

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 12, 2007**

CASE OF CANTOS V. ARGENTINA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits, reparations and costs delivered on November 28, 2002 by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal"), whereby it declared, *inter alia*, that:

the State violated the right of access to the courts protected under Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mr. José María Cantos, as set forth in paragraphs 54, 55 and 56 of the [...] Judgment[;]

and therefore unanimously,

decide[d] that:

1. The State shall refrain from charging Mr. José María Cantos the filing fee and fine levied for failure to pay the filing fee on time[;]

2. The State shall set in a reasonable sum the fees regulated in Argentine Supreme Court case C-1099, as stipulated in paragraphs 70(b) and 74 [of the Judgment;]

3. The State shall pay the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago del Estero, under the conditions set forth in the preceding point[;]

4. The State shall lift the attachments, general property encumbrances and other measures that were ordered against the properties and business assets of Mr. José María Cantos in order to guarantee payment of the court filing fee and the professional fees[;]

5. The State shall pay the victim's representatives the sum of US\$ 15,000.00 (fifteen thousand United States dollars) for expenses caused in the international proceedings before the inter-American system for the protection of human rights, pursuant to paragraphs 73 and 74 of [the] Judgment[;]

* Judge Leonardo A. Franco, of Argentinean nationality, excused himself from participating in the present case, in accordance with Articles 19(2) of the Court's Statute and 19 of the Court's Rules of Procedure.

6. The other claims of the application are dismissed as unfounded[;]

7. The State shall submit a report to the Inter-American Court of Human Rights every six months from the date of notification of [the] Judgment, recounting the measures it has taken to comply with said Judgment[, and]

8. The Court will oversee compliance with this Judgment and will regard the present case closed once the State has fully carried out the terms of [the] Judgment.
[...]

2. The Order on Compliance with Judgment issued by the Court on November 28, 2005, by means of which the Court declared:

1. [t]hat in accordance with Considering paragraph eighth of the [...] Order, the State has complied with that which is specified in the fifth operative paragraph of the Judgment on the merits, reparations and costs in relation to the payment of expenses accrued during the international proceedings before the inter-American system of protection of human rights[;]

2. [t]hat it will keep open the proceeding for monitoring compliance with the aspects pending compliance, namely the obligations to:

a) "refrain from charging Mr. José María Cantos the filing fee and fine levied for failure to pay the filing fee on time" (*first operative paragraph of the Judgment of November 28, 2002*);

b) "set in a reasonable sum the regulated fees in the Argentine Supreme Court case C-1099, as stipulated in paragraphs 70(b) and 74 [of the Judgment;]" (*second operative paragraph of the Judgment of November 28, 2002*);

c) "pay the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago de Estero, under the conditions set forth in the preceding point[;]" (*third operative paragraph of the Judgment of November 28, 2002*); and

d) "lift the attachments, general property encumbrances and other measures that were ordered against the properties and business assets of Mr. José María Cantos in order to guarantee payment of the court filing fee and the professional fees" (*fourth operative paragraph of the Judgment of November 28, 2002*).

AND DECIDE[D]:

1. [t]o call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending measures ordered by the Court in the Judgment on the merits, reparations and costs of November 28, 2002, pursuant to Article 68(1) of the American Convention on Human Rights[;]

2. [to] request that by no later than March 6, 2006, the State submit a report specifying all such measures that may have been adopted to comply with the reparations ordered by this Court and which are still pending compliance, as

established in the tenth Considering paragraph and in the second declarative paragraph of this [...] Order[;]

3. [t]o call upon the representatives of the victim and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks respectively, as from the date of receipt of the report[, and]

4. [t]o continue monitoring those aspects of the Judgment on the merits, reparations and costs of November 28, 2002 that are still pending compliance [...]

3. The communications presented by the State of Argentina (hereinafter "the State" or "Argentina") on March 6, 2006 and May 14, 2007, whereby the State reported that:

a) on January 25, 2006 the National Executive Branch enacted Decree No. 99/06, whereby the State ordered, *inter alia*, so as to comply with the Court's Judgment on the merits of November 28, 2002 in this case,

i) to instruct the FEDERAL ADMINISTRATION OF PUBLIC REVENUE to abstain from requiring the payment of filing fees and fines for lack of timely payment of said fees[;]

ii) to convene interested parties in order to establish the foundation for the execution of the Judgment of the [Inter-American Court] regarding the payment of the fees regulated in Case C-1099 of the Supreme Court of Argentina under the conditions set forth in the Judgment of said Tribunal[;]

iii) to instruct the FEDERAL ADMINISTRATION OF PUBLIC REVENUE [...], to proceed and comply with paragraph 77, point 4 of the Judgment by the [Inter-American Court] during the appropriate procedural opportunity[, and]

iv) to require the participation of Argentina's National Congress with respect to the compliance with paragraph 77, point 1 of the Judgment by the [Inter-American Court].

b) on the same date, the National Executive Branch submitted for consideration to the Argentinean National Congress a bill which states:

"ARTICLE 1: Comply with paragraph 77, point 1 of the Judgment emitted by the INTER-AMERICAN COURT OF HUMAN RIGHTS in the Case of CANTOS-CDH 11.636 on November 28, 2002."
[...]

c) on May 10, 2007 the Attorney General's Office ("Procuración del Tesoro de la Nación") requested from the Ministry of Justice and Human Rights, "this being the agency responsible for complying with the measures required by the Inter-American Court," a report about "the measures taken and/or to be taken, in particular with respect to compliance with operative paragraphs first, second, third and fourth of the Judgment by the Inter-American Court".

4. The communications filed by the representatives of the victim (hereinafter "the representatives") on March 20, 2006 and June 7, 2007, whereby the representatives reported that:

- a) they are "disconcerted by the amount of time that has passed without the effective compliance with the Judgment, with the exception of the payment of expenses accrued during the international proceedings";
- b) they consider that "non-compliance of international judgments violates due process of law";
- c) four and a half years have passed without effective compliance with the Judgment;
- d) "treaty obligations of States Parties bind all powers or functions of the State, such that a State official cannot deny responsibility by demonstrating that he carried out his function and that it is another State official that did not do his part. Even if such is the case, it continues to be the State Party who did not comply with its international responsibility", and
- e) "they believe that the [...] Court should determine and apply a sanction to the State for allowing, by the way it acted, the non-compliance of the international judgment within a reasonable timeframe".

5. The communications submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on April 20, 2006 and June 26, 2007, whereby the Commission reported that:

- a) in their last communication "the State only presented information regarding the two communications sent by the Attorney General's Office ("Procuración del Tesoro de la Nación") to the Ministry of Justice and Human Rights, consulting them about the developments in the compliance procedure of the Judgment dictated by the Inter-American Court." In this respect, the Commission recognized that "compliance requires that different State entities and domestic proceedings be involved. However, before the Tribunal and in the inter-American proceedings, the responsibility of the State is undivided";
- b) "it values that the State took the necessary actions to finalize and issue Presidential Decree No. 99/06 that orders a course of action aimed at complying with the reparations ordered by the Court." However, "it is necessary to point out that the measures ordered do not refer to the direct fulfillment of the reparations ordered, but rather to procedures directed to fulfill them that still need to be orchestrated and completed";
- c) "it observes with concern that nearly all of the reparation measures ordered by the Court are unfulfilled" and that "the State has not offered any information regarding the advances that could have been made in the course of the last two years to carry out the Court's orders", and
- d) "it requests that the Court require the State to report on the Executive Branch's precise timeline and planned schedule for compliance with the pending measures."

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent in the judicial functions of the Court.

2. That Argentina has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since September 5, 1984 and that it accepted the binding jurisdiction of the Court on the same day. On November 28, 2002, *supra* the Court delivered the Judgment on the merits, reparations, and costs of this case (*supra* Having Seen paragraph 1).

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 the domestic level.¹

4. That, given the binding 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 the States, as supported by international case law, under which States are required to comply with the 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 States Parties are binding on all State 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 law 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

¹ Cf. *Case of the Constitutional Court v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering paragraph third; *Case of Sawhoyamaxa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 02, 2007, Considering paragraph second, and *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering paragraph third.

² Cf. *Case of Baena-Ricardo et al. v. Panama*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, Considering paragraphs second and third; *Case of Sawhoyamaxa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph third, and *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph fifth.

³ Cf. *Case of the Constitutional Court v. Peru*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph sixth; *Case of Sawhoyamaxa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph fourth, and *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph sixth.

7. That those 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. This obligation includes the State's duty to inform the Court on the measures adopted to comply with this Court's Judgment, as well as in the instant Order. Timely fulfillment of the State's obligation to report to the Court on the 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 Furthermore, the OAS General Assembly has reiterated that, with the purpose that the Tribunal can fully comply with the obligation to report about the compliance with its decisions, it is necessary that State Parties timely provide to the Court the information that the latter requests them.⁵

8. That the obligation to inform the Court is not fulfilled with the mere formal presentation of a document to the Court. Rather, effective compliance constitutes the dual obligation of a formal presentation of a timely document and the specific, current, truthful and detailed material information upon which said obligation relies.⁶

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9. That in monitoring the full compliance with the Judgment on the merits, reparations, and costs delivered in the instant case, and after analyzing the information provided by the State, the Inter-American Commission, and the representatives of the victim in their respective communications regarding compliance with the Judgment (*supra* Having Seen paragraphs 3 to 5), the Court observes that Argentina's Executive Branch, by enacting Decree 99/06 and proposing a bill to the National Legislative Branch (*supra* Having Seen paragraphs 3.a and 3.b), has adopted measures that move toward full complying with the pending operative paragraphs of the November 28, 2002 Judgment, but has not complied with said obligations in a concrete manner.

10. That more than four and a half years after rendering the Judgment of November 28, 2002, there is a lack of compliance with four of the five reparation measures ordered by the Tribunal in said Judgment.

11. That, consequently, according to the information brought by the parties, the compliance with the following measures of reparation is still pending:

- a) "refrain from charging Mr. José María Cantos the filing fee and fine levied for failure to pay the filing fee on time[;]" (*first operative paragraph of the Judgment of November 28, 2002*);

⁴ Cf. *Case of Barrios-Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering paragraph seventh; *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph seventh, and *Case of Ricardo Canese v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering paragraph thirteenth.

⁵ General Assembly, Resolution AG/RES. 2129 (XXXV-O/05) adopted in fourth plenary session, celebrated on June 7, 2005, titled "Observations and Recommendations to the Inter-American Court of Human Rights' Annual Report".

⁶ Cf. *Matter of Luisiana Ríos et al. regarding Venezuela*. Provisional measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering paragraph twelfth; *Case of Loayza-Tamayo v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering paragraph seventh, and *Case of Tibi v. Ecuador. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering paragraph seventh.

b) “set in a reasonable sum the fees regulated in the Argentine Supreme Court case C-1099, as stipulated in paragraphs 70(b) and 74 [of the judgment;]” (*second operative paragraph of the Judgment of November 28, 2002*);

c) “pay the fees and expenses of all experts and attorneys hired by the State and the Province of Santiago de Estero, under the conditions set forth in the preceding point” (*third operative paragraph of the Judgment of November 28, 2002*), and

d) “lift the attachments, general property encumbrances and other measures that were ordered against the properties and business assets of Mr. José María Cantos in order to guarantee payment of the court filing fee and the professional fees” (*fourth operative paragraph of the Judgment of November 28, 2002*).

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12. That, given the nature of the instant Order, the purpose of which is to evaluate compliance with what was ordered in the Judgment of the instant case, it is inappropriate at this time to consider the allegation of the representatives that noncompliance with said Judgment would constitute a violation of due process rights (*supra* Having Seen paragraph 4.e).

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its 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 on Human Rights, and articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

1. That it will keep open the proceeding for monitoring compliance with the aspects pending fulfillment in the present case, namely the obligations to:

a) “refrain from charging Mr. José María Cantos the filing fee and fine levied for failure to pay the filing fee on time” (*first operative paragraph of the Judgment of November 28, 2002*);

b) “set in a reasonable sum the fees regulated in the Argentine Supreme Court case C-1099, as stipulated in paragraphs 70(b) and 74 [of the

judgment;]" (*second operative paragraph of the Judgment of November 28, 2002*);

c) "pay the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago de Estero, under the conditions set forth in the preceding point" (*third operative paragraph of the Judgment of November 28, 2002*), and

d) "lift the attachments, general property encumbrances and other measures that were ordered against the properties and business assets of Mr. José María Cantos in order to guarantee payment of the court filing fee and the professional fees" (*fourth operative paragraph of the Judgment of November 28, 2002*).

AND DECIDES:

1. To call upon the State to adopt such measures as may be necessary to promptly and effectively comply with the pending measures ordered by the Court in the Judgment on the merits, reparations and costs of November 28, 2002, pursuant to article 68(1) of the American Convention on Human Rights.

2. To request that no later than by September 28, 2007, the State submit a report specifying all such measures as may have been adopted to comply with the reparations ordered by this Court and which are still pending compliance, as established in the tenth Considering paragraph and in the declarative paragraph of this Order.

3. To call upon the Inter-American Commission on Human Rights and the representatives of the victim to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of six and four weeks, respectively as from the date of receipt of the mentioned report.

4. To continue monitoring those aspects of the judgment on the merits, reparations and costs of November 28, 2002 that are still pending compliance.

5. To notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victim.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary