

Order of the Inter-American Court of Human Rights

of November 26, 2008

Case of Bulacio v. Argentina

(Monitoring Compliance with Judgment)

Having Seen:

1. The Judgment on merits, reparations and costs of September 18, 2003 (hereinafter, "the Judgment"), rendered by the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court" or "the Court"), which was fully notified to Argentina (hereinafter, "the State" or "Argentina") on October 3, 2003 and whereby it was unanimously decided that the State was to:

[...]

4. [...] continue and complete the investigation of all the facts of th[e] case and punish those responsible for them; that the next of kin of the victim [were to] have full access and be able to act, at all stages and levels of said investigations, pursuant to domestic legislation and the provisions of the American Convention on Human Rights; and that the results of the investigations [were to] be publicly disseminated, under the terms set forth in paragraphs 100 to 121 of the [...] Judgment[;]

5. [...] guarantee non-recidivism of facts such as those of the instant case, adopting such legislative and any other measures as may be necessary to adjust the domestic legal system to international human rights provisions, and to make them fully effective, pursuant to Article 2 of the American Convention on Human Rights, under the terms of paragraphs 122 to 144 of the [...] Judgment [;]

6. [...] publish in the Daily Gazette, once only, chapter VI and the operative section of th[e] Judgment, under the terms of paragraph 145 [there]of[;]

7. [...] pay the total sum of US\$124,000.00 (one hundred and twenty-four United States dollars) or its equivalent in Argentinean currency, as compensation for pecuniary damage, distributed as follows:

- a) US\$110,000.00 (one hundred and ten thousand United States dollars) or their equivalent in Argentinean currency to [...] Graciela Rosa Scavone under the terms of paragraphs 85, 87, 88, 89, 157 to 159 of the [...] Judgment[,] and
- b) US\$14,000.00 (fourteen thousand United States dollars) or their equivalent in Argentinean currency, [...] distributed equally between María Ramona Armas de Bulacio and Lorena Beatriz Bulacio, under the terms of paragraphs 88 and 157 to 159 of the [...] Judgment[;]

8. [...] pay the total sum of US\$210,000.00 (two hundred ten thousand United States dollars) or their equivalent in Argentinean currency, as compensation for non-pecuniary damages, distributed as follows:

- a) US\$114,333.00 (one hundred and fourteen thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to [...] Graciela Rosa Scavone under the terms of paragraphs 95 to 104 and 157 to 159 of the [...] Judgment;

- b) US\$44,333.00 (forty-four thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to [...] María Ramona Armas de Bulacio under the terms of paragraphs 95 to 104 and 157 to 159 of the [...] Judgment;
- c) US\$39,333.00 (thirty-nine thousand three hundred and thirty-three United States dollars), or their equivalent in Argentinean currency, to [...] Lorena Beatriz Bulacio under the terms of paragraphs 95 to 104 and 157 to 159 of the [...] Judgment; and
- d) US\$12,000.00 (twelve thousand United States dollars), or their equivalent in Argentinean currency, [...] distributed in equal parts between the children Matías Emanuel and Tamara Florencia Bulacio under the terms of paragraphs 104 [and] 157 to 160 of the [...] Judgment[;]

9. [...] pay the total sum of US\$40,000.00 (forty thousand United States dollars), or their equivalent in Argentinean currency, for costs and expenses, under the terms of paragraphs 152 and 157 to 159 of the [...] Judgment[, and]

10. [...] pay such compensation and reimburse such costs and expenditures as ordered in the [...] Judgment within six months from the notification thereof.

[...]

2. The Order of the Inter-American Court of November 17, 2004 on compliance with the Judgment, whereby the Court declared:

1. [t]hat the State ha[d] fully complied with the requirements in operative paragraphs six to thirteen of the Judgment [...] as to publication of said Judgment, and compensation for material damages, immaterial damages, and costs and expenditures[, and]

2. [t]hat it [would] maintain open the procedure of supervision of compliance with the requirements indicated in considering paragraph ten of [the] Order.
[...]

3. The communications of November 30, 2004; January 31 and February 24, 2005; March 15, 2006; May 14, June 13, and July 16 and 26, 2007; July 14, August 5 and 14, and October 3, 2008; whereby the State addressed the matter of compliance with the Judgment.

4. The briefs of March 7, 2005; January 3 and April 17, 2006; June 12, July 13 and 20, and September 20, 2007; and August 14, September 8, and October 31, 2008, whereby the representatives of the victim and his next of kin (hereinafter, "the representatives") submitted their comments on the status of compliance with the Judgment.

5. The communications of June 16, 2005; May 3, 2006; June 26 and September 17, 2007, and September 26 and November 19, 2008, whereby the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") submitted its comments regarding the status of compliance with the Judgment.

6. The private hearing that took place on August 14, 2008 during the XXXV Special Session of the Inter-American Court in the city of Montevideo, in the Republic of Uruguay, at which the State, the Inter-American Commission and the representatives addressed the aspects that are yet to be complied with in the instant case. After the private hearing on monitoring compliance with the Judgment and at the Inter-American Court's proposal, the parties signed an agreement that was submitted to the Court, whereby it was agreed as follows:

[a.] In the light of Section 1 of Resolution No. 2209, passed by the Minister of Justice, Security and Human Rights on August 12, 2008, instructing the Human Rights Secretary to set up the consultation mechanism provided for in item 3 of the Friendly Settlement Agreement

approved by the inter-American Court via paragraph 144 of the Judgment, and with a view to achieving compliance therewith, the State undertakes to organize a meeting within a period of 30 days between the Minister of Justice, Security and Human Rights, acting in his capacity as head of the Interior Security Council, and the Human Rights Secretary, as head of the Federal Human Rights Council, and the representatives of the petitioners in the instant case.

[b.] At such meeting, the parties shall define the contents of an agenda aimed at adjusting the laws and regulations to the international human rights standards on the subject of the police authority to make warrantless detentions other than in cases of *flagrante delicto*, in the terms of operative paragraph 5 of the Judgment of September 18, 2003; a work timeline shall also be defined, and a decision shall be reached regarding the consultation mechanism ordered by the Inter-American Court.

[c.] The State shall adopt such measures as it may deem adequate to implement any agreements reached at said meeting regarding the agenda, timeline, makeup and call.

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 "Convention" or the "American Convention") since September 5, 1984, and that it recognized the Court's jurisdiction on the same day.
3. That Article 68(1) of the American Convention provides 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 such purpose, the States must guarantee that the Court's decisions are implemented domestically.¹
4. That by virtue of the nature of the Court's judgments as final and not subject to appeal, as established in Article 67 of the American Convention, the State must promptly and fully comply with them within the term established therefor.
5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility.² The State Parties' obligations under the Convention bind all State branches and organs.³

¹ Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Goiburú et al. v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 6, 2008, third considering clause; and *Case of Servellón-García et al. v. Honduras. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 5, 2008, third considering clause.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Bámaca-Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of November 11, 2008, twenty-fourth considering clause, and *Case of Vargas-Areco v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of October 30, 2008, fifth considering clause.

³ Cf. *Case of Castillo-Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, third considering clause; *Case of*

6. That the States Parties to the Convention must guarantee compliance with the provisions thereof and 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 rights thereby protected) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. These 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.⁴

7. That those States Parties to the Convention which have recognized the binding jurisdiction of the Court must comply with the obligations established by the Court. In this regard, Argentina is required to take all such steps as may be required to effectively comply with the rulings of the Court as laid down in the Judgment of September 18, 2003. This obligation includes the State's duty to report on the measures taken to comply with the Court's orders contained in the aforementioned Judgment. Timely fulfillment of the State's obligation to report to the Court on the exact manner in which it is complying with each one of the aspects ordered by the latter is essential to evaluate the status of compliance with the Judgment as a whole.

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8. That, as regards the obligation to continue and complete the investigation of the facts of the instant case, the State reported that, on December 23, 2004 and based on the Judgment rendered in this case, the Supreme Court of Justice overturned the appealed judgment whereby the criminal action brought against a defendant for the aggravated illegal imprisonment of Walter David Bulacio was dismissed under the statute of limitations. According to the State, faced with the ruling of the Supreme Court of Justice, "the [defendant's] attorneys again moved for the dismissal of the criminal action based on the statute of limitations in reliance upon Section 67 of the Criminal Code, which motion was rejected *in limine* by the Prosecutor's Office and [...] allow[ed] by the relevant Court. Thus[,] the case file was submitted to Division VI of the Criminal Appellate Court." "[O]n March 2, 2006, the General Prosecutor [...] asked Division VI of the National Criminal and Correctional Appellate Court to 'urgently' decide the ancillary proceeding initiated as a result of the appeal filed by the [d]efense." On June 26, 2007, Division VI disallowed the defendant's appeal. Notwithstanding the foregoing, the State announced that, "in spite of the critical decision of the [Supreme Court of Justice,] the investigation, which is a necessary pre-requisite to determine the [relevant] sanctions, has not come to an end." It should be noted that the President of Argentina has acknowledged that "the judicial delays [in this case have been the] reason [why] from 1996 to date the defense has not replied to the criminal charges and the next of kin have been systematically denied inclusion as complainants in the case."

9. That, in this regard, the representatives stated that "the Supreme Court's judgment [of December 23, 2004] is just the first step, as the relevant domestic courts have yet to responsibly carry out the State's obligation to continue the criminal and administrative investigations into all of the facts of the case." Moreover, they noted that "there is no

Bámaca-Velásquez, *supra* note 2, twenty-fourth considering clause, and *Case of Vargas-Areco*, *supra* note 2, fifth considering clause.

⁴ *Cf. Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Vargas-Areco*, *supra* note 2, sixth considering clause, and *Case of Goiburú et al.*, *supra* note 1, sixth considering clause.

precedent of the persisting ongoing policy of undue delays in which the Judiciary itself is acting as the protector of an extremely serious situation of impunity[, since] those judges who should have been removed from the case, as well as those who only recently have become involved in it due to administrative causes, continue to endorse the never-ending series of delaying motions which the [defendant's] defense continues to successfully file." Accordingly, the representatives advised the Court that, on September 10, 2008, "the Supreme Court of Justice issued a ruling whereby [it addressed] the dilatory tactics which the [defendant's] attorneys have employed and continue to resort to in the criminal case and which are allowed by the judicial authorities." "Despite the categorical nature of such ruling [...] [it is the representatives' view that] it is already too late: 12 years having elapsed since the criminal charges were first notified, the defense has yet to respond to the allegations, which rules out any possibility of a trial."

10. That, as regards said criminal proceeding, the Commission stressed "the exceptional importance of the Supreme Court of Justice's decision [of December 23, 2004], both to the specific case at hand and as regards the subject of impunity in general." Again, however, it stated that "even though [said judgment] represents a significant step forward at the domestic case-law level regarding the subject of the inapplicability of the statute of limitations to investigations in cases involving human rights violations, the information provided by the State [...] does not speak of any specific progress in the investigation of the facts, the discovery of the historic truth and the determination of the criminal, administrative and other liability of the perpetrators of and masterminds behind the human rights violations against young Walter Bulacio." Moreover, the Commission stated that it "appreciates [the] petitions made by the State in its capacity as complainant in the criminal action [intended, for the most part, to secure the prompt performance of any pending steps and to prevent new dilatory tactics on the part of the [defendant's] attorneys, and is awaiting additional information on the outcome of such petitions and the progress made in the court proceedings after almost 12 years of the case halted due to multiple ancillary procedures and the defendant's attorney's failure to reply to the filings."

11. That, as regards the criminal proceeding that is still pending to elucidate the facts of the instant case, the Court has taken note of the Supreme Court of Justice's Judgment of December 23, 2004 and its ruling of September 10, 2008 (*supra* Considering clauses Nos. 8, 9 and 10).

12. That, in spite of said rulings by the Supreme Court, this Court is concerned about the fact that more than 17 years, 7 months have elapsed since the facts of the instant case took place, and more than five years have elapsed since the Judgment of the Inter-American Court was rendered and the State has yet to elucidate the facts and determine the relevant criminal liability for the violations that were declared such in the instant case, and, accordingly, impunity still prevails. Therefore, as soon as possible, the State is to adopt all such measures as may be required to comply with such obligation.

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13. That, as regards the initiation of administrative or disciplinary proceedings in connection with the Judiciary's actions in the processing of the criminal case, the State noted that, in its December 23, 2004 Judgment, the Supreme Court of Justice requested that the Council of the Judiciary place the judges who were involved in the processing of the case and who allowed the delay that led to the ancillary proceeding on the statute of limitations under investigation. On August 19, 2008, the Ministry of Justice, Security and

Human Rights repeated the request, and the Council of the Judiciary “replied that, to date, there are no cases open against any judge who has been involved in the case of Bulacio.”

14. That, as regards such administrative proceedings, the representatives stated that “the information provided by the State [...] is [...] insufficient to consider that the international decision has been complied with. The Council of the Judiciary has yet to make any progress in the attribution of liability to the judicial officers that were involved in the processing of the [criminal] proceeding; there is not even the specific identification of those judges that are the most compromised on account of their tolerance for impunity.”

15. That the Commission stated that “the determination of liability and the appropriate sanctions, at both the criminal and administrative levels, is critical, and that, in this regard, it is important for the State to report on [...] the steps taken to achieve concrete results.”

16. That, in its Judgment, this Court noted that the defendant’s attorneys had resorted to “a large number of diverse legal questions and remedies (requests for postponement, challenges, incidental pleas, objections, motions on lack of jurisdiction, requests for annulment, among others), which have not allowed the proceedings to progress forward to their natural culmination” and that “[t]his manner of exercising the means that the law makes available to the defense counsel has been tolerated and allowed by the intervening judiciary bodies, forgetting that their function is not exhausted by enabling due process that guarantees defense at a trial, but that they must also ensure, within a reasonable time [...], the right of the victim or his or her next of kin to learn the truth about what happened and for those responsible to be punished.”⁵

17. That this Court has duly noted the fact that, in its Judgment of December 23, 2004, the Supreme Court of Justice stated that “[it was for] the Council of the Judiciary [...] [to] determine the relevant liability” engaged as a result of the conduct of the judges involved in the investigation of the case of Bulacio. In this regard, the Council noted that, to date, there are no cases open against said judges (*supra* Considering clauses Nos. 13 and 14).

18. That it is relevant to repeat the text of the Judgment to the effect that “[t]he right to effective judicial protection therefore requires that the judges direct the process in such a way that undue delays and hindrances do not lead to impunity, thus frustrating adequate and due protection of human rights.”⁶ In this regard, in previous cases the Court has also held that “when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention; this forces them to see that all effects of the provisions embodied in the Convention are not adversely affected.”⁷ Accordingly, the State must adopt such measures as may be required to comply with the orders contained in the Judgment.

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19. That, as regards the application of administrative sanctions to those responsible for the facts of the instant case, the State reported that, on April 20, 2004, the Administrative Investigations Prosecutor requested that, “[c]onsidering the prosecutorial role taken on by

⁵ Cf. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C No. 100, paras. 113 and 114.

⁶ Cf. *Case of Bulacio v. Argentina*, *supra* note 5, para. 115.

⁷ *Case of Almonacid-Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 124. Cf. *Case of Boyce et al. v. Barbados. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, para. 78.

[the] Prosecutor's Office in disciplinary administrative investigation No. 465-18-000.048-92 [...], (R) Captain Miguel Ángel Espósito be dismissed from the Force without pension under Section 563 of the Regulations of Law No. 21965, on Personnel of the Argentine Federal Police Department." Moreover, the State noted that, upon the case file being sent to the Minister of Justice, Security and Human Rights, "said Minister issued Resolution 2706/2008 [published in the September 19, 2008 issue of the Official Gazette], ordering the dismissal without pension of Police Captain [...] Miguel Angel Espósito." "[E]ven though the Head of the Police Department requested that the retirement of the Captain be turned into his dismissal with pension, after analyzing his conduct and in exercise of the powers vested in him, the Minister decided to convert the Captain's legal status into one carrying more serious consequences, *i.e.* dismissal without pension."

20. That, as regards the administrative proceeding against Captain Espósito, the representatives have learned that the "even though in a belated fashion, the Ministry of Justice has acknowledged that [C]aptain Espósito 'abused his position and overstepped the bounds of his authority in ordering that Walter Bulacio be imprisoned." However, the representatives stressed that "[a]lso in this investigation, [C]aptain Espósito's defense attorneys d[id] their best to hinder the proceedings and the public institutions respond[ed] inefficiently."

21. That, on the other hand, as regards the application of administrative sanctions to Captain Espósito on account of his responsibility for the arrest and custody of the victim, the Commission stated that it "commends this important step taken by the State of Argentina towards discharging its obligation to investigate and punish those responsible for the human rights violations inflicted upon Walter Bulacio."

22. That, given that by way of Resolution 2706/2008 the Ministry of Justice, Security and Human Rights ordered Captain Miguel Ángel Espósito dismissed without pension (*supra* Considering clauses Nos. 19, 20 and 21), it is the Court's view that such measure is part of the State's compliance with the Judgment and the relevant obligation to investigate the facts of the instant case and punish those responsible therefor.

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23. That, in view of the above statements regarding the criminal proceeding and the administrative investigations, it is essential for the State to provide updated, detailed and complete information on the steps taken and progress made in the relevant proceedings in order that this Court may assess compliance with the fourth operative paragraph of the Judgment, which paragraph addresses the State's duty to carry out investigations aimed at prosecuting and eventually punishing those responsible for the facts and to publicize the outcome of such investigations.

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24. That, as regards the obligation to provide the victims' next of kin full access to and allow them to be able to act at all stages and levels of the investigations, in accordance with the domestic laws and regulations and the provisions of the Convention, the State reported that "[s]o far, it has not been possible to comply with [the relevant] operative paragraph either." In this regard, it stated that, fully observant of the constitutional separation of powers, "the [...] President of Argentina signed Decree [No. 1313/08], intended to authorize the Human Rights Secretary's Office to appear [as complainant] in the court proceedings

currently pending in connection with this case." Following publication of said Decree, "via Resolution 2214 of August 12, 2008[,] the Minister of Justice, Security and Human Rights authorized the Human Rights Secretary to act as complainant in the proceedings in which the commission of crimes against Walter David Bulacio is investigated." Thus, "[g]iven the courts' refusal to reinstate the family as [complainants], [...] the Human Rights Secretary's Office has already made its appearance and requested that the next of kin of Walter Bulacio be reinstated in [such] capacity." In this regard, on September 24, 2008, the Ministry of Justice, Security and Human Rights sent a letter to the Attorney General requesting that "the best efforts be made in order to guarantee that the victims' next of kin will have full access and be able to act at all stages [and] levels [of the proceedings]."

25. That, as regards to Walter Bulacio's mother's reinstatement as complainant in the domestic proceedings, the representatives noted that she "remains alien to any procedural alternative, is not notified of any developments in the case and has not been recognized standing to file petitions in the case or even to verify them." Furthermore, the representatives reported that "on September 2, 2008, Criminal Investigation Court No. 49 [...] once again dismissed the motion made by the counsel for Walter Bulacio's family, denying their reinstatement to the case as affected private parties." Said criminal Court noted that "their [the next of kin of the victim's] lack of standing to participate in the trial and in connection with the crime of illegal imprisonment that led to the investigation was already ruled on [on June 6, 2002] by the higher Court[, which applied Section 170 of the Code of Criminal Procedure,] in the context of the ancillary proceedings instituted by the defense." In this regard, said criminal Court concluded that "the ruling ha[d] become final." The representatives described as inadmissible the fact that "[p]aradoxically, in that same ruling, the judge allow[ed] the federal government – acting through the Human Rights Secretary's Office- as complainant, on the understanding that a matter of public interest is at stake in the case." The representatives appealed the ruling of September 2, 2008, and the appeal is still pending.

26. That, on the subject, the Commission noted that "for more than two decades now, international bodies for the protection of human rights have recognized the importance of the right of the victim or the victim's next of kin to be involved in the domestic proceedings as complainant to supplement or potentially substitute for the prosecutorial action that is required of the State." Moreover, the Commission stated that "[a]t the hearing on monitoring compliance with the [J]udgment [...] held in Montevideo, Uruguay, on August 14, 2008, the representatives of the victim and the victim's next of kin advised the Court that, for several years now, they have not been allowed even to see the court case file under the pretext that they are not parties to the case." Accordingly, the Commission asked the Court to instruct the State to provide an explanation on the possibility of overturning the decision rendered on September 2, 2008 by Criminal Investigation Court No. 49 of the City of Buenos Aires, as such decision is incompatible with the orders contained in the Court's Judgment.

27. That, according to the parties (*supra* Considering clauses Nos. 24, 25 and 26), as a result of the aforementioned decisions of June 6, 2002, and September 2, 2008, the State has refused to reinstate Walter Bulacio's next of kin as "harmed next of kin" in the criminal proceedings, based on the declaration of their lack of standing to take part in the proceedings under Section 170 of the Code of Criminal Procedure in force.

28. That the State has failed to comply with its obligation to give the victim's next of kin full access to, and allow them to be able to act at, all stages and levels of the investigations, in accordance with the domestic laws and regulations and the provisions of the Convention;

accordingly, the State is to report to the Court on such measures as it may adopt to comply with this obligation.

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29. That, as regards the obligation to guarantee that facts such as the facts of the instant case will not recur in the future by adopting such legislative and any other measures as may be necessary to adjust the domestic legal system to international human rights provisions, and to make them fully effective, the State reported on the implementation of the following measures: 1) enactment of the Law on Comprehensive Protection of Children and Teenagers, on September 28, 2005; 2) ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; 3) issue of Resolution 2208, of August 12, 2008, whereby the Minister of Justice, Security and Human Rights instructed "*Gendarmería Nacional Argentina* [Border Police Department], the Argentine Federal Police Department, *Prefectura Naval Argentina* [the Argentine Coast Guard Department] and *Policía de Seguridad Aeroportuaria* [the Airport Police Department] to bring their actions in cases involving the restriction of the physical liberty of minors under the age of 18 in line with the international human rights standards;" 4) issue of Resolution 578/2008, of March 25, 2008, whereby the Minister of Justice, Security and Human Rights created the Committee on the Legislative Reform and Updating of the Juvenile Criminal Justice System, to be chaired by the Minister of Justice, Security and Human Rights, which Committee "shall have a coordinator and be made up of national criminal law professors appointed by contest and renowned judges who will perform their duties free of charge," and who "shall submit a bill on the legislative reform and updating of the juvenile criminal justice system;" 5) issue of Resolution 2209, of August 12, 2008, whereby the "Minister of Justice, Security and Human Rights instructed the Human Rights Secretary to create [a] consultation mechanism on the legislative adjustment ordered by the Inter-American Court in the Judgment rendered in the instant case; 6) implementation of "a number of bills [...] aimed at modifying the juvenile criminal justice laws, [including] sentence execution," and 7) the "creation of training programs on the subject of the rights of children and teenagers for the police and law enforcement forces." The State also informed on the "process of and results obtained from the legislative survey implemented by the Ministry of Justice, Security and Human Rights regarding the police authority to make warrantless detentions in cases other than cases of *flagrante delicto*." The State further explained that said process consisted in "surveying the entire set of legislation governing the aforementioned [...] cases [...] through *Servicio Argentino de Informática Jurídica* [Argentine Computerized Legal Service], an institution reporting to the Ministry of Justice. Such work produced a database of local legislation [which] includes the Codes of Criminal Procedure in force in each jurisdiction, the charter laws of the local police departments, the Codes of Misdemeanors and Violations in force, Provincial Laws on the Comprehensive Protection of Childhood and other documents." An analysis of such documents "allowed the identification of those local rules which, in principle, do not appear to be in line with the international standards for police action." Based on such information, the Minister of Justice, Security and Human Rights sent "a letter to the head of each local jurisdiction explaining the results of the survey, identifying those pieces of legislation that, in principle, need to be adjusted to the international standards enshrined in the international laws and case law, and asking for a commitment to such changes." New letters have been sent to that effect and, additionally, the Minister of Justice, Security and Human Rights has asked the Interior Security Council and the Federal Human Rights Council to participate in this endeavor.

30. That, additionally, the State explained that legislative and other initiatives have been set in motion in the City of Buenos Aires, including: 1) the 2004 amendment to the City Code of Misdemeanors –created by virtue of Law No. 10 of 1998 and amended by Law No. 1472 of 2004-, Section 11 of which establishes “the ‘non-punishable’ status of teenagers under the age of 18 for the commission of city misdemeanors” other than traffic violations; 2) Law 12 on “Misdemeanor Procedures,” establishing “a specific procedure for children and teenagers charged with a misdemeanor”; 3) Law No. 1287, which creates a specific procedure to be applied when a teenager is arrested for possessing, carrying and supplying civilian weapons without being a licensed user; 4) Law No. 23950, which sets at 10 hours the period during which a person may be held in detention by the Police Forces in the City of Buenos Aires on the presumption that such person has committed or may commit a crime or misdemeanor where such person has failed to sufficiently prove their identity, and 5) Resolution 1623, of October 29, 2004, whereby the Ministry of Security of the Province of Buenos Aires prohibited the holding of minors at police premises and forced the judges in charge of them to have the police precincts relocate such minors to adequate facilities.

31. That, in this regard, the representatives stated that “[e]ven though [...] it is their view that debating on and adjusting the Argentine legislation as regards the international standards for the comprehensive protection of children and teenagers and as regards the criminal procedure applicable to minors is very important, they consider that little does such issue have to do with the subjects in question in the case of Walter Bulacio. This is so because Walter [Bulacio] was not accused of any crime at all.” “In this regard, [according to the representatives,] what the State is required to do is create a mechanism to analyze and amend the legislation that is currently in force and the practices that allow arbitrary detentions (such as detentions to verify identity, police edicts or *razzias*), which are particularly serious when they involve children who have not committed any crime at all and are performed without a warrant, as was the case with Walter Bulacio, and which leave room for detention in inadequate conditions.” According to the representatives, “the underlying issue in this case [is] the complex system of authority vested in the police and other security forces by the State to make arbitrary arrests without a court warrant in cases other than cases of *flagrante delicto*.” Thus, “it is necessary for the State to seriously commit to modifying and correcting the practices related to the authority for detention – either to verify a person’s criminal records or to verify the identity of a person–, which practices are deeply rooted in the police and other security forces.” Moreover, the representatives noted that “the State’s commitment [...] is not limited to amending the legislation in the Province of Buenos Aires –which is just one of the 23 provinces that make up the State of Argentina- but extends to the entire national territory as well.” Lastly, they noted that, so far, no meetings have been held between them and the State’s agents after the private hearing of August 2008 to exchange information or make suggestions on the subject.

32. That the Commission “acknowledge[d] the legislative progress made by the State of Argentina in connection with the protection of children and teenagers. It also acknowledge[d] the importance of implementing an adequate procedural system to assess offenses committed by minors, as well as to apply measures intended to reeducate the offending minors. However, [...] it note[d] that the [...] subjects [...] that are critical in order to keep violations similar to those sustained by Walter Bulacio from recurring in the future [are]: [1]) the State must adopt the factual and legal measures required to guarantee that the facilities at which minors are held in detention are adequate and are properly monitored on a permanent basis; and [2]) the State must take all such measures as may be necessary to guarantee that detained minors are brought without delay before a judicial authority for a ruling on the legality of their detention.” Furthermore, the Commission stated that, “so far,

the State has not provided information on the creation of a committee to review and propose how to reform the laws and decrees, as well as resolutions, circulars or institutional communications that allow detentions to be made by the police without objective grounds therefor, as well as the mistreatment of those held in detention." Thus, the Commission "[was] concerned about the lack of more concrete progress in complying with the guarantees of non-repetition ordered in the [J]udgment," and concluded that the State "has yet to satisfy its obligation to [...] enact such legislative and other reforms as are necessary to avoid the repetition of similar facts in the future."

33. That, as per the statements made by the parties (*supra* Considering clauses Nos. 29 to 32), the State has adopted measures aimed at complying with the orders contained in the fifth operative paragraph of the Judgment. In this regard, the Court acknowledges the efforts made by the State to set up mechanisms aimed at adjusting the domestic legislation and practices on the subject of warrantless child detentions in cases other than cases of *flagrante delicto* and those related to the detention of children. Also, the Court has taken note of the State's disposition to adjust its criminal procedural laws, as well as its laws relating to the general protection of children. In this regard, the Court has taken note of the actions undertaken by the State to create the Committee on the Legislative Reform and Updating of the Juvenile Criminal Justice System, and the consultation mechanism on the legislative changes in connection with the instant case (*supra* Considering clause No. 29).

34. That, notwithstanding the foregoing and in addition to the various measures that were adopted and are pending approval, the State must take measures of a different nature in order that such system will be effectively applied at the domestic level and, accordingly, enforced by the relevant parties, particularly in connection with the warrantless detention of children in cases other than cases of *flagrante delicto* and the obligation to maintain adequate conditions for the detention of children. Such obligation also means that the State must take such action as will allow the implementation and application of said measures in the twenty-three provinces and the capital city of the State of Argentina.

35. That the State must continue to take such measures as are necessary to guarantee effective compliance,⁸ at the national level, with the obligation to adopt such legislative and other measures as may be necessary to bring the domestic legal system in line with the international rules on human rights, so as to avoid the future repetition of facts and violations such as those of the instant case.

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36. That, as reported by the State and the representatives, after the private hearing on monitoring compliance with the Judgment held on August 14, 2008, they signed an agreement whereby the State, among other things, undertook to "organize a meeting within

⁸ Cf. *Case of Bulacio v. Argentina*, *supra* note 5, para. 142.

a period of 30 days between the Minister of Justice, Security and Human Rights, acting in his capacity as head of the Interior Security Council, and the Human Rights Secretary, as head of the Federal Human Rights Council, and the representatives of the petitioners in the instant case" (*supra* Having Seen clause No. 6). The representatives advised the Court that no call has yet been made to such meeting (*supra* Considering Clause No. 31); accordingly, the Court urges the State to take the required steps for the meeting to be actually held.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES,

1. That, as stated in Considering clauses Nos. 11, 17, 22 y 33 of this Order, the State has partially complied with the following operative paragraphs of the Judgment:

a) continue and complete the investigation of all the facts of this case, in accordance with the fourth operative paragraph of the Judgment, and

b) guarantee non-recidivism of facts such as those of the instant case, adopting such legislative and any other measures as may be necessary to adjust the domestic legal system to international human rights provisions, and to make them fully effective, pursuant to Article 2 of the American Convention on Human Rights, under the terms of paragraphs 122 to 144 of the Judgment and the fifth operative paragraph thereof.

2. That it will keep open the procedure to monitor compliance until all pending aspects have been fully complied with.

AND DECIDES:

1. To order the State to adopt all such measures as may be necessary for the effective and prompt compliance with the pending orders issued by the Court in the Judgment on merits, reparations, and costs of September 18, 2003 and, again, in its Order of November 17, 2004, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request that, by February 20, 2009, the State submit to the Inter-American Court of Human Rights a detailed and updated report specifying such measures as may have been adopted to comply with those reparations ordered by this Court which are still pending fulfillment, as spelled out in Considering clauses Nos. 12, 16, 17, 18, 23, 27, 28, 34 and 35 and the first declarative paragraph of this Order.

3. To call upon the representatives of the victim and the victim's next of kin, as well as the Inter-American Commission on Human Rights, to present their comments on the report of the State referred to in the preceding operative paragraph, within four and six weeks, respectively, as from the date of receipt of said report.

4. To continue monitoring compliance with the Judgment on merits, reparations and costs rendered on September 18, 2003.

5. To request the Secretariat of the Court to serve notice of this Order upon the State, the representatives of the victims and their next of kin, and the Inter-American Commission on Human Rights.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel E. Ventura-Robles

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary