

**Order of the  
Inter-American Court of Human Rights \***  
**of November 30, 2007**  
**Case of Palamara Iribarne v. Chile**  
***(Monitoring Compliance with Judgment)***

**HAVING SEEN:**

1. The Judgment on merits, reparations, and costs (hereinafter “the Judgment”) issued by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court”, or “the Tribunal”) on November 22, 2005, through which it:

DECLAR[ED]:

Unanimously, that:

1. The State violated the right to freedom of thought and expression enshrined in Article 13 of the American Convention on Human Rights, in detriment of Mr. Humberto Antonio Palamara Iribarne, in relation to the general obligations to respect and guarantee the rights and liberties and to adopt stipulations of domestic law established in Articles 1(1) and 2 of said treaty, in the terms of paragraphs 67 through 95 of the [...] Judgment.

2. The State violated the right to private property enshrined in Article 21(1) and 21(2) of the American Convention on Human Rights, in detriment of Mr. Humberto Antonio Palamara Iribarne, in relation to the general obligation to respect and guarantee the rights established in Article 1(1) of said treaty, in the terms of paragraphs 99 through 111 of the [...] Judgment.

3. The State violated the right to a fair trial enshrined in Article 8 of the American Convention on Human Rights in its subparagraphs 1, 5, 2(c), 2(d), 2(f), and 2(g), in detriment of Mr. Humberto Antonio Palamara Iribarne, in relation to the general obligations to respect and guarantee the rights and liberties and to adopt stipulations of domestic law established in Articles 1(1) and 2 of said treaty, in the terms of paragraphs 120 through 181 of the [...] Judgment.

4. The State violated the right to judicial protection enshrined in Article 25 of the American Convention on Human Rights, in detriment of Mr. Humberto Antonio Palamara Iribarne, in relation to the general obligations to respect and guarantee the rights and liberties and to adopt stipulations of domestic law established in Articles 1(1) and 2 of said treaty, in the terms of paragraphs 182 through 189 of the [...] Judgment.

5. The State violated the rights to personal liberty and to a fair trial enshrined in Articles 7(1), 7(2), 7(3), 7(4), 7(5), 8(2), and 8(2)(b) of the American Convention on Human Rights, in detriment of Mr. Humberto Antonio Palamara Iribarne, in relation to the general obligations to respect and guarantee the rights and liberties and to adopt stipulations of domestic law established in Articles 1(1) and 2 of said treaty, in the terms of paragraphs 193 through 228 of the [...] Judgment.

6. The State has failed to comply with the general obligation to respect and guarantee the rights and liberties established in Article 1(1) of the Convention, in the terms of paragraphs 95, 111, 144, 161, 181, 189, and 228 of the [...] Judgment.

7. The State has failed to comply with the general obligation to adopt provisions of domestic legislation established in Article 2 of the Convention, in the terms of paragraphs 95, 144, 161, 181, 189, and 228 of the [...] Judgment.

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\* The Judge Cecilia Medina Quiroga, of Chilean nationality, excused herself from the present case, pursuant to Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court.

8. [The] Judgment constitutes *per se* a form of reparation, in the terms of paragraph 258 of the same.

AND ORDER[ED]:

Unanimously, that:

9. The State must allow Mr. Humberto Antonio Palamara Iribarne to publish his book, as well as return all the material that was taken from him, in the terms of paragraphs 250 and 251 of the [...] Judgment.

10. The State must publish, within a six-month term, in the Official Gazette and in another newspaper of national circulation, a single time, the chapter regarding the proven facts of the [...] Judgment, without the corresponding footnotes, and the operative part of the same, in the terms of paragraph 252 of the same.

11. The State must publish the entire [...] Judgment on the official website, within a six-month term, in the terms of paragraph 252 of the same.

12. The State must, within a six-month term, leave without effect, in all its points, the convictions issued against Mr. Humberto Antonio Palamara Iribarne: the judgment of January 3, 1995 of the Army's Court-Martial in Case No. 471 for the crime of contempt and the judgments issued by said Court-Martial in Case No. 464 on January 3, 1997 and by the Naval Court of Magallanes on June 10, 1996 for the crimes of disobedience and non-compliance of military duties, in the terms of paragraph 253 of the [...] Judgment.

13. The State must adopt all the measures necessary to annul and modify, within a reasonable term, any domestic norms that are not compatible with international standards in matters of freedom of thought and expression, in the terms of the paragraphs 254 and 255 of the [...] Judgment.

14. The State must adjust, within a reasonable period of time, the domestic juridical ordinance to international standards on military criminal jurisdiction, in such a way that in the case that it considers the existence of a military criminal jurisdiction necessary, the same must be limited only to the hearing of cases of crimes of duty committed by soldiers in active service. Therefore, the State must establish, through its legislation, limits to the material and personal competence of the military courts, ensuring that in no circumstance will a civilian be submitted to the jurisdiction of military criminal courts, in the terms of paragraphs 256 and 257 of the [...] Judgment.

15. The State must guarantee the due process in the military criminal jurisdiction and the judicial protection regarding the actions of the military authorities, in the terms of paragraph 257 of the [...] Judgment.

16. The State must pay Mr. Humberto Antonio Palamara Iribarne, within a one-year term, the amounts set as compensation for pecuniary damages in paragraphs 239, 242, and 243 of the [...] Judgment, in the terms of paragraphs 261 through 267 of the same.

17. The State must pay Mr. Humberto Antonio Palamara Iribarne, within a one-year term, the amount set as compensation for non-pecuniary damage in paragraph 248 of the [...] Judgment, in the terms of paragraphs 261 through 267 of the same.

18. The State must pay Mr. Humberto Antonio Palamara Iribarne, within a one-year term, the amount set for costs and expenses in paragraph 260 of the [...] Judgment, in the terms of said paragraph.

19. It will monitor the compliance of the [...] Judgment in all its aspects, and it will close the present case once the State has fully implemented all of the provisions of the same. Within a one-year period as of notification of [...] Judgment, the State must present a report of the measures taken in compliance of this Judgment to the Court, in the terms of paragraph 268 of the [...] Judgment.

[...]

2. The briefs of February 20 and September 28, 2006, of January 17 and its appendixes, of March 23 and of July 16, the two briefs of August 29 and their appendixes, and the briefs of November 6 and 12 and their corresponding appendixes,

all of 2007, through which the State of Chile (hereinafter “the State” or “Chile”) informed of the state of compliance with the Judgment.

3. The briefs of February 23 and its appendix, of June 21, of September 13, and of November 12, 22, and 26, all of 2007, through which the representatives of the victim (hereinafter “the representatives”), presented observations to the information provided by the State and presented information regarding the payments owed by Mr. Palamara Iribarne to Mrs. Stewart Orlandini ordered in the Tribunal’s Judgment.

4. The briefs of March 13, July 5, of October 17, and of November 14 and 21, all of 2007, through which the Inter-American Commission of Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented observations to the information offered by the State and the payments owed by Mr. Palamara Iribarne to Mrs. Stewart Orlandini ordered in the Tribunal’s Judgment.

5. Mrs. Anne Ellen Stewart Orlandini’s communication of May 29, 2007, in relation to the payments owed to her by Mr. Palamara Iribarne ordered in the Tribunal’s 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 Chile is a State Party to the American Convention since August 21, 1990 and it acknowledged the compulsory jurisdiction of the Court on that same day.

3. That Article 68(1) of the 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.” For this the States must ensure the domestic implementation of that stated by the Tribunal in its decisions.<sup>1</sup>

4. That in virtue of the final and unappealable nature of the Court’s judgments, pursuant to that established in Article 67 of the American Convention, these must be complied with promptly by the State in their totality.

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 fulfill 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 assume a previously established international responsibility. The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>2</sup>

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<sup>1</sup> Cfr. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Molina Theissen*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 10, 2007, Considering Clause number two; and *Case of García Asto and Ramírez Rojas*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 12, 2007, Considering Clause number four.

<sup>2</sup> Cfr. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention of Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, para. 35; *Case of Molina Theissen*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause number three; and *Case of García Asto and Ramírez Rojas*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause number six.

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 with regard not only to the substantive norms of human rights treaties (that is, those that include stipulations on the protected rights), but also to the procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>3</sup>

7. That the States Parties to the Convention that have acknowledged the adjudicatory jurisdiction of the Court are obliged to comply with the obligations established by the Tribunal. This obligation includes the State's duty to inform the Court of the measures adopted to comply with that ordered by the Tribunal in said decisions. The timely observance of the State's obligation to inform the Tribunal of how it is complying with each of the points ordered by the latter is fundamental for the evaluation of the status of compliance of the Judgment in its totality.<sup>4</sup>

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8. That in relation to the obligation to allow Mr. Humberto Antonio Palamara Iribarne to publish his book, as well as return all the material of which he was deprived, the State informed that "it offered the claimant a new printing of the copies of the book seized, which was accepted by Mr. Humberto Palamara's legal representative [...] on November 16, 2006," and that "[s]aid printing was carried out in the Printing Press of the Chilean Army and the delivery of the 1,000 copies and the book's electronic version was made directly [to the claimant] on Wednesday December 27, 2006."

9. That the representatives informed that on December 27, 2006, "the delivery of the 1,000 copies of the books printed in the Printing Press of the Chilean Army and the electronic version of the book" took place in the Human Rights Office of the Ministry of Foreign Affairs. Therefore, they consider "that the obligation to allow Mr. Palamara Iribarne to publish his book [...], as well as the return of the copies pursuant to the operative paragraph of the judgment was complied with by the State, even when said compliance has not respected the six-month term established by the Court."

10. That in this regard the Inter-American Commission indicated that said obligation "was fulfilled by the State, even when said compliance has not respected the six-month term established by the Court;" and "observe[d] with satisfaction that the State adopted specific measures to fully comply with the state's obligation."

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<sup>3</sup> Cfr. *Case of Ivcher Bronstein. Competence*. Judgment of September 24, 1999, para. 37; *Case of Gómez Palomino*. Monitoring Compliance with Judgment. Order of the Inter-American Court on Human Rights of October 18, 2007, Considering Clause number four; and *Case of Molina Theissen*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause number four.

<sup>4</sup> Cfr. *Case of Barrios Altos*. Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering Clause number seven; *Case of Gómez Palomino*. Monitoring Compliance with Judgment, *supra* note 3, Considering Clause number five; and *Case of García Asto and Ramírez Rojas*. Monitoring Compliance with Judgment, *supra* note 1, Considering Clause number eight.

11. That in relation to the publication in the Official Gazette and in another newspaper of national circulation, for a single time, of the chapter on proven facts and the operative paragraphs of the Judgment, the State informed that "it proceeded to comply with this operative paragraph, through the corresponding insertion in the 'Official Gazette of the Republic of Chile' on August 10, 2006 and in the newspaper of national circulation 'La Nación' on August 7, 2006," and it presented a copy of the numbers of both publications.

12. That the representatives agree with the information provided by the State in what refers to the publication of the corresponding parts of the Judgment in the Official Gazette of the Republic of Chile. Likewise, they informed that, "the mentioned extracts of the judgment [were] publish[ed] on August 7, 2006 on pages 13 and following of the newspaper 'La Nación', of ample national circulation, but unfortunately the publication was inserted in the section of classified ads, a section that does not have great importance." Despite the previous, the representatives considered that this obligation was fulfilled by the State, "however said compliance has not respected the six-month term established by the Court."

13. That the Inter-American Commission "value[d] the compliance with the obligation of publishing the Judgment in the Official Gazette and in a newspaper of national circulation."

14. That the Tribunal warns that the Inter-American Commission and the representatives considered this obligation complied with, despite the fact that the latter mentioned that the publication was made in the classified ads section of said newspaper, section that is not of great importance, and that the same was made once the six-month term ordered in the Judgment had expired.

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15. That regarding the duty to publish the complete Judgment on the State's official website, Chile informed, on September 28, 2006, that it proceeded to publish the entire judgment on the official website of the State of Chile belonging to the Ministry of Foreign Affairs.

16. That the representatives informed that they have "accessed on different occasions the [...] electronic address, being the last time on January 31, 2007, and they have not been able to locate the mentioned publication," reason for which they mentioned that "the obligation to publish the entire judgment [...] was not complied with by the State."

17. That the Inter-American Commission indicated that "it agrees with the representatives of the injured party since it has tried to access, on several occasions, the website mentioned by the State of Chile and it has not been able to verify that up to this date [March 2007] there is in fact a link to the complete text of the Judgment on said page." The Inter-American Commission stated it "is awaiting the State's information regarding what happened with said publication, since it has been more than double the period of time granted by the Court for said effect."

18. That after the observations made by the representatives and the Commission, on March 23, 2007 the State informed that the publication of the complete Judgment had been made on the webpage of the Ministry of Foreign Affairs in the "Novelties" section, being kept in that section for approximately six months. Likewise, it informed that, "with the purpose of making its access easier, it has been transferred to the section corresponding to the Human Rights Office [on the page of the Ministry of Foreign Affairs]."

19. That the Court points out that the information included in the State's last communication of March 23, 2007 regarding compliance of this point of the Judgment was transmitted to the parties without receiving any objection in this regard from the Inter-American Commission or the representatives. On its part, the Tribunal has verified that the entire Judgment is published on the website of the Human Rights Office of Chile's Ministry of Foreign Affairs and it has accessed said text on several occasions without problem.

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20. That in relation to the State's duty to leave without effect, in all their aspects, the convictions issued against Mr. Humberto Palamara Iribarne, Chile first informed that "it [was] studying, along with the corresponding public authorities, a mechanism that will allow the elimination of the criminal records in the registry corresponding to Mr. Humberto Palamara Iribarne." This "would permit to leave without effect the main consequence of the judgments issued in cases number 471 and 434, whose sentences were already served by Mr. Palamara prior to the Inter-American's ruling on this case." The State mentioned that "it hope[d] to have in the near future the administrative decision that will allow it to eliminate Mr. Palamara's criminal records" and that "[t]he advances of this process are being [...] communicated to the legal representative of [Mr. Palamara]." Later, on August 2007 the State informed the Court that on June 5, 2007 it complied with "the elimination of [the criminal antecedents] that affected Mr. Humberto Palamara." Finally, in November 2007 the State forwarded the copies of the "official letter through which the National Director of the Civil Registry and Identification inform[ed] of the elimination of the cases No. 464 and 471 [...]" and of a certificate of criminal antecedents issued on October 26, 2007, in which it can be read that Mr. Humberto Antonio Palamara Iribarne appears "without antecedents" in the General Registry of Convictions.

21. That the representatives observed "with concern the fact that having expired the six-month term [...] for the State to adopt all the judicial and administrative measures as well as those of any other nature necessary to leave the military criminal proceedings instituted against Mr. Palamara Iribarne and their convictions without effect, including the elimination of the criminal records from the corresponding registry, the Chilean State ha[d] not yet complied with this obligation causing the victim serious damages." The representatives stated that Mr. Palamara Iribarne, could not resume his normal life after the occurred facts that were object of the proceedings presented before the Court and "that having the six-month term granted by the Court for the State of Chile to comply with this operative paragraph expired and more than a year after the judgment was issued, the damages caused to Mr. Palamara Iribarne have not been repaired and his rights continue to be affected." Therefore, they asked the Court "to require the State's prompt compliance with the obligation [...]." On September 13, 2007 the representatives requested that the State be required to present a copy of the determination that ordered the elimination of the antecedents of Mr. Palamara Iribarne along with a current certificate of criminal antecedents. In its brief of November 12, 2007 the representatives stated that they are [...] please[d] with that informed by the State of Chile in the understanding that the elimination of 'the cases' that affected Mr. Palamara have full legal effects –administrative, police, and judicial- so that in the future the judicial procedures and the convictions issued against Mr. Palamara can never be invoked." (*supra* Having Seen paragraph 3).

22. That the Inter-American Commission stated first that "it shares the concern expressed by the representatives of the injured party and considers it very important that the State inform of the efforts made in order to complete the internal processes and

coordination that will allow it to comply with the obligation established by the Court as soon as possible." On October 17, 2007 the Inter-American Commission expressed that it was awaiting the corresponding documents to issue its observation in that regard, and on November 14, 2007 it stated that "[...] it notes with satisfaction the information provided by the State [...] with regard to the recent 'elimination of the cases' and of the criminal antecedents that fell upon the victim."

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23. That regarding the duty to adopt all the measures necessary to annul and modify the domestic norms that are not compatible with international standards in the matter of freedom of thought and expression, the State informed that "the Executive Power is studying the possibility to present a bill that will clarify or modify the scope of Article 264 of the Criminal Code in the part that refers to the crime of 'threats', taking into account the observations and comments stated in paragraph 92 of the [J]udgment." With regard to the elimination of the crime of contempt of the Code of Military Justice, the State informed that, "[...] said matter is being dealt with by [the Special] Commission [in charge of the reform to military criminal justice]."

24. That the representatives informed that the State "has not presented specific information regarding the measures it will adopt in seeking to prepare the bill and sending it to the National Congress for the study and eventual approval of the mentioned bill" and that "it has not indicated an estimate of time to comply with this obligation." The representatives observed that even though the Tribunal granted a "reasonable period of time" to comply with this obligation, "the lack of specific steps after a year of the issuing of the judgment and communicating that the possibility of presenting a bill to modify Article 264 of the Criminal Code is being studied are insufficient measures for the satisfaction of the reparations ordered by the Inter-American Court."

25. That the Inter-American Commission indicated that there is "a lack of specific information on the State's behalf of the measures tending to effectively comply with this reparation" and that "[i]t is essential that the modifications made as a result of the present case seek the protection of the freedom of thought and expression and that the information presented to the Tribunal establish the specific steps adopted in that sense." The Commission added that "it knows of legislative initiatives presented since [the time at which] the case was being heard before the Court and it has stated its specific concern regarding the crime of contempt in the Military Jurisdiction, [and that] due to that and to the time that has gone by since the issuing of the Judgment by the Court, [the Inter-American Commission stated that] it is awaiting detailed information regarding the measures adopted by the State as soon as possible."

26. That the Court values the information provided by the State on the measure tending to the adjustment of domestic legislation to international standards in matters of freedom of thought and expression. In this regard, the Tribunal observes that an important legislative change was ordered to the State and that the reform process is at an initial stage. The Court highlights the need that the State adopt specific measures tending to comply with that established in the Judgment and to offer greater information, especially in reference to: i) the stages of the preparation of the bill that are pending compliance or, in its case, the status of its legislative process; ii) the estimated approximate terms for its compliance; and iii) the content of the reform projects oriented to complying with this aspect of the Judgment. Finally, the Court considers it convenient to remember that the conventional obligations of the States Parties are binding for all the State's powers and bodies and it points out that this

adjustment to international standards is especially important for the State's domestic legislation and for the regional human rights system.

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27. That in relation to i) the duty to adjust the domestic juridical ordinance to international standards on military criminal jurisdiction and the establishment, through the legislation, of limits to the material and personal competence of military courts, and ii) the duty to guarantee the due process in the military criminal jurisdiction and the judicial protection regarding the actions of military authorities, the State informed that:

a) on January 9, 2006 it held a meeting with the presence of the Secretaries of Foreign Affairs, of Defense, and of Justice, in which they agreed on "the creation of a inter-ministerial work team in charge of organizing the reform works" and that on January 26, 2006 "a Special Commission in charge of analyzing and presenting a reform of military criminal justice was created." This Special Commission was conformed by representatives of the Ministries of the Interior, of Foreign Affairs, Justice, and the Armed Forces and Order. According to that decided in its initial session, said Commission "will revise the aspects regarding the due process, independence, impartiality, and processing of civilians in the military justice. Besides, it will deal with the process and organic structure of the courts that make up the Military Justice." The State informed that in its second session, on April 6, 2006, "they agreed to invite experts and some members of the Supreme Court that [had] preferably acted in the Court-Martial. In the same manner, they concluded there was a need to have a technical study on the proposal of analysis and reform of the competence and proceedings of the Military Justice." The State indicated that in the present year "the [Special] Commission has decided to hire the services of experts that could provide reports on the different matters that will be object of the reforms" and that for the end of the second semester of 2007, the State hoped to have "a proposal of said Commission that will allow it to prepare a bill that includes the matters previously indicated [...]."

b) On July 3, 2007 the approval process before the National Congress of the bill sent by the Presidency of the Republic through which it proposed the reform to the Code of Military Justice, "[...] limiting the competence of the Military Tribunals and eliminating the death penalty," was started, and a copy of said project was enclosed. The following are among the main modifications proposed in this bill:

- i) It establishes the jurisdiction of Military Tribunals over members of the military to prosecute matters of military jurisdiction as a general rule, although it acknowledged exceptions to said principle;
- ii) It modifies competence in reason of the matter of military tribunals;
- iii) It determines the people that will be considered members of the military for the effects of the military jurisdiction;
- iv) It establishes rules of competence between military justice and ordinary justice;
- v) It eliminates the death penalty from the Code of Military Justice and from the national legal ordinance.

The presidential message that accompanies the project states that "[...] this project is a partial and prudent solution because there is awareness that he

reform to Military Justice must be more ample than the one presented today [...]", and that therefore "[...] in an administrative act parallel to the sending of this bill, [we created] through a Supreme Decree of the Ministry of National Defense the Commission that will study [up to] the end of 2007, the comprehensive reform proposal of Military Justice that [the President of the Republic] [will] send to the National Congress during 2008."

c) on October 17, 2007 the inaugural session of the Commission for the Study of the Reform to Military Justice, whose mission is to achieve, in stages, the comprehensive reform to the Code of Military Justice, was held at the National Congress. The State informed that the bill presented by the Executive Power in the month of July 2007 was the first of said Commission's four work stages. The second stage refers to the adjustment of internal legislation to international norms in aspects such as forbidden armaments, crimes against humanity, norms of international humanitarian law, etc.; the third stage will refer to the military procedural reform "[...] trying to achieve the establishment of the due process;" finally the fourth stage will cover the substantive military criminal law, through the adjustment of the military criminal definitions. The State enclosed the Speech of the Ministry of National Defense given in the inaugural session of said Commission and a presentation of the Sub-Secretary of the Army before the Constitution, Legislation, Justice, and Regulations Commission of the Senate, where the information on the work stages to cover the different aspects related to the reform to military justice are presented in detail.

28. That regarding these operative paragraphs the representatives expressed that:

a) the State "has started actions that seek to comply with the operative paragraphs regarding the obligation to adjust the domestic juridical ordinance to international standards on military criminal jurisdiction, limiting the latter only to hearing of crimes of duty committed by soldiers in active service." However, they stated that "understanding that these measures will require a technical and gradual study that must be carried out in a reasonable period of time-, [they] consider that the measures adopted by the State in order to comply with this operative paragraph are insufficient. The mere creation of the inter-ministerial commission a year after the judgment [was issued], is a lukewarm sign that does not reflect the need and importance of adjusting the military criminal justice to international standards. Besides, this is evident in the seriousness of the fact [of...] a recent decision of the Constitutional Court of Chile, through which this Tribunal has ruled that the crime of disobedience of military duties as defined in the Code of Military Justice is constitutional."

b) the bill sent by the Executive Power to the National Congress in July 2007 "[...] does not adjust to international standards or to the requirements of the international judgment whose compliance is being supervised." Among other reasons the representatives expressed that:

i) even though the reform establishes the general principle that Military Tribunals will have jurisdiction "regarding soldiers" and to "prosecute all matters of the military jurisdiction that may arise within the national territory," the principle is subject to so many exceptions, and of such a nature, that the modification results in a matter of very little practical effect;

ii) one of these exceptions results in leaving the competence of military jurisdiction regarding acts committed by *carabineros* against civilians

intact. Therefore, very serious crimes, such as torture in military barracks or in watch posts set up by *carabineros* will continue to be subject to military jurisdiction;

iii) other exceptions seek to expand the current competence of military tribunals, going in the exactly opposite direction to that stated by the Inter-American Court. In this sense, the representatives stated that related to the maritime police and the expansion of the current competence of military justice by not demanding that the commission of the mentioned crimes occur in military dependencies;

iv) matters so distant from military duties, such as the behaviors described in the Aeronautic Code regarding civil aviation, continue to be subject to military jurisdiction;

v) it is not explicit when excluding civil employees of the Armed Forces and *Carabineros* from military jurisdiction;

vi) it maintains under military jurisdiction not only the author of a crime of military jurisdiction, but also all those other parties responsible for the same, and it conserves the rule of preference for military justice if a same agent commits crimes from the military and common jurisdiction; and

vii) finally, the project makes no progress in what refers to the other demands established in the Court's Judgment, that is, the guarantees of the due process, thus the State's non-compliance with this aspect is complete.

c) with regard to the Commission for the Study of the Reform of Military Justice, whose inaugural session took place on October 17, 2007, the representatives stated that the "[...] creation of a Special Commission in charge of analyzing and preparing a reform of military criminal justice" had already been informed to this Honorable Court in the briefs [presented by the State in the year 2006]" and that "[n]o evidence is presented in order to know if the Commission mentioned now by the Chilean State is a new initiative or a continuation of what had already been started." Likewise, they once again commented on the reform bill indicating, among other considerations, that "[...] the existing contrast between that indicated by the [State] and the actual content of the bill is of great concern [...]" and that "[...] they do not see the need of an extensive reform bill in order to remove the actions of civilians from the realm of competence of the military courts [...]."

29. That the Inter-American Commission stated that

a) "[...] it values the efforts made [by the State] and that "it hopes that [...] the superior interest of justice be taken into account and that the process started by the Special Commission be carried out as soon as possible and in such a way that it generate confidence and seek a true adjustment of the system in such a way that it be compatible with the international norms that oblige the State of Chile;"

b) with regard to the bill sent by the Executive Power to the Legislative Power "it values the start of this process of legislative reform by the Chilean State in a positive manner; however, it takes note of that analyzed by the representatives

and observes that, in this sense, the Court established clear guidelines regarding the minimum guarantee that must govern said procedure [...];" and

c) "[...] it observes with satisfaction the information presented [...] with regard to the formation of the Commission for the Study of the Reform of Military Justice and the stages it has set out to fulfill [...]", which "[...] could represent a step toward complying with that ordered by the Honorable Court [...]", reiterating the concern expressed by the representatives and the considerations of the Commission itself with regard to the bill sent to the National Congress.

30. That the Court values with satisfaction that the State has started the reform process of military criminal justice in order to adjust it to the international obligations of the State Party. The Tribunal points out that Chile is promoting an important reform to military justice, which is organized in four stages, and that for this purpose it established a Commission made up by representatives of different ministries and State dependencies, including the armed forces and security forces, which on October 17, 2007 held its inaugural session in the National Congress. On the other hand, the Court takes note of the sending of a bill to the National Congress that seeks to eliminate the death penalty and limit the personal and material competence of military justice, which was the first of the four stages mentioned. In this regard, the Court reiterates that stated with regard to the importance of the adjustment of domestic legislation to international standards and the compliance with the obligations of international law by the different powers of the State (*supra* Considering Clause number 26). Similarly, the Tribunal warns that both the representatives and the Inter-American Commission have expressed differences with the State in what refers to the scope of said bill and they presented observations to the military justice reform process carried out by the State. The Inter-American Court considers it necessary that Chile: a) continue sending updated and detailed information on the measures adopted to comply with the fourteenth and fifteenth operative paragraphs of the Judgment, including the sending of bills and relevant documents; b) There are currently two initiatives of the National Executive Power in this subject: a) the creation of a Special Commission made up by representatives of different State powers in order to propose a comprehensive reform to military criminal justice, and b) that is specifically inform on the advances in the different stages and estimated terms for compliance with the measures ordered by the Tribunal; and c) in its next report, give its opinion regarding the observations presented in this sense by the representatives in their briefs of September 13 and November 26, 2007, and by the Inter-American Commission in its communications of October 17 and November 21, 2007 (*supra* Considering Clauses number 28 and 29).

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31. That regarding the duty to pay Mr. Humberto Antonio Palamara Iribarne the compensation for pecuniary and non-pecuniary damages and the amount set for costs and expenses, the State informed that "the Ministry of Justice of Chile issued Exempt Resolution No. 3532 of December 14, 2006 through which it order[ed] the Metropolitan Regional Treasury to pay Mr. Humberto Palamara Iribarne the amount equal in national currency to US\$ 57,400" and that the victim "pick[ed] up the check issued by the Treasury on Thursday December 28, 2006." The State included a copy of Exempt Resolution N° 3532.

32. That the representatives informed that on "December 28, 2006, little more than a year after the judgment was issued, Mr. Palamara Iribarne has picked up the check issued by the Treasury for the amount [equal in national currency to the amount

mentioned],” and considered “that the obligation to pay the pecuniary reparation to Mr. Humberto Palamara Iribarne [...] was complied with by the State.”

33. That the Inter-American Commission indicated that “the State informed that on December 28, 2006 the corresponding payment was made and the representatives indicated that the State complied with that established by the Court. The Inter-American Commission value[d] the compliance of this obligation with satisfaction.”

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34. That Mrs. Anne Ellien Stewart Orlandini, former wife of Mr. Palamara Iribarne, presented a brief on June 7, 2007 through which she indicated that “[...] Chile had paid the amounts set in the Judgment to Mr. Humberto Palamara Iribarne [, but the latter] refuses to give her the corresponding money” as beneficiary to the effects of distribution.

35. That the Commission stated that the Court “considered as proven the different economic contributions made by Mrs. Stewart Orlandini as a consequence of the submission of her husband to military criminal proceedings.

36. That the representatives informed that Mr. Palamara Iribarne “[...] has stated [...] that he will pay the amount corresponding to Mrs. Stewart Orlandini during the next month of January 2008, date on which she will be traveling to Santiago, Chile, since she currently resides in Murcia, Kingdom of Spain.”

37. That the State reminded that it paid the amounts ordered by the Tribunal and stated that “it does not correspond to the State of Chile [...] to go on the record” regarding the information communicated by Mrs. “Anne Ellen Stewart Orlandini, in her condition of spouse of Mr. Humberto Palamara.”

38. That the Court recalls that stated in paragraphs 242 and 243 of the Judgment, in the sense that Mr. Palamara Iribarne “will give Mrs. Anne Ellen Stewart Orlandini the corresponding part” to defray and compensate “the expenses incurred in by her.”

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39. That upon supervising full compliance of the Judgment of merits, reparations, and costs issued in the present case, and after analyzing the information provided by the State, the Inter-American Commission, and the victim’s representatives, the Court has verified that the State has fully complied with the obligations included in the operative paragraphs of the Judgment of November 22, 2005 indicated below:

- a) Allow Mr. Humberto Antonio Palamara Iribarne to publish his book, as well as return all the material that was taken from him (*ninth operative paragraph of the Judgment*);
- b) Publish in the Official Gazette and in another newspaper of national circulation, a single time, the chapter regarding the proven facts of the Judgment, without the corresponding footnotes, and the operative part of the same (*tenth operative paragraph*);
- c) Publish the entire Judgment on the State’s official website (*eleventh operative paragraph of the Judgment*);

d) Leave without effect, in all its points, the convictions issued against Mr. Humberto Antonio Palamara Iribarne: the judgment of January 3, 1995 of the Army's Court-Martial in Case No. 471 for the crime of contempt and the judgments issued by said Court-Martial in Case No. 464 on January 3, 1997 and by the Naval Court of Magallanes on June 10, 1996 for the crimes of disobedience and non-compliance of military duties (*twelfth operative paragraph of the Judgment*);

e) Pay Mr. Humberto Antonio Palamara Iribarne the amounts set as compensation for pecuniary damages in paragraphs 239, 242, and 243 of the [...] Judgment (*sixteenth operative paragraph of the Judgment*);

f) Pay Mr. Humberto Antonio Palamara Iribarne the amount set as compensation for non-pecuniary damage in paragraph 248 of the [...] Judgment (*seventeenth operative paragraph of the Judgment*); and

g) Pay Mr. Humberto Antonio Palamara Iribarne the amount set for costs and expenses in paragraph 260 of the [...] Judgment (*eighteenth operative paragraph of the Judgment*).

40. That the Court values positively that the State has complied with the majority of the reparations ordered by the Tribunal and that it has presented information regarding the totality of the measures of reparation set in the Judgment of November 22, 2005.

41. That the Court considers it essential that the State present updated information on the operative paragraphs of the Judgment of November 22, 2005 that are pending compliance, which are specified below:

a) Adopt all the measures necessary to annul and modify, within a reasonable term, any domestic norms that are not compatible with international standards in matters of freedom of thought and expression, in the terms of the paragraphs 254 and 255 of the present Judgment. (*thirteenth operative paragraph of the Judgment*). Specifically, the Inter-American Court asks the State to present detailed information on the measures put in action to comply with the Judgment in this sense, including the presentation of bills and documents of interest, as well as reports on the stages and estimated terms for compliance with this point of the Judgment. (*supra* Considering Clause number 26).

b) Adjust the domestic juridical ordinance to international standards on military criminal jurisdiction, in such a way that in the case that it considers the existence of a military criminal jurisdiction necessary, the same must be limited only to knowing of crimes of duty committed by soldiers in active service. Therefore, the State must establish, through its legislation, limits to the material and personal competence of the military courts, ensuring that in no circumstance will a civilian be submitted to the jurisdiction of military criminal courts (*fourteenth operative paragraph of the Judgment*).

c) Guarantee the due process in the military criminal jurisdiction and the judicial protection regarding the actions of the military authorities (*fifteenth operative paragraph of the Judgment*). Specifically, the Inter-American Court considers it necessary that Chile: a) continue providing updated and detailed information regarding the measures put in action to comply with the fourteenth and fifteenth operative paragraphs of the Judgment, including the sending of bills and relevant documents; b) that is specifically inform on the advances in the

different stages and estimated terms for compliance with the measures ordered by the Tribunal; and c) in its next report, give its opinion regarding the observations presented in this sense by the representatives in their briefs of September 13 and November 26, 2007, and by the Inter-American Commission in its communications of October 17 and November 21, 2007 (*supra* Considering Clause number 30).

42. That the Court will consider the general status of compliance with the Judgment on merits, reparations, and costs of November 22, 2005, once it receives the corresponding information regarding the matters of reparation pending compliance.

**THEREFORE:**

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

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

**DECLARES:**

1. That pursuant to that stated in the Considering Clause number 39 of the present Order, the State has fully complied with:

a) Allowing Mr. Humberto Antonio Palamara Iribarne to publish his book, as well as return all the material that was taken from him (*ninth operative paragraph of the Judgment of November 22, 2005*);

b) Publishing in the Official Gazette and in another newspaper of national circulation, a single time, the chapter regarding the proven facts of this Judgment, without the corresponding footnotes, and the operative part of the same (*tenth operative paragraph of the Judgment of November 22, 2005*);

c) Publishing the entire Judgment on the State's official website (*eleventh operative paragraph of the Judgment of November 22, 2005*);

d) Leaving without effect, in all its points, the convictions issued against Mr. Humberto Antonio Palamara Iribarne: the judgment of January 3, 1995 of the Army's Court-Martial in Case No. 471 for the crime of contempt and the judgments issued by said Court-Martial in Case No. 464 on January 3, 1997 and by the Naval Court of Magallanes on June 10, 1996 for the crimes of disobedience and non-compliance of military duties (*twelfth operative paragraph of the Judgment of November 22, 2005*);

e) Paying Mr. Humberto Antonio Palamara Iribarne the amounts set as compensation for pecuniary damages (*sixteenth operative paragraph of the Judgment of November 22, 2005*);

f) Paying Mr. Humberto Antonio Palamara Iribarne the amount set as compensation for non-pecuniary damages (*seventeenth operative paragraph of the Judgment of November 22, 2005*); and

g) Paying Mr. Humberto Antonio Palamara Iribarne the amount set for costs and expenses (*eighteenth operative paragraph of the Judgment of November 22, 2005*).

2. That pursuant to that stated in the Considering Clause number 41 of the present Order it will keep the monitoring procedure of compliance with the matters pending compliance in the present case open, specifically:

a) Adopt all the measures necessary to annul and modify, within a reasonable term, any domestic norms that are not compatible with international standards in matters of freedom of thought and expression, in the terms of the paragraphs 254 and 255 of the present Judgment (*thirteenth operative paragraph of the Judgment of November 22, 2005*);

b) Adjust the domestic juridical ordinance to international standards on military criminal jurisdiction, in such a way that in the case that it considers the existence of a military criminal jurisdiction necessary, the same must be limited only to hearing crimes of duty committed by soldiers in active service. Therefore, the State must establish, through its legislation, limits to the material and personal competence of the military courts, ensuring that in no circumstance will a civilian be submitted to the jurisdiction of military criminal courts (*fourteenth operative paragraph of the Judgment of November 22, 2005*); and

c) Guarantee the due process in the military criminal jurisdiction and the judicial protection regarding the actions of the military authorities (*fifteenth operative paragraph of the Judgment of November 22, 2005*).

#### **AND DECIDES:**

1. To order the State to adopt all the measures necessary to give an effective and prompt compliance to the matters pending compliance that were ordered by the Tribunal in the Judgment on merits, reparations, and costs of November 22, 2005, and in the present Order, pursuant to that stated in Article 68(1) of the American Convention on Human Rights.

2. To ask that the State present to the Inter-American Court of Human Rights, no later than May 30, 2008, a report in which it must indicate all the measures adopted to comply with the reparations ordered by this Court that are still pending compliance, pursuant to that stated in Considering Clause number 41 and the Second Declarative Paragraph of the present Order.

3. To call upon the representative of the victims and the Inter-American Commission on Human Rights to present their observations to the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, computed as of its receipt.

4. To continue monitoring the matters pending compliance of the judgment on merits, reparations, and costs of November 22, 2005.

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

Sergio García Ramírez  
President

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri  
Secretary

So ordered,

Sergio García Ramírez  
President

Pablo Saavedra Alessandri  
Secretary