

c) As regards Operative Paragraph thirteen, "the State [...] fully complied with its obligation by means of a deposit made on December 29 to the account of the *Asociación Instituto de Estudios Comparados de Ciencias Penales de Guatemala* (Institute of Comparative Studies in Criminal Sciences of Guatemala Association)."

7. The brief of August 10, 2006, whereby the representatives filed comments on the reports of the State. In this regard, the representatives stated, *inter alia*:

a) As regards the new proceedings against Fermín Ramírez, the trial was effectively conducted and, on June 21, 2006, the Criminal Court sentenced the defendant to 40 years imprisonment on the count of aggravated rape. Said conviction is not final because the defense raised a motion for special appeal, which is still pending resolution, based on the assertion that Court must have imposed the minimum sentence;

b) As regards the obligation to refrain from executing the death penalty based on the dangerousness of the agent (Article 32 of the Criminal Code of Guatemala), the State failed to comply with this obligation for, by means of a judgment delivered on June 15, 2006, the Criminal Chamber of the Supreme Court of Justice dismissed the motion raised by the defendant seeking review of the judgment rendered in November, 2005 by the *Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente* (First Trial Court for Criminal, Drug-trafficking and Environmental Offenses) in and for the Department of Chiquimula, sentencing defendant to the death penalty on the grounds of the greater dangerousness of the agent. Said ruling was contrary to the decision of the Supreme Court in two previous cases where, by application of the conviction in the case of Fermín Ramírez, it had reversed the death penalty, commuted the sentence, and imposed the next lower sentence. Pursuant to the foregoing, this situation "amounts to a failure to comply with the decisions of the [...] Court [...] and places 13 people in a situation of imminent jeopardy by application of a rule contrary to the Convention;

- c) As regards the actions aimed at adapting Article 132 of the Criminal Code to the Convention, Guatemala failed to present a bill to the National Congress in order to amend said provision. In deed, congressmen's public statements supported the urgent execution of the persons sentenced to death for the crime of murder. Furthermore, on October 19, 2005, the Committee of Legislation and Constitutional Affairs submitted an unfavorable report on a Bill filed by representative Maria Reinhardt to abolish the death penalty and, in particular, to amend said article;
- d) As regards the obligation to refrain from executing Fermín Ramírez, Guatemala complied with its commitment, for the death penalty was superseded by a sentence of imprisonment;
- e) As regards Operative Paragraph ten, the representatives consider that "the State did not adopt any legislative or administrative measure, for no proceedings have been instituted in order to [...] raise or resolve a motion for pardon." There is only a bill at the National Congress whose "technical deficiencies in contradiction to constitutional principles and guarantees" render it unconstitutional. As regards the sentence commutation, only six cases involving the crime of kidnapping without the victim's death were commuted, but not as a result of a motion for pardon, but through an appeal for review based on the judgments delivered in the cases of Fermín Ramírez and Raxcacó;
- f) As regards Operative Paragraph eleven, Fermín Ramírez was medically and psychiatrically evaluated in order to determine his clinical condition and it was inferred that he had not been provided with regular dental, medical and psychological assistance. Currently, his dental hygiene is spoiled; he has stomach and gastric problems, headaches, ocular irritation and depression symptoms. He was not provided with any type of individual psychological assistance, nor was he enrolled in any special assistance program; he is suffering the consequences of the non-stop lock-in regime that kept him away from educational, labor or recreational programs.
- g) As regards prison conditions, the imprisonment program to which Ramírez was subject remained unchanged, "thus, maximum security restrictions still apply." The bodily and mental deterioration resulting from said conditions may be regarded as cruel, inhuman and degrading treatment. The extreme situation of the center where he is held in custody "increases the possibility of aggressive and violent outbreaks." Said center "offers extremely limited self-managing educational programs to the inmates, lacks [room] for sports or [...] fitness activities and inmates are not allowed to access outdoor facilities [or] lay in the sun." Currently, more than three jails are being built, but it is still unknown whether they will conform to international legal standards, and
- h) As regards Operative Paragraph three, the State complied with its cost reimbursement obligation.
8. The brief of August 25, 2006, whereby the Inter-American Commission of Human Rights (hereinafter "the Commission" or the "Inter-American Commission") submitted comments on the reports of the State and asserted:

- a) That the Commission understands that the Judgment of the Court sets three types of terms for complying with the obligations:
 - i. Immediate and constant terms: Operative Paragraphs eight, nine and eleven;
 - ii. Within a reasonable time: Operative Paragraphs seven, eight, ten and twelve; and
 - ii. Within one year: Operative Paragraphs thirteen and fifteen;
- b) That the obligation to refrain from executing Fermín Ramírez was complied with, as informed by the State and later ratified by the representatives;
- c) That payment of costs and expenses by the State was made by bank deposit, as ratified by the representatives;
- d) That in the reports submitted by the State no reference is made to the obligation to provide Fermín Ramírez with adequate medical treatment, adopt measures to improve prison conditions, refrain from applying Article 132 of the Criminal Code regarding to the dangerousness of the agent, and amend said rule. Thus, the Commission deems it necessary that the State submit an additional report on those matters, "including any general guidelines adopted in connection therewith;"
- e) That, as regards the duty to legislate the pardon procedure, the Commission expressed its satisfaction with the progress described by the State, but considered that the State must provide further details and address the alleged unconstitutionality issue regarding the bill presented to the Congress;
- f) That, as regards the new proceedings against Fermín Ramírez, the Commission reserves the right to file additional comments once it has been served with the judgment of June 21, 2006, whereby he was convicted, and
- g) That the Commission considers it relevant that the Court require the State "to file an additional report on specific matters [...] regarding the unfulfilled obligations, which have not been addressed yet."

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.
2. That the State of Guatemala has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since May 25, 1978 and that it accepted the binding jurisdiction of the Court on March 9, 1987.

3. That, pursuant to Article 68(1) of the American Convention, “[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 such purpose, States are required to guarantee implementation of the Court’s rulings at domestic level.¹

4. That, given the final and not-subject-to-appeal nature of the Court’s judgments, as established in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility.² The treaty obligations of the States Parties are binding on all States powers and organs.

6. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and secure their effects (*effet utile*) at the domestic level. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

7. That the States Parties to the American Convention that have accepted the binding jurisdiction of the court are under a duty to fulfill the obligations set by the Court. In this regard, Guatemala is required to take such measures as may be necessary in order to effectively comply with the Judgment on the merits and reparations delivered by the Court on June 20, 2005 (*supra* Having Seen clause No. 1). This obligation includes the State’s duty to report on the measures adopted to comply with such decisions of the Court. Timely fulfillment of the State’s obligation to report to the Court on the exact manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance in this case.⁴

¹ Cf. *Case of the “Five Pensioners”*. Monitoring Compliance with Judgment, Considering clause No. 3; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment, Considering clause No. 3, and *Case of the “Juvenile Reeducation Institute”*. Monitoring Compliance with Judgment, Considering clause No. 3.

² Cf. *Case of the “Five Pensioners”*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 7; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 5, and *Case of the “Juvenile Reeducation Institute”*, *supra* note 1, Considering clause No. 5.

³ Cf. *Case of the “Five Pensioners”*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 8; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 6, and *Case of the “Juvenile Reeducation Institute”*, *supra* note 1, Considering clause No. 6.

⁴ Cf. *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment, *supra* note 1, Considering clause No. 7.

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8. That, in monitoring comprehensive compliance with the Judgment on the merits and reparations in the instant case, and after having analyzed the information supplied by the State, the Inter-American Commission and the representatives, the Court has verified that the State has fully complied with the obligation to reimburse costs and expenses to the *Instituto de Estudios Comparados de Ciencias Penales* (Institute of Comparative Studies of Criminal Sciences) of Guatemala, as ordered in Operative Paragraph 13 of the Judgment.

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9. That, as regards the new proceedings against Fermín Ramírez, the Court notes that the State has duly conducted a new public trial on May 9, 2006. In this regard, the Court expresses its satisfaction with the provisions of Agreement No. 96-2006 entered into by the Supreme Court of Justice of Guatemala and which has become an important precedent for the Inter-American system in connection with compliance with judgments passed by this Court. This agreement provides:

CONSIDERING:

That the State of Guatemala ratified the American Convention [...]; furthermore, [...] it accepted without any special convention the binding *ipso facto* jurisdiction of the Inter-American Court [...], in cases related to the interpretation and application of the Convention.

CONSIDERING:

That, pursuant to the acceptance by the State of Guatemala of the contentious jurisdiction of the Inter-American Court of Human Rights, the rulings delivered by it on the interpretation and application of the American Convention on Human Rights are final and not subject to appeal, the State having committed, under Article 68 of the Convention, to comply with the judgments of the Court.

CONSIDERING:

That, on the twentieth day of June of the year two thousand and five, the Inter-American Court of Human Rights, based on the application filed against the State of Guatemala, delivered a Judgment in the "Case of Fermín Ramírez v. Guatemala", ordering the State to institute, within a reasonable time, new proceedings against Fermín Ramírez satisfying the demands of the due process of law, with all the guarantees of hearings and defense for the accused; as a result, the proceedings conducted against Fermín Ramírez or Fermín Ramírez Ordóñez for the crime of aggravated rape are thereby set aside.

CONSIDERING:

That, based on the binding nature of the judgment of the Inter-American Court of Human Rights, said ruling must be complied with; therefore, it is pertinent to appoint the *Tribunal de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente* (Court for Criminal, Drug-trafficking and Environmental Offenses) in and for Escuintla so that it may conduct the public trial against Fermín Ramírez o Fermín Ramírez Ordóñez, taking into account that said judicial authority has geographical jurisdiction over the case and is composed of judges who did not take part in the previous proceedings.

NOW, THEREFORE:

Based on the foregoing and by virtue of the provisions of Articles 1, 2, 12, 14, 44, 46, 140, 141, 149, 152, 153, 154 and 203 of the Political Constitution of the Republic of Guatemala; and Articles 1, 8, 25, 33, 61, 62, 63 and 67 of the American Convention on Human Rights, in the exercise of the powers granted under Articles 52, 54(d), 55(b) and 98 of the Judiciary Law, and pursuant to the judgment of the Inter-American Court of Human Rights of the twentieth day of June of the year two thousand and five,

AGREES:

Article 1. To appoint the *Tribunal de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente* (Court for Criminal, Drug-trafficking and Environmental Offenses) in and for Escuintla, composed of [...], so that it may preside over proceedings number sixty-four dash ninety-seven against defendant Fermín Ramírez o Fermín Ramírez Ordóñez, charged with the crime of aggravated rape based on the judgment of the Inter-American Court of Human Rights of the twentieth day of June of the year two thousand and five.

Article 2. The Secretariat of the Supreme Court of Justice must forward a transcription of this Agreement to the appointed court together with a certified copy of the supreme final decision of the Inter-American Court of Human Rights, so that it may comply with its provisions within the stipulated term.

Article 3. The *Tribunal de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente* (Court for Criminal, Drug-trafficking and Environmental Offenses) in and for Escuintla shall timely inform the Supreme Court of Justice about the progress made in the proceedings according to the provisions of Operative Paragraph fifteen (15) of the judgment of the twentieth day of June of the year two thousand and five delivered by the Inter-American Court of Human Rights.

Done at the Courthouse, in the city of Guatemala, this twenty-third day of the month of January of the year two thousand and six.

10. That, based on the foregoing, the parties informed that on June 21, 2006, the *Tribunal de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente* (Court for Criminal, Drug-trafficking and Environmental Offenses) in and for Escuintla sentenced Fermín Ramírez to 40 years imprisonment on the count of aggravated rape. Said conviction is not final, for the defense raised a special motion of appeal which is still pending resolution. As regards the requirements that the new proceedings should meet (*i.e.* to conduct said proceedings within a reasonable time, satisfying the demands of the due process of law, with all the guarantees of hearings and defense for the accused), the representatives failed to inform whether during the proceedings said requirements were met or not. In fact, the representatives informed that the defense raised a motion of appeal based on the sole assertion that Court must have imposed the minimum sentence.

11. That, in this regard, the Court expresses its satisfaction with the progress made by the State in complying with the related provisions of the above mentioned Judgment. Nevertheless, while the obligation to refrain from executing Ramírez is independent of the outcome of the new proceedings and the death penalty is inapplicable *vis-à-vis* the crime for which defendant was prosecuted and convicted, due to the fact that the new proceedings are still pending, this Court deems it convenient to continue monitoring compliance with the Judgment in connection with Operative Paragraphs seven, nine, fourteen until full observance thereof has been verified.

12. That in the reports submitted by the State no reference was made to the obligation to refrain from applying Article 132 of the Criminal Code regarding to the dangerousness of the agent, and adapt said rule to the Convention within a reasonable time. The representatives mentioned that a duly presented bill to abolish the death penalty and, in particular, to amend said article was rejected by the Committee of Legislation and Constitutional Affairs of the National Congress. In turn, the Court expresses its concern about the information supplied by the representatives with regard to the judgment of June 15, 2006 delivered by the Criminal Chamber of the Supreme Court of Justice dismissing the request for review filed by the defendant against the death penalty sentence based on the application of the greater dangerousness of the agent doctrine. In this regard, the Court deems it

convenient to highlight that the scope of the decision made by the Court in Operative Paragraph eight of the Judgment is general insofar the source of this type of reparation is the violation by the State of Article 9 of the Convention in relation to Article 2 thereof, for having failed to set aside Article 132 of the Criminal Code after ratification by Guatemala of said treaty. In other words, according to the provisions of paragraphs 81 and 90 to 98 of the Judgment, the application of the dangerousness of the agent doctrine to the case and the imposition of certain punishments should be deemed incompatible with the freedom from *Ex Post Facto* Laws and, therefore, contrary to the Convention. Thus, the reparation so ordered provides, on the one hand, for the obligation of criminal judicial authorities of the State to refrain from applying Article 132 of the Criminal Code of Guatemala regarding to the dangerousness of the agent either to Fermín Ramírez or to any other individual prosecuted, accused or convicted for the same crime.⁵ On the other hand, such is the source of the obligation of the Guatemalan legislature to amend said rule within a reasonable time so that the freedom from *Ex Post Facto* Laws is respected by repealing any reference to the dangerousness of the agent. Therefore, the Court deems it imperative that the State furnish details of the measures adopted in compliance with the above-mentioned issue and inform whether the domestic criminal courts still apply said part of the referenced rule.

13. That, as regards Operative Paragraph ten of the Judgment, which refers to the duty to implement a procedure that guarantees that whoever is sentenced to the death penalty will be entitled to request a pardon or commutation of the sentence, the State informed that "the legal framework of the measure of grace or pardon has already been addressed" and that the Committee of Legislation and Constitutional Affairs of the National Congress "issued a supporting report containing amendments to Bill number 32045, which provides for the approval of the *Ley Reguladora del Recurso de Gracia* (Framework Law on the Measure of Grace)." The representatives ratified said information, but expressed that the bill has technical deficiencies in contradiction to constitutional principles and that in several cases the sentence was commuted, but not as a result of a motion for pardon, but through an appeal for review based on the judgments delivered in the cases of Fermín Ramírez and Raxcacó Reyes. The Commission expressed its satisfaction with the progress made in connection therewith and stated that the State should address the alleged unconstitutionality issue regarding the bill. In this regard, it is worth noting that, in monitoring compliance with the obligations imposed on the State by the above mentioned Judgment, the obligation to adopt or amend domestic rules in particular, it is not incumbent on the Court to determine the compatibility of domestic legislation, or its amendment, with the Constitution or other domestic legal rules in force in the particular State, but to control that they are compatible with the provisions of a Judgment delivered under the American Convention. In the instant case, the Court expresses its satisfaction with the progress described by the State, but considers that the State must provide further details. Moreover, the Court wishes to call to mind that, under the provisions of Operative Paragraph ten, until said procedure is implemented the State must refrain from executing any person sentenced to death who has applied for a pardon or sentence commutation.

⁵ Similarly, the Court imposed on the State the obligation to amend an Article of the Criminal Code under Operative Paragraph number six of the Judgment on the merits, reparations and costs in the *Case of Raxcacó-Reyes v. Guatemala* as follows: "[w]hile the above mentioned amendments are still pending, the State must refrain from applying the death penalty and execute convicted prisoners for the crime of kidnapping and abduction, as set forth in paragraph 132 of the [...] Judgment." Cf. *Case of Raxcacó-Reyes*. Judgment of September 15, 2005. Series C No. 133.

14. That, as regards the provision of proper medical treatment to Fermín Ramírez, the State informed that the professionals of the *Centro de Alta Seguridad Escuintla* (Escuintla Maximum Security Center) provided medical and psychological assistance to Ramírez and forwarded medical and psychological reports (*supra* Having Seen clause No. 4). In turn, the representatives asserted that Fermín Ramírez had no access to regular medical, psychological and dental assistance and that his maximum-security imprisonment regime remained unchanged, and informed the Court of the hardship he was allegedly enduring. Owing to the fact that this obligation must have been complied with without delay after service of the Judgment and while it is necessary, the Court deems it imperative that the State supply detailed and specific information about the medical evaluations and treatment supplied, as well as about the method of implementation thereof, so that said treatment is provided when required.

15. That the State failed to address the issue of the obligation to adopt the necessary measures to improve prison conditions to eventually meet international legal standards on human rights. Based on their knowledge of the personal situation of Fermín Ramírez, the representatives notified that he would have no access to labor, educational or recreational programs. While the prison conditions verified by the Court in the case of Ramírez that amount to a violation of Article 5 of the Convention remain unchanged, the effects of said violation will spread and adversely affect Ramírez and other inmates held in custody under the same conditions. Consequently, the Court deems it necessary that the State submit an additional report on this issue.

16. That the Court will consider the general issues regarding compliance with the Judgment on the merits and reparations of June 20, 2005, once any pertinent information on the measures pending fulfillment is received.

NOW, THEREFORE:

THE INTER-AMERICAN COURT ON HUMAN RIGHTS

By virtue of the authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62.(3), 65, 67 and 68(1) of the American Convention, 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES,

1. That, in accordance with Considering clause number eight of this Order, the State has complied with the provisions of Operative Paragraph thirteen of the Judgment on the merits and reparations delivered by the Court on June 20, 2005, as it effectively made reimbursement of costs and expenses to the *Instituto de Estudios Comparados en Ciencias Penales* (Institute of Comparative Studies of Criminal Sciences) under the provisions of paragraphs 131 to 137 of the Judgment.

2. That it will keep open the proceedings for monitoring compliance with the aspects pending fulfillment, namely the obligations to:

- a) Effectively conduct, within a reasonable time, a new trial against Fermín Ramírez, satisfying the demands of the due process of law,

with all the guarantees of hearings and defense for the accused (Operative Paragraph number seven);

- b) Refrain from applying the part of Article 132 of the Criminal Code of Guatemala that refers to the dangerousness of the agent and adapt it to the Convention within a reasonable time (Operative Paragraph number eight);
- c) Refrain from execute Fermín Ramírez, whichever the outcome of the trial referred to in Operative Paragraph seven (Operative Paragraph number nine);
- d) Adopt the legislative and administrative measures necessary to establish a procedure that guarantees that every person sentenced to death has the right to request a pardon or commutation of the sentence (Operative Paragraph number ten);
- e) Provide Fermín Ramírez with an adequate treatment (Operative Paragraph number eleven);
- f) Adopt, within a reasonable time limit, the necessary measures to ensure that prison conditions conform to international standards on human rights (Operative Paragraph number twelve);

AND DECIDES:

1. To require the State to take the necessary measures to fully and immediately comply with the Operative Paragraphs pending fulfillment of the Judgment on the merits and reparations delivered by the Court on June 20, 2005 and this Order, according to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To require the State to submit to the Court, before January 19, 2007, a detailed report on the actions taken in order to comply with the reparations ordered by the Court which are still pending, as set forth in Considering clauses number nine to sixteen and declaratory paragraph two of this Order.
3. To request the representatives of Fermín Ramírez and the Inter-American Commission on Human Rights to file comments on the brief of the State within four and six weeks, respectively, as from the date of receipt of the report.
4. To continue monitoring compliance with the unfulfilled paragraphs of the Judgment on the merits and reparations of June 20, 2005.
5. To notify this Order to the State, the Inter-American Commission on Human Rights and the representatives.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

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