

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 21, 2007**

CASE OF CAESAR V. TRINIDAD AND TOBAGO

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) on March 11, 2005 (hereinafter “the Judgment”)¹, in which it:

DECLARE[D],

Unanimously, that:

1. The State violated the right enshrined in Article 5(1) and 5(2) in conjunction with Article 1(1) of the American Convention on Human Rights, to the detriment of Mr. Winston Caesar, in the terms of paragraphs 70, 73, 89 and 100 of [the] judgment.
2. The State breached its obligations established in Article 2 of the American Convention on Human Rights, in relation to Article 5(1) and 5(2) of the Convention, to the detriment of Mr. Winston Caesar, in the terms of paragraph 94 of [the] judgment.
3. The State did not violate the right enshrined in Article 8(1) of the American Convention on Human Rights, for the reasons set forth in paragraphs 106 to 112 of [the] judgment.
4. The State violated the right enshrined in Article 25 in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights, to the detriment of Mr. Winston Caesar, in the terms of paragraphs 113 to 117 of [the] judgment.
5. [The] judgment constitutes, *per se*, a form of reparation, in the terms of paragraph 126 of [the] judgment.

AND DECIDE[D],

Unanimously, that:

1. The State shall pay the compensation ordered in paragraph 128 of [the] judgment to Winston Caesar for moral damages.
2. The State shall, with effect from the date of notification of [the] judgment, provide Mr. Winston Caesar, through its national health services, free of charge and for such period as may be necessary, such medical and psychological care and medication as may be recommended by appropriately qualified specialists, in the terms of paragraph 131 of [the] judgment.

¹ Cf. *Case of Caesar v. Trinidad and Tobago*. Merits, Reparations, and Costs. Judgment of March 11, 2005. Series C No. 123.

3. The State shall adopt, within a reasonable time, such legislative or other measures as may be necessary to abrogate the Corporal Punishment Act (Offenders Over Eighteen), in the terms of paragraph 132 of [the] judgment.

4. The State shall amend, within a reasonable time, Section 6 of Trinidad and Tobago's Constitution, in the terms of paragraph 133 of [the] judgment.

5. The State shall adopt, within a reasonable time, such measures as may be necessary to bring the conditions of detention in its prisons into compliance with the relevant international human rights norms, in the terms of paragraph 134 of [the] judgment.

6. The State shall pay the compensation ordered in favor of Mr. Winston Caesar directly to him within one year of the notification of [the] judgment, in the terms of paragraph 128 of [the] judgment.

7. The State may comply with the pecuniary dispositions in [the] judgment by payment in United States dollars or the equivalent amount in national currency, using the rate of exchange between the two currencies in force on the market in New York, United States of America, on the day preceding the day of payment.

8. If, for reasons attributable to the recipient of the compensation herein ordered, he is unable to claim such compensation within the stipulated period of one year, the State shall deposit such amount in his favor in an account or a deposit certificate in a reputable national banking institution, in the terms of paragraph 139 of [the] judgment.

9. The payment for moral damages ordered in [the] judgment shall not be subject to or affected or reduced by any existing or future taxes or charges, in the terms of paragraph 140 of [the] judgment.

10. If the State falls into arrears in the payments ordered, it shall pay interest on the amount owed at the going bank rate in Trinidad and Tobago.

11. It shall monitor compliance with [the] judgment and shall close the instant case when the State has fully implemented all of its provisions. Within one year of the notification of [the] judgment, the State shall provide the Court with a report on the measures taken in compliance, in the terms of paragraph 142 of [the] judgment.

2. The Order of the Court on the applicability of Article 65 of the American Convention on Human Rights² (hereinafter, "the American Convention" or "the Convention") of June 29, 2005, in which it decided, *inter alia*:

1. To discontinue its requirement that State submit information on compliance with its judgments once the Tribunal has decided to apply Articles 65 of the American Convention on Human Rights and 30 of the Statute of the Court in cases of noncompliance, and once the Court, through its Annual Report, has submitted the information of said noncompliance to the General Assembly of the Organization of American States for its consideration. If the State in question subsequently does not demonstrate before the Tribunal its compliance with the pending provisions of the judgment, the Court will continue to include said noncompliance each year in its Annual Report to the General Assembly.

3. The note dated May 25, 2006, in which the Secretariat of the Court (hereinafter, "the Secretariat"), following instructions from the President of the Court (hereinafter, "the President"), ordered the State of Trinidad and Tobago (hereinafter, "the State" or "Trinidad and Tobago") to submit, as soon as possible, its report on the measures taken in compliance with the Judgment, considering that the State's report had not been submitted to the Secretariat within the term established in operative paragraph 142 of the Judgment that is by April 8, 2006.

² Cf. Applicability of Article 65 of the American Convention on Human Rights. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of June 29, 2005, Operative paragraph first.

4. The note dated May 2nd, 2007, in which the Secretariat, following instructions from the President, reiterated that the State shall submit, as soon as possible, its report on the measures taken in compliance with the Judgment. Furthermore, the Secretariat pointed out that if said information was not submitted within this term, the Court will determine the eventual applicability of Article 65 of the American Convention. Said report has not been received.

5. The note dated August 28, 2007 in which the Secretariat, following instructions from the President of the Court, ordered the State to submit its report on the measures taken in compliance with the Judgment no later than October 15, 2007. Moreover, the Secretariat ordered the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and the representatives of Winston Caesar (hereinafter "the representatives") to submit, within the same term, any relevant information so that it be available to the Court in its following Ordinary Period of Sessions. The report requested has not been submitted within the term granted.

6. The brief dated October 16, 2007, received the next day at the Secretariat, in which the Commission referred to the "non-compliance by the [...] State with the orders of the Court contained in [the] Judgment". In this regard, the Commission pointed out, *inter alia*, that:

- a) in the absence of information provided by the State and of any other information indicating that the State would have adopted the measures to comply with said Judgment, the Commission can only observe that the State's duty to comply with the orders of the Court remains pending;
- b) with respect to the obligation to adopt such legislative or other measures as may be necessary to abrogate the Corporal Punishment Act (Offenders Over Eighteen) and to amend Section 6 of Trinidad and Tobago's Constitution, the Commission has not received any information that might indicate that said abrogation or amendment have taken place. On the contrary, the Commission has received information that the courts in Trinidad and Tobago have continued to apply corporal punishment, notwithstanding said Judgment by the Court; and
- c) the Commission requested the Court to continue to monitor compliance with said Judgment until "the State has fully implemented all of its provisions."

7. The note dated October 24, 2007, in which the Secretariat, following instructions from the President of the Court, requested the representatives and the State to submit, no later than November 9, 2007, all relevant information on this matter. No information has been submitted within the established term.

WHEREAS:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. Trinidad and Tobago has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") from May 28, 1991, date on which it also recognized the jurisdiction of the Court pursuant to Article 62 of the Convention, until May 26, 1999, date on which the denunciation made by the State entered into force, pursuant to Article 78 thereof.

3. Pursuant to Article 78(2) of the Convention, a denunciation of the treaty does not relieve the State of its obligations with respect to any act that may constitute a violation of said Convention and that has occurred prior to the entry into force of said denunciation, as stated in the March 11, 2005 Judgment.³

4. 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.” Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.⁴

5. In view of the definitive and conclusive nature of the judgments of the Court, pursuant to Article 67 of the Convention, the State must promptly and completely comply with them⁵ within the term set for this purpose.⁶

6. The obligation to comply with the rulings of the decisions of the Court accords with a basic principle of law regarding the international responsibility of the State, supported by international case law. That is, States must fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has previously stated and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they cannot avoid compliance with the previously established international responsibility for domestic reasons.⁷

7. The State Parties to the American Convention shall guarantee the compliance with treaty obligations and their effectiveness (*effet utile*) in their respective domestic legal systems. This principle applies not only with regards to substantive provisions contained in human rights treaties (that is, those containing provisions on protected rights), but also with regard to procedural provisions, such as those related to the compliance with judgments of the Court. Those obligations should be interpreted and applied in such a

³ Cf. *Case of Caesar v. Trinidad and Tobago*. *supra* note 1, para. 6, and *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 27, 2003, Considering paragraph second.

⁴ Cf. *Case of Baena-Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of García-Asto and Ramírez-Rojas v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering paragraph fourth, and *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 02, 2007, Considering paragraph second.

⁵ Cf. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, Considering paragraph second; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of December 14, 2007, Considering paragraph third, and *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October, 2007, Considering paragraph third.

⁶ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. *supra* note 2, Considering paragraph fourth.

⁷ 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 García-Asto and Ramírez-Rojas v. Peru*. *supra* note 5, Considering paragraph sixth, and *Case of Sawhoyamaya Indigenous Community v. Paraguay*. *supra* note 5, Considering paragraph third.

way that the guarantee protected is truly practical and effective, taking into account the special nature of human rights treaties.⁸

8. The State Parties to the Convention that have also recognized the binding jurisdiction of the Court have the duty to comply with the obligations established by the Court. This obligation includes the State's duty to inform the Court about the measures adopted to comply with the orders of the Court in said decisions. The prompt compliance by the State with its obligation to update the Court on the steps it has taken to comply with each of the orders made by the Court is fundamental to the evaluation of the status of compliance with the Judgment.⁹ Moreover, the General Assembly of the Organization of American States has reiterated that, in order to enable the Court to fully meet its obligation to report to the General Assembly on compliance with its judgments, it is necessary for the State Parties to provide, in a timely fashion, the information requested by the Court.¹⁰

9. The duty to inform the Court about the compliance with its Judgment constitutes an obligation that requires, in order to be fully complied, the formal submission of a document within the term set as well as the specific, true, current and detailed material reference to the issues that fall within the scope of said obligation.¹¹

10. In its Judgment the Court ordered the State to submit a report on the measures taken in order to comply with said Judgment, within one year from its notification (*supra* Having Seen 1). Despite the fact that after said term had elapsed, the Secretariat, on three occasions and following instructions from the President, required the State to submit said report (*supra* Having Seen 3, 4 and 5), it has not been presented so far.

11. Since said report from the State on the measures taken in compliance with the Judgment has not been received, this Court has been unable to exercise its monitoring function regarding the implementation of its judgments. Therefore, the State has not complied with its treaty obligation.

12. There has been a lack of participation and collaboration from the State since the instant case was brought before the Court. In this regard, the Court has deemed that the State's inactivity before an international human rights jurisdiction, or its lack of

⁸ Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Gómez-Palomino v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering paragraph fourth, and *García-Asto and Ramírez-Rojas v. Peru*. *supra* note 5, Considering paragraph seventh.

⁹ 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 Gómez-Palomino v. Peru*. *supra* note 9, Considering paragraph fifth, and *Case of García-Asto and Ramírez-Rojas v. Peru*. *supra* note 5, Considering paragraph eighth.

¹⁰ Cf. Organization of American States General Assembly, "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights", Resolution AG/RES. 2292 (XXXVII-O/07) adopted at the fourth plenary session, June 5, 2007.

¹¹ Cf. *Matter of Liliana Ortega et al.* Provisional Measures. Order of the Inter-American Court of Human Rights of December 2, 2003, Considering paragraph twelfth; *Case of Cantos v. Argentina*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering paragraph eighth, and *Case of Suárez-Rosero v. Ecuador*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering paragraph fifth.

collaboration with it, is contrary to the object, purpose, and spirit of the American Convention and to the collective security mechanism set forth therein.¹²

13. The Court shall continue to consider the general state of compliance with the Judgment of March 11, 2005.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of its authority to monitor compliance with its own decisions and pursuant to Articles 33, 62(1), 67, 68(1) and 78(2) of the American Convention on Human Rights, Articles 25(1) of the Statute of the Court and Article 29(2) of its Rules of Procedure,

DECLARES:

1. That, in accordance with the considerations found in Whereas clauses 9 to 13, the State has not complied with its obligation to inform the Court about the steps taken in order to comply with the Judgment of March 11, 2005.
2. That the State cannot elude its obligations set forth in the Judgment issued by the Court on March 11, 2005, despite having denounced the Convention. Therefore, the State shall effectively comply with said Judgment, pursuant to the provisions of Articles 68(1) and 78(2) of the American Convention.
3. That the Court will continue to monitor compliance with all the reparations ordered by this Court in said Judgment.

AND DECIDES:

1. To require the State to take such necessary measures to effectively and promptly comply with the Judgment delivered by the Court on March 11, 2005, 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, no later than March 8, 2008, a detailed report on the measures taken in order to comply with the reparations ordered by this Court.
3. To require that the Secretariat notify the instant Order to the State, to the Inter-American Commission on Human Rights and to the representatives of Winston Caesar.

Sergio García Ramírez
President

¹² Cf. *Case of Caesar v. Trinidad and Tobago*, *supra* note 1, para. 38.

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Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary