

**Order of the
Inter-American Court of Human Rights*
of February 6, 2008
Case of Ricardo Canese v. Paraguay
(Monitoring Compliance with Judgment)**

HAVING SEEN:

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

ORDER[ED]

unanimously, that

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

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

7. The State shall pay Ricardo Nicolás Canese Krivoshein the total amount of US\$5,500.00 (five thousand five hundred United States dollars), for costs and expenses. Of this total, the sum of US\$1,500.00 (one thousand five hundred United States dollars) shall correspond to the expenses which Mr. Canese Krivoshein incurred before the Inter-American Commission, and the amount of US\$4,000.00 (four thousand United States dollars) to the costs and expenses that Mr. Canese Krivoshein must reimburse to his representatives for the expenditure they assumed in the international proceeding before the Inter-American System for the protection of human rights, in the terms of paragraphs 214, 215 and 217 of th[e] judgment.

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

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

* Judge Cecilia Medina Quiroga disqualified herself from hearing the instant case in keeping with Article 19 of the Statute and Article 19 of the Rules of Procedure of the Court, a decision that was accepted by the Court. Therefore Judge Medina Quiroga did not take part in the deliberations and did not sign this Order. Judge Manuel E. Ventura Robles informed the Court that, for reasons beyond his control, he was unable to attend the deliberations or to sign this Order.

[...]

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

[...]

2. The orders on monitoring compliance with judgment, delivered by the Court on February 2, 2006 and September 22, 2006. In the latter, the Court:

DECLARE[D]:

1. That in accordance with the provisions of Considering clauses No. 8, 10 and 12 of th[e ...] Order, the State has not fulfilled the obligations contained in the operative paragraphs of the judgment on the merits, reparations and costs, issued by the Tribunal on August 31, 2004.

AND DECIDE[D]:

1. To require the State to adopt the necessary measures to comply promptly and effectively with the decisions of the Court in the judgment on merits, reparations and costs of August 31, 2004, that are pending fulfillment, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

[...]

3. The October 13, 2006 brief filed by the representatives of the victim (hereinafter "the representatives"), commenting on the State's September 13, 2006 report and asking the Court to "urge the State of Paraguay to act with the greatest of urgency to comply with reparations ordered by the [...] Court."

4. The November 1, 2006 brief filed by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), stating that it was "awaiting full, up-to-date information from the State" on measures adopted to comply with the judgment delivered in the instant case.

5. The November 16, 2006 communication by the State of Paraguay (hereinafter "the State" or "Paraguay"), reporting that "the appropriate agencies are taking all necessary measures to comply with the terms of the August 31, 2004 judgment."

6. The February 14, 2007 note by which the Secretary of the Court, on instructions from the President of the Court, reminded the State that November 30, 2006 had been the final date for it to file its report on compliance with the judgment,

as requested in an Order of the Court dated September 22, 2006 (*supra* Having seen 2). Consequently, the State was asked to file its report forthwith.

7. The July 24, 2007 note from the State attaching a photocopy of the March 14, 2007 edition of the Official Gazette of the Republic of Paraguay, in which the proven facts and operative paragraphs of the judgment in the Ricardo Canese case had been published.

8. The November 28, 2007 note from the Secretary of the Court, sent on instructions from the Court, reminding the State to proceed forthwith to submit its report on compliance with the judgment, since the deadline for submission had expired on November 30, 2006, according to the provisions of the September 22, 2006 Court Order (*supra* Having seen 2).

9. The decision delivered by the President of the Court on December 10, 2007 in which, exercising the powers of the Court to monitor compliance with its decisions, in consultation with the other Judges of the Court, and in accordance with Articles 67 and 68(1) of the American Convention on Human Rights (hereinafter "the Convention"), he ordered the State, the representatives and the Inter-American Commission to attend a private hearing for the purpose of obtaining information from the State on its actions to comply with pending points of the judgment, and for receiving comments to this effect from the representatives and the Inter-American Commission.

10. The December 14, 2007 brief filed by the State, submitting its report on compliance with the judgment. In its report, the State advised that "on August 30, 2007, by Decree No. 10854, the Ministry of Finance was authorized to pay the amount of two hundred five million, seven hundred forty thousand Paraguayan *guaraníes* [...] as compensation for [non]pecuniary damage[, and] legal costs and fees [...]." Subsequently, the State submitted a copy of Decree No. 10854 and the bank slip by which this sum was deposited into the account of Mr. Ricardo Canese.

11. The February 4, 2008 private hearing on monitoring compliance with the judgment on merits, reparations and costs, in which the parties discussed the state of compliance with the judgment.¹ At this hearing, the State supplied the Court with a

¹ The Court, in accordance with Article 6(2) of the Rules of Procedure, conducted the hearing by means of a commission made up of the following judges: Judge Diego García-Sayán, Vice-president; Judge Sergio García Ramírez and Judge Rhadys Abreu Blondet. The following parties appeared at the hearing: a) for the Inter-American Commission: Santiago Canton, Delegate, and Juan Pablo Albán A. and Lilly Ching Soto, advisors; b) for the State of Paraguay: Darío Díaz Camaraza, Public Prosecutor of Paraguay; Arnaldo Frutos, Deputy Minister for Children; Julio Arriola, Business Attaché of the Republic of Paraguay to the Government of the Republic of Costa Rica; Edgar Fidiás Taboada Ynsfrán, Director General of Human Rights for the Ministry of Justice and Labor; Francisco Barreiro Perrota, Human Rights Director for the Ministry of Foreign Affairs; Nury Natalia Montiel Mallada, Human Rights Director for the Supreme Court; Silvio Ortega Rolón, Human Rights Director for the Ministry of Public Health and Social Welfare; Sonia Chávez Galeano, Chief of Compliance and Follow-up of Judgments, and Stella Azuaga, Director General of the National Service for Care of Juvenile Offenders; and c) for the representatives of the victims: Liliana Tojo, of the Center for Justice and International Law (CEJIL).

copy of the article published in "La Nación" newspaper on January 30, 2008, containing the proven facts and operative paragraphs of the judgment, and displayed a copy of Decree No. 10854 and the bank slip for the deposit of the relevant amount in the account of Mr. Ricardo Canese.

CONSIDERING:

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

2. That Paraguay has been a State Party to the American Convention since August 24, 1989 and, in accordance with Article 62 thereof, acknowledged the adjudicatory jurisdiction of the Court on March 26, 1993.

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, the States are required to guarantee that the Court's orders are implemented in decisions made at the domestic level.²

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4. That with regard to the obligation of the State to "pay the sum of US\$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Paraguayan currency, to compensate the non-pecuniary damage caused to Ricardo Nicolás Canese Krivoshein" (*Operative Paragraph 6 of the judgment*), and the duty to "pay Ricardo Nicolás Canese Krivoshein the total amount of US\$5,500.00 (five thousand five hundred United States dollars), for costs and expenses" (*Operative Paragraph 7 of the judgment*), the Court takes note of the State's evidence that it has made the payments to the victim as ordered in the judgment (*supra* Having seen clauses 10 and 11).

5. That in the private hearing on monitoring compliance, the State asserted that its payment reflected the exact amount of damages ordered in the judgment. Furthermore, the State asked the Court to forgive payment of overdue interest that

² Cfr. I/A Court HR. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, par. 131; I/A Court HR. *Case of Palamara-Iribarne v. Chile*. Monitoring Compliance with Judgment Order of November 30, 2007, Considering clause 3; and I/A Court HR. *Case of Molina-Theissen v. Guatemala*. Monitoring Compliance with Judgment Order of July 10, 2007, Considering clause 2.

had accrued during the delay in payment of damages. Paraguay explained that its request for forgiveness should be considered in view of the actions the State had taken to comply fully with the terms of the Court's judgment, as well as the complex, difficult process of repeatedly modifying the national budget to include additional amounts for overdue interest payments. According to Paraguay, the payment of overdue interest would require a new budget allocation, meaning that disbursement could not be made until 2009; thus an additional year would elapse before the case could be closed, which in turn would generate more arrearages.

6. That the representative of the victim stated in the private hearing that she "fully acknowledge[d] the Decree and also the payment made to Mr. Canese by bank transfer." She noted, nonetheless, that the payment had been made in 2007, while the judgment dated back to the year 2004. With regard to the State's request for forgiveness, she commented that Paraguay had been aware of its obligation at the time it made the damage payment, and that she as representative "...would not be in a position to accept" the State's request; therefore she would consult with the victim and report back to the Court in due time.

7. That with regard to the State's request for forgiveness of overdue interest, the Commission stated that this matter "should be decided [...] by Mr. Canese," and therefore said it would await the victim's opinion on this request.

8. That the Court values the measure adopted by the State of Paraguay to abide by its obligation to pay compensation as ordered in the judgment, reported by the State and accepted by the representative of the victim in the private hearing. Nevertheless, the Court notes that Operative Paragraphs 9 and 12 of the judgment state, respectively, that the "State shall comply with the measures of reparation and reimbursement of costs and expenses ordered in Operative paragraphs 6, 7 and 8 of [the] judgment, within six months of its notification, ..." and that if "the State should delay payment, it must pay interest on the amount owed, corresponding to banking interest on arrears in Paraguay."

9. That on the basis of these provisions of the judgment and considering that notification of the judgment was made on September 16, 2004, the deadline for paying pecuniary damage expired on March 16, 2005, and as of that date, the State was in arrears. That in keeping with the provisions of the Court's judgment, the victim will need to express an opinion concerning the State's request.

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* * *

10. That with regard to the State's obligation to "publish once in the Official Gazette and in another newspaper with national circulation the chapter on the proven facts in this judgment, without the corresponding footnotes, and its operative paragraphs"

(*Operative Paragraph 8 of the judgment*), the Court notes that the State submitted copies of both the March 14, 2007 publication in its Official Gazette, and the January 30, 2008 notice published in the nationally read newspaper "La Nación."

11. That in the hearing, a representative of the victim verified that the State had published the relevant section of the judgment, both in the Official Gazette and in another nationally read newspaper, but commented that the State had been slow to comply with these obligations.

12. That the Inter-American Commission acknowledged the willingness of the State to comply with pending items ordered in the judgment for this case.

13. That the Court notes that, according to Operative Paragraph 9 of the judgment and based on the date when notification was made, the deadline for complying with the obligation to publish the relevant sections of the judgment expired on March 16, 2005 (*supra* Considering clause 9). Nevertheless, the Court feels that these publications constitute compliance with the terms of Operative Paragraph 8 of the judgment.

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, Articles 25(1) and 30 of its Statute, and Article 29(2) of its Rules of Procedure,

DECLARES,

1. That in view of the provisions of *Considering* clauses 4 and 13 of this Order, the State has fully complied with the following measures of redress:

a) pay compensation and reparations ordered for non-pecuniary damage and for costs and expenses (*Operative Paragraphs 6 and 7 of the judgment*), except insofar as they entail payment of overdue interest, in accordance with the provisions of Operative Paragraph 12 of the judgment, and

b) publish in the Official Gazette and another newspaper of nationwide

circulation, the chapter concerning the proven facts and the Operative Paragraphs of the judgment (*Operative Paragraph 8 of the judgment*).

AND DECIDES:

1. To ask the representatives to advise the Court, by March 28, 2008 at the latest, of the victim's position concerning the request by the State of Paraguay for forgiveness of overdue interest payments.
2. To continue monitoring compliance of the August 31, 2004 judgment on merits, reparations and costs.
3. To order the Secretary of the Court to notify the State, the Inter-American Commission on Human Rights and the representatives of the victim of this Order.

Diego García-Sayán
President

Sergio García Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary