

**Order of the
Inter-American Court of Human Rights
of July 9, 2009
Case of Herrera Ulloa v. Costa Rica
(Monitoring Compliance with Judgment)**

Having seen:

1. The Judgment on preliminary objections, merits, reparations and costs of July 2, 2004 (hereinafter, "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal"), which provided that:

[...]

4. The State must annul in whole the judgment issued on November 12, 1999 by the Criminal Court for the First Court Circuit of San José, pursuant to paragraphs 195 and 204 of the [...] Judgment.

5. That within a reasonable period of time, the State must adjust its domestic legal system to conform to the provisions of Article 8(2)(h) of the American Convention on Human Rights, in relation to Article 2 thereof, as established in paragraph 198 of the [...] Judgment.

6. That the State must pay non-pecuniary damages to Mr. Mauricio Herrera Ulloa in the amount of US\$ 20,000.00 (twenty thousand United States dollars) or the equivalent in Costa Rican currency, as established in paragraphs 200, 203, 204 and 205 of the [...] Judgment.

7. The State must pay Mr. Mauricio Herrera Ulloa the sum of US\$ 10,000.00 (ten thousand United States dollars) or the equivalent in Costa Rican currency, to defray the expenses of his legal defense in litigating his case before the inter-American system for the protection of human rights, as established in paragraphs 202, 203, 204 and 205 of the [...] Judgment.

8. None of the compensation ordered in operative paragraphs 6 and 7 of this judgment shall be subject to any tax or levy currently in existence or ordered in the future, as established in paragraph 204 of the [...] Judgment.

9. Should the State fall into arrears, it shall pay interest on the amount owed, which will be the banking arrearage interest rate in effect in Costa Rica, under the terms specified in paragraphs 203 and 204 of the [...] Judgment.

[...]

11. The State must comply with the measures of reparation and reimbursement of expenses ordered in operative paragraphs 4, 6 and 7 of the [...] Judgment, within six months of the date of notification of the present Judgment.

[...]

13. The Court will oversee compliance with [the] Judgment and will close the present case once the

State has fully complied with the measures ordered herein.

2. The Orders of Monitoring Compliance with Judgment issued by the Court on September 12, 2005 and September 22, 2006. In the latter, the Court held:

[...]

2. That it will continue to monitor compliance with the following issues pending compliance in this case:

a) to annul the November 12, 1999 judgment of the Criminal Court of the First Judicial Circuit of San José and all the measures it orders (*fourth operative paragraph of the Judgment of July 2, 2004*) [...];

(b) adjust its domestic legal system to the provisions of Article 8(2)(h) of the American Convention on Human Rights, in relation to Article 2 thereof (*fifth operative paragraph of the Judgment of July 2, 2004*); and

(c) to pay interest accrued on account of the payment of the compensation for non-pecuniary damages and reimbursement of expenses to Mauricio Herrera-Ulloa after expiration of the term prescribed in the Judgment (*sixth, seventh and ninth operative paragraphs of the Judgment of July 2, 2004*).

3. The communications of March 12, April 11, and December 16, 2008 of the Secretariat of the Inter-American Court (hereinafter, "the Secretariat"), whereby, pursuant to the instructions of the Court's President, the Secretariat requested up-to-date information on the items pending compliance.

4. The briefs of January 19, 2007; April 10, May 20 and 23, 2008; and January 29, 2009 and their respective appendixes, whereby the State reported on the status of compliance with the issues pending compliance.

5. The briefs of April 23, 2007; May 30 and June 30, 2008; and February 29, 2009, whereby the victim's representatives (hereinafter, "the representatives") put forward their comments to the State's reports.

6. The briefs of March 19, 2007; September 23, 2008; and March 4, 2009, through which the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") stated its comments on the information provided by the State and the representatives' observations.

7. The *amicus curiae* writings and corresponding appendixes submitted by the following persons: Rafael Antonio Rojas-Madrigal, Geovanny Leiva-Lara, José Armando Jiménez-Carranga, Benedicto Arauz-Flores, José Ruiz-Pérez, Fernando Herrer-Carranza, Alfonso Saborio-Corrales, Hugo Umaña-Chaverri, Antonio Sandovalendoza, Andy Waltersayle, Eliecer Acuñaaniagua and Ángel Aragón-Calderón. On January 21, 2009, some of the aforesaid persons supported a congressional Bill (Costa Rican Legislative Assembly file No. 17,143) "*establishing the motion for appeal, introducing other amendments to the appellate system and adopting new oral procedure rules in criminal proceedings*".

8. The Order of the President of the Inter-American Court of June 2, 2009, whereby, in consultation with the other Judges of the Court, she summoned the parties to a private hearing to monitor compliance with the judgment.

9. The statements and the information submitted by the parties in the private hearing held on July 8, 2009 during the Court's 83rd Regular Session to monitor compliance with the judgment.¹

CONSIDERING:

1. That it is an inherent power of the Court to monitor compliance with its decisions.
2. That Costa Rica has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or "the Convention") since November 22, 1969 and acknowledged the contentious jurisdiction of the Inter-American Court on July 2, 1980.
3. That under 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 must ensure that the Court's rulings are complied with at the domestic level.²
4. That because the Court's judgments are final and not subject to appeal pursuant to Article 67 of the American Convention, they must be promptly and fully complied with by the States.
5. That the duty to comply with the judgments of the Court is rooted in the basic principle of law on the international responsibility of States, which has been upheld by international case law, under which the States must perform their obligations under international treaties in good faith (*pacta sunt servanda*) and, as pointed out by this Court and set forth in Article 27 of the Vienna Convention on the Law of Treaties of 1969, they may not rely on their domestic interests to avoid their international responsibility.³ The

¹ In accordance with Article 63(3) of the Rules, the Court held the hearing with a committee of Judges composed by: Judge Diego García-Sayán; Judge Sergio García-Ramírez and Judge Rhadys Abreu-Blondet. Such hearing was attended by: (a) For the Inter-American Commission: Juan Pablo Alban, Advisor; (b) for the State: Luis Paulino Mora Mora, Chief Justice of the Supreme Court of Costa Rica; José Manuel Arroyo Gutiérrez, President of the Third Division of the Supreme Court of Justice; Edgar Ugalde Álvarez, Deputy Minister of Foreign Affairs and Cult; Vanessa Videche, Legal Director of the Ministry of Foreign Affairs and Cult; José Carlos Jiménez Alpizar, Legal Advisor to the Ministry of Foreign Affairs; José Enrique Castro-Marín, Costa Rica's Attorney General; Vivian Ávila-Jones, Public Law Attorney of the Attorney General's Office; and Edwin Jiménez-González, Judge of the Third Division of the Costa Rican Supreme Court of Justice; and (c) for the victim: Representatives Pedro Nikken, Fernando Guier, Armando González and Carlos Tiffer.

² Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 28, 2009, Considering clause No. 3; and *Case of Chaparro Álvarez and Lapo-Íñiguez v. Ecuador*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 29, 2009, considering clause No. 3.

³ 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, para. 35; *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*, *supra* note 2, Considering clause No. 5, and *Case of Chaparro Álvarez and Lapo-Íñiguez v. Ecuador*, *supra* nota 2, Considering clause No. 5.

conventional obligations of the States Parties are binding upon all of the State's branches of government and organs.⁴

6. That the States Parties to the American Convention must ensure compliance with the Convention's provisions and their effects (*effet utile*) at their domestic law level. Such principle applies both to substantive rules in human rights treaties (i.e., provisions on protected rights) and to procedural rules, such as provisions on compliance with the Court's decisions. These obligations must be interpreted and applied in such a way that the protected safeguard is truly practical and effective, taking into account the special character of human rights treaties.⁵

7. That the States Parties to the Convention who have acknowledged the Court's contentious jurisdiction have the duty to comply with the obligations imposed by the Court. Such obligations include the duty of the State to report to the Court on the measures adopted in compliance with the Court's rulings. The prompt observance of a State's obligation to inform the Court on the manner in which it is carrying out each of the instructions set out by the Court is essential to evaluate compliance with the Judgment as a whole.⁶

8. That the Court finds the hearing held to monitor the issues pending compliance in this case very instrumental.

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9. That, with regard to the obligation to annul in whole the judgment issued on November 12, 1999 by the Criminal Court for the First Court Circuit of San José, in connection with the damages and court and other costs awarded against Mr. Mauricio Herrera-Ulloa and the La Nación newspaper, represented by Mr. Fernán Vargas Rohrmoser (*operative paragraph No. 4 of the Judgment*), the State informed that "failed action was taken before civil courts seeking the recovery of sixty-three million eight hundred and eleven thousand colones, plus interest as damages and court costs for La Nación S.A. corporation". Said corporation filed ordinary fiscal civil proceedings against the State before a Contentious-Administrative and Civil Fiscal Court.

10. That, afterwards, Costa Rica informed that, through judgment No. 823-2007 of June 22, 2007, the Contentious-Administrative and Civil Fiscal Court had granted relief to La

⁴ Cf. *Case of Castillo-Petruzzi et al. v. Peru*. Monitoring Compliance with Judgment. Order of Inter-American Court of Human Rights of November 17, 1999. Series C No. 59; Considering clause No. 3; *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*, *supra* note 2, Considering clause No. 5, and *Case of Chaparro Álvarez and Lapo-Íñiguez v. Ecuador*, *supra* nota 2, Considering clause No. 5.

⁵ Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999, Series C No. 54, para. 37; *Case of Cantoral-Huamani and García-Santa Cruz v. Peru*, *supra* note 2, Considering clause No. 6, and *Case of Chaparro Álvarez and Lapo-Íñiguez v. Ecuador*, *supra* nota 2, Considering clause No. 6.

⁶ Cf. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause No. 7; *Case of Cantoral-Huamani and García Santa Cruz v. Peru*, *supra* note 2, Considering clause No. 7, and *Case of the Miguel Castro-Castro Prison v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 28, 2009, considering clause No. 7.

Nación S.A., compelling the State to reimburse "principal in the amount of sixty-three million eight hundred and eleven thousand colones, pursuant to the certificate of deposit [...], plus statutory interest and default interest owed"; furthermore, the State was compelled to "pay personal and court costs incurred in pursuing this action". Upon issuing such judgment, Costa Rica informed that, among other steps being taken, "funds [were] being applied into the 'compensation' item to provide for [...] the payment of the damages award against the State", which implied "taking unavoidable legal steps which require from two to three months to be effective, when the deposit into La Nación S.A.'s account will be made".

11. That, finally, on January 29, 2009 the State reported that it had made two deposits into La Nación S.A.'s account for sixty-three million, eight hundred and eleven thousand colones (CRC 63,811,000.00) and sixty-seven million, seven hundred and fifty thousand, three hundred and sixty colones (CRC 67,750,360.00), as "the principal owed for the annulment of the aforementioned judgment and [the] amount [arising from] costs and statutory and default interest". The State attached copies of the certificates of the deposits made on September 19 and December 10, 2008.

12. That the representatives pointed out that they had to file an action against the State in view of "the Ministry of Finance's refusal to comply with the judgment reimbursing the compensation award paid when required [...]. The Ministry alleged that such payment should be ordered by the Supreme Court of Justice *en banc*. The Supreme Court, for its part, failed to comply with the requirement and expressed its opinion that contentious-administrative proceedings should be carried out previously, refusing to comply with the Inter-American Court's Judgment pursuant to the Convention and the Headquarters Agreement. Finally, the State as defendant in the aforementioned proceedings has not been particularly cooperative either, since, in light of its undeniable international obligations in this regard, in compliance with the Judgment it should have appeared at least upon commencement of the proceedings rather than confining itself to refrain from raising challenges. Had the State acted properly, the contentious-administrative proceedings would very likely have ended by now and the Judgment would have been enforced in whole".

13. That the representatives added that the State "has failed to comply on its own with its duty to abide by a final international judgment almost five years old[, which] is even more inexplicable considering that section 27 of the Headquarters Agreement between [the State] and [the Court provides that] 'once the orders of the Court and its President have been notified to the appropriate administrative or judicial authorities of the Republic, they shall have the same binding force as the orders issued by Costa Rican courts'". The representatives stated that the action filed by La Nación S.A. against the State was encouraged by them "in an attempt to cure the State's contradictions and breaches of duties and to offer the State further opportunity to comply with international duties which it has failed to perform on its own". This made the State's breach of duties even worse, as "[the State] continues making excuses such as difficulties and defects in its domestic system for its delay in complying with a money judgment issued by a Costa Rican court along the same lines as [the Court's order of] July 2004".

14. That, with regard to the amounts deposited in late 2008 (*supra* Considering clause No. 11), the representatives stated that "they do not cover the interest accrued between the date of the Costa Rican court's judgment and the payment date", which must be paid not only pursuant to the Costa Rican contentious-administrative court's judgment, but also

pursuant to operative paragraph No. 9 of the Court's Judgment. Additionally, they stated that "the amounts deposited by the State are not enough to cover the costs incurred in claiming payment in the Costa Rican domestic courts", referring to the proceedings commenced in view of the State's failure to comply with its legal duty to pay on its own the amounts it was compelled to pay. The same domestic court order compelled the State to pay personal and court costs incurred in pursuing the domestic proceedings, which constitutes an "ancillary obligation inseparable from the Court's Judgment", as such costs had to be incurred as a result of the State's failure to comply with the Judgment. The Judgment remains "pending compliance" and the "State still owes eleven million, two hundred and sixty-eight thousand, nine hundred and forty-one colones with forty cents (CRC 11,268,941.40), as unpaid interest accrued during eighteen months, calculated at the basic interest rate of the Central Bank of Costa Rica, which is currently 12%. The State also owes fees in the amount of six million nine hundred thousand colones (CRC 6,900,000.00), for collecting in court the sums ordered in the Judgment". The representatives submitted a pleading on February 5, 2009, in which they claimed for the aforesaid amounts before the Contentious-Administrative Civil Fiscal Court.

15. That the Inter-American Commission "positively value[d] the payments made by Costa Rica to the La Nación newspaper". Notwithstanding the foregoing, the Commission considered it would be useful for the State "to make a statement on the representatives' allegations [...] of February 17, 2009 that the payments made fail to fully comply with their obligation", so that the Court may decide whether to consider such obligation fulfilled.

16. That at the private hearing for monitoring compliance the State pointed out that "indeed, a claim is still pending for some amounts owed as interest and costs" and that "a court decision is expected ordering payment of such amounts; the amounts [...] do not represent principal or the initial amounts, but constitute ancillary sums deriving from such original amounts". The representatives agreed on the fact that the amounts owed are the result of "engaging in a contentious-administrative proceeding to enforce the Judgment, as such judgment was not spontaneously complied with [...], which gave rise to additional procedural complications and caused further costs which could have been avoided if the Judgment had been complied with simultaneously. For its part, the Commission referred to its written observations on the above-mentioned differences.

17. That the Inter-American Court notices that in September and December 2008 the State deposited the amounts owed in connection with the principal amount owed as a result of the annulment of the aforementioned judgment and personal costs and current and default interest (*supra* Considering clause No. 11).

18. That the Court notices the difficulties and delays in complying with this reparation measure. The deadline for complying with this obligation expired six months after the Judgment was notified, on February 6, 2005, while the State made the aforesaid deposits in September and December 2008 (*supra* Considering clause No. 11), that is, more than three years and seven months, and three years and ten months, respectively, after the expiry of the term. Additionally, the Court also notices that the State failed to comply on its own with this reparation measure, so the representatives had to file an action with the domestic courts. Costa Rica has paid the amount due as principal in connection with the civil damages award; however, such civil proceeding gave rise to additional costs, expenses and interest, which had not been fully paid. The State pointed out that it is waiting for a domestic court decision ordering payment of such amounts. In view of the foregoing, the State in its next

report must refer to the observations of the representatives and the Commission (*supra* Considering clauses No. 14 and 15) and furnish current information on the compliance with this item.

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19. That with regard to the obligation to adjust its domestic legal system within a reasonable term to conform to the provisions of Article 8(2)(h) of the American Convention in relation to Article 2 thereof (*operative paragraph No. 5 of the Judgment*), the State informed that on April 28, 2006, the Legislative Assembly enacted Law No. 8503, called "Law Extending Criminal Review Proceedings" (hereinafter, also "Criminal Review Proceedings Law"), published on June 6, 2006 in the official gazette La Gaceta No. 108. The State attached a copy of such publication and, additionally, pointed out that:

(i) pursuant to the Judgment issued by the Inter-American Court, "both the Third Division of the Supreme Court of Justice and the Criminal Cassation Court adjusted their case law [...] with administrative and legal interpretation action, even before amending the Code of Criminal Procedure through the Criminal Review Proceedings Law". Among other "immediate measures", the rules governing admissibility of evidence were made more flexible and expanded, and factual evidence was admitted in criminal review proceedings;

(ii) by enacting the Criminal Review Proceedings Law, "Costa Rica complied with the Inter-American Court's order in its judgment of July 2, 2004," since the law: "(a) Relaxes the formalities of the motion for review; both in terms of admissibility requirements and other formalities typical of review proceedings; (b) expressly provides for the possibility for alleging a violation of due process or of the right to defense, so full provision is made for the possibility of reviewing any kind of defects or violations to the rights of convicts; (c) provides an opportunity to receive factual evidence through the review proceedings, provided one of the causes for a review proceeding is present, including the rising of new facts or new evidence; (d) offers an opportunity to produce evidence that was not admitted at trial, because it was arbitrarily dismissed or rejected; even the Court or Division may *ex officio* order that evidence be produced when it deems it necessary, appropriate or instrumental to settle the case; (e) extensively provides for the analysis to be carried out on review, allowing the moving party to rely on the sound or video recording of the trial as grounds for its motion for review; (f) reduces the formalities of the review procedure; and (g) provides an opportunity to file a motion for appeal when the motion for review has been rejected based on the admissibility criteria in force before the law was enacted";

(iii) as to the requirement that the review relief be accessible and simple, pursuant to section 447 of the Criminal Review Proceedings law the Court may reject a motion for review if it considers that the order being challenged may not be reviewed pursuant to review proceedings, that the motion for review has been filed after the term to do so or that the moving party has no right to move for review. In the event the motion is admissible, it shall proceed, and the Court shall issue a decision on the merits, even when it considers that there are defects in the way the motion has been

framed. The Criminal Review Proceedings law, together with section 15 of the Code of Criminal Procedure, also amended by the aforementioned law, which provides for the possibility of curing formal defects, "significantly reduces the formalities involved in criminal review proceedings, so that a court hearing an appeal on the grounds of error must consider the motion, even if there are defects in the way the motion has been framed. Only where the defects are such that the Court cannot satisfy the motion, the moving party is given an opportunity to correct such defects at a hearing. Thus, even in such a case a court may not declare a motion for review inadmissible without giving the moving party an opportunity to cure any defects";

(iv) as regards the requirement that the review proceedings allow for comprehensive review of the judgment, international law rules provide that "the right to review clearly does not necessarily mean that [...] there must be a right to appeal in the narrow sense". Any conviction requires two operations: Firstly, the 'proven fact' must be determined (finding of facts); secondly —after the facts have been established— the facts must fit one or more legal rules (finding of law). Both operations can be strictly controlled through a motion for review of a criminal judgment pursuant to an error, the former by examining the causes of the facts and the latter by examining how the law was applied to the facts in the criminal judgment. The motion for review of a criminal judgment on the grounds of error "provides a measure of control over the factual findings by the higher court [...]. The Costa Rican review system can normally provide ordinary and effective recourse that is accessible and comprehensive so as to allow a higher court to carry out a comprehensive examination of all the issues of fact and of law disputed and analyzed by a trial court, which does ensure a comprehensive examination of the challenged decision through which the higher court may reconsider a court decision that runs counter to the law". The American Convention does not guarantee "the right to two successive trials by two different courts so that the second trial preempts the first one, but rather is intended to guarantee control or review of the conviction entered in the single-instance trial, so as to prevent an error from causing harm to the accused". The Convention is complied with by establishing a remedy against an allegedly erroneous conviction, regardless of its name (i.e., appeal or review) provided that such remedy makes it possible to determine: (a) whether the procedural rules set out for the benefit of the accused have been observed in determining the facts that the lower court deemed to be proven in its judgment, and (b) the law applied to the proven fact. A "repetition or extension of the trial to a second instance would not satisfy [the international obligation]; at any rate would unnecessarily protract the process, and would aggravate the accused's situation by putting him twice in jeopardy, which can bring about a vicious circle, because if the repetition (i.e., the second instance) results in a new conviction, the process —following this rationale— would need to be repeated and then trial would have to be carried out once again (i.e., a third instance) so as to comply with the instruments in question";

(v) the Law Extending Criminal Review Proceedings incorporated subsection (j) into section 369 of the Code of Criminal Procedure, which established a defect in the judgment justifying review by a higher court "*where the judgment has not been issued pursuant to a due process or with an opportunity for defense*". The introduction of this provision "ratifies the wide variety of grounds for granting a motion for review of a criminal judgment in Costa Rica, including any violation of the

right of due process or the right to defense, thus allowing for a comprehensive review of the judgment";

(vi) the Law Extending Criminal Review introduced section 449 bis into the Code of Criminal Procedure. Contrary to the classical views of cassation, "review of criminal judgments [in Costa Rica] allows supervision of the facts and evidence". Particularly "in the case of requests for review based on a lack of justification and violation of the rules of sound judgment, the goal is to challenge the proven facts and argue aspects of the evidence received. Those actions allow for a wide variety of options for requesting review, which becomes evident upon the incorporation of section 499 bis to the Code of Criminal Procedure". Additionally, the Law Extending Criminal Review provides that "the higher court may even rely on audio and visual recordings in reviewing the challenged decision". Furthermore, as regards the possibility that the Higher Court receives new evidence or evidence rejected at trial, the newly incorporated section 449 bis of the Code of Criminal Procedure allows for evidence to be submitted. The State further pointed out that "[i]n addition to the general opportunity afforded the accused to offer evidence supporting his case, the accused may also offer such evidence if it is essential to the request for review, provided such evidence has been previously rejected; which, although expressly provided only with respect to the Attorney General, the complainant and the civil plaintiff, it must be interpreted so that the accused may do it too";

(vii) additionally, pursuant to the terms of the Law Extending Criminal Review, a persons who was convicted prior to the effective date of such law may challenge the conviction on the grounds of violation to the right of due process or the right to defense by filing a motion for review on the grounds of error, which covers a wide range of situations. A person who "has been convicted prior to the effective date of the Law Extending Criminal Review may file a motion for review to argue the issues of fact and of law which could not be argued upon review because of the rules governing the admissibility of the motion for review"; and

(viii) the statistical data submitted by the State with regard to the review proceedings show "substantially low inadmissibility rates, [...] which reflects the broader criteria currently adopted and the total abandonment of the excessive attachment to formality which the Costa Rican courts themselves have set out to abolish". Additionally, the effectiveness of the supervision by criminal review courts "is reflected in the high rate of court orders granting" motions for review.

20. The State concluded that "in Costa Rica the motion for criminal review has departed from what this method for challenging decisions has been in Europe and Latin-America" and that the reform has resulted in "a complete reduction in formalities, which guarantees the right to simple recourse to carry out a comprehensive review of the judgment convicting a defendant". The Costa Rican review proceedings "have ceased to be strictly a review proceeding to acquire a number of features of appellate proceedings".

21. That the representatives "celebrate[d] the State's efforts to comply with this part of the Court's Decision by enacting the aforementioned legislation. A legislative reform process entails the complications inherent in a debate in a democratic society, so it is always comforting to know that such a process is entertained pursuant to the judgment of an

international human rights court such as the Inter-American Court". Additionally, among other considerations, the representatives pointed out that:

(i) "the new criminal review law keeps the same instances which were disapproved by the Court in its Judgment, that is, first instance and review by a higher court. However, the second instance is intended to be less formal and restricted than the typical review proceedings, which distinguished them from an appeal to a higher court pursuant to Article 8(2)(h) of the Convention". Thus, the Law Extending Review Proceedings "relaxes the requirements for admission of a motion for review; vests the Review Court with powers to carry out a more comprehensive review of a lower court's decision; provides an opportunity, albeit limited, to offer and receive evidence upon review; and increases the number of members of the Criminal Review Court. Additionally, temporary provision I provides an opportunity for the review of previous cases in which a motion for review by a higher court on grounds of error has been rejected on the basis of the former legislation repealed by the statutory reform in question. Doubtless, these are positive aspects aimed at curing the insufficiency of the motion for review to satisfy the requirements of Article 8(2)(h) of the Convention";

(ii) however, "it cannot be overlooked that the reform represents a sort of compromise between the system criticized in the Court's Judgment (i.e., one instance with review proceedings limited to classical review proceedings) and the clearer system consisting of two-instance proceedings for the full examination of the case plus one review instance. Such compromise [...] does not seem to make up for the inobservance of the Costa Rican criminal procedure system of the Convention [...]. Indeed, the aforementioned enactment does not suffice to comply with the Court's Judgment [...]. Not only does the newly enacted legislation maintain the same review structure, but also, owing to the very nature of the motion for review on the grounds of error, the system remains unchanged inasmuch as it provides for a review of the judgment rather than a full review of the case actually allowing for an assessment of all the aspects involved in a conviction, including issues of fact as well as issues of law. The defects in the Costa Rican review system pointed out by the Court [are] not cured simply by admitting all motions for review, but by providing for legal and procedural mechanisms allowing for a full review of the judgment being challenged";

(iii) the "new law has not modified section 443 of the Code of Criminal Procedure, which sets out the grounds upon which a motion for review may be granted". Such provision should have been modified "to provide for wider possibilities of obtaining review from a cassation court, or its content [should have been] modified so that it ceases to entertain a formalistic interpretation of the motion for review". The same might be predicated of section 449 bis of the Law Extending Criminal Review; even though it true that such provision provides greater possibilities for offering evidence, "it provides that the Cassation Court must evaluate the manner in which the trial court judges assessed the evidence and justified their decision, which confirms the supervisory role of the higher court rather than vesting it with the power to carry out 'a full and comprehensive review of all the issues presented to the lower court' pursuant to the Judgment";

(iv) given that such "limitations, paired with the circumstance that the legislative reform does not touch on the structure of criminal procedure, which continues to be confined to a first instance plus review by a higher court, [the representatives] conclude that hardly will the Law Extending Criminal Review make Costa Rican criminal procedure comply with the requirements set out in Article 8(2)(h) of the Convention pursuant to the terms of the Judgment". This abstract consideration, however, "could be corrected in practice if the newly enacted rules were applied broadly to satisfy the requirements of the international law on human rights. Otherwise, if a restrictive stance is adopted—as did happen in the past—the goal of adjusting procedural roles to the Convention would be thwarted. In such a case, the Convention would be violated again in future cases submitted to this Court". Therefore, "the determination [whether the State has complied with its obligation to adjust its domestic legal system to Article 8(2)(h) of the Convention] will be made by the domestic courts, interpreting the law in accordance with its purpose and intent and pursuant to the State's international obligations";

(v) with regard to temporary section II of the Law Extending Review Proceedings providing that the newly enacted law will become effective as soon as sufficient economic resources are secured to meet the new task imposed upon the Cassation Court, it is "inadmissible [...] to make the effective protection of an individual right (i.e., the right to due process under Article 8 of the Convention) conditional upon the existence or availability of material resources", inasmuch as "the protection of the rights enshrined in the Convention may not be subordinated to the availability of economic resources". As long as such protection continues to be conditioned upon material resources, "the State [shall] not have fully satisfied this item of the Judgment", and

(vi) the statistical data provided by the State to show the behavior of the courts after the Law Extending Review Proceedings is "partial and limited" and provides no grounds to conclude that the Judgment is being complied with. Pursuant to the analysis of the annual reports of the Planning and Statistics Department of the Judiciary, changes have not been substantial in practice. Court statistics clearly point at confirming the perception that "not only legislative reform is insufficient, but also there have been no major changes in practice". The representatives further stated that the statistical analyses "must be supplemented with qualitative analysis, scrutinizing past judgments to check whether there was a effectively [...] a full and comprehensive review of the court rulings and whether the moving parties were allowed to submit new evidence".

22. That, based on the foregoing, the representatives concluded that the Law Extending Review Proceedings "constitutes a measure intended to comply with the Judgment [...] but contains formal limitations that do not assure that the higher court [will] carry out a full or comprehensive analysis of all the issues presented to the lower court, so its effectiveness will depend on its future application; therefore, the law must still be supervised by the Court". Furthermore, the condition contained in temporary section II of the above-mentioned law is incompatible with the duties imposed by Articles 1(1) and 8(2)(h) of the Convention; therefore, "such Law does not constitute *per se* compliance with the Judgment [...] and fails to comply operative paragraph No. 5 [thereof]".

23. That the Inter-American Commission analyzed the Law Extending Review Proceedings and found that "it extends to a certain degree criminal review proceedings in order to adjust review proceedings to Article 8(2)(h) of the Convention by introducing three fundamental changes: (i) the relaxation of formal requirements for granting a motion for review on the grounds of error; (ii) the granting of additional powers to the authorities who must rule upon the motion to review in whole the lower court's judgment; and (iii) the relaxation of formalities as to the admission of evidence. The Commission took notice of "these significant reforms propounded by the State [...]; at the same time, it f[ound] that their effectiveness and the corresponding compliance with the Court's order in its judgment of July 2, 2004 must be assessed based on the application of the new system to specific cases".

24. That, with regard to the statistical data furnished by the State, the Inter-American Commission found that it has not been proved that the State's rules of procedure have been redesigned to provide citizens with further judicial safeguards. Finally, the Commission asked the Court to "declare that the State enacted legislation aimed at adjusting the Costa Rican legal system to the terms of Article "8(2)(h) of the Inter-American Convention in relation to Article 2 thereof, which still must be analyzed for effective application and compliance, so the monitoring proceedings must be kept open with regard to this item".

25. That, in the private hearing for monitoring compliance, the State provided explanations and clarifications regarding the representatives' and the Inter-American Commission's observations regarding the changes introduced to review proceedings under the Law Extending Review Proceedings. Furthermore, it made reference to the "[B]ill to *establish the motion for appeal, introduce other amendments to appellate proceedings and adopt new trial rules (Legislative File No.) 17.143*". The State informed that "this proposed legislative reform propounded by the Third Division of the Supreme Court of Justice and approved in a preliminary report by the [Supreme] Court *en banc*, raises the need to conclude a lengthy process of partial reforms dating back to the 1980s and intended to bring Costa Rica's domestic legal system into compliance with the obligations imposed by the American Convention, particularly Article 8(2)(h) in relation with Article 2 thereof". The Commission pointed out that "the propounders of this proposal [are] convinced that it will settle a long-lasting controversy" and added that the reform is aimed at: (i) designing "a single uniform appellate system in criminal courts"; (ii) "[c]reating a motion for appeal to the existing cassation courts against criminal judgments"; (iii) creating a motion "to be filed before a judgment becomes final", which would be given "the largest possible broadness, accessibility and flexibility, so as to settle any doubts and objections presented so far in the face of a motion for review which, even though it has evolved substantially, remains the subject of much controversy by foreign commentators"; (iv) ruling out asymmetries and self-defeating outcomes emerging from this long process of reform, which has included temporary fixes resulting from the evolution and the efforts to adjust the domestic criminal legal system to the terms of the American Convention"; and (v) "[e]stablishing a [m]otion for [r]eview designed in a more classical fashion, and providing guidance in conflicting issues".

26. That in the hearing for monitoring compliance the representatives summarized their observations submitted in their briefs and pointed out that the Law Extending Review Proceedings represented an effort by the State "to comply in good faith with the Judgment, but [...] such effort has proven to be insufficient in practice, and to that end a bill has been introduced which is now under consideration by the Legislative Assembly, which, in the view

of that legislative body, satisfies the requirements set out in the Judgment for review by a higher court pursuant to the Convention". Even though the representatives once again acknowledged the efforts, they requested the Court to declare that the State has failed to comply with this reparation measure pursuant to the Judgment.

27. That in the hearing for monitoring compliance the Inter-American Commission celebrated and acknowledged the State's efforts, recalled the observations set out in its various briefs and pointed out that "[the] reforms should be reflected in a more effective procedure" and that it expects a qualitative change. It stated that, before deeming this item in the Judgment complied with, "in view of the fact that a new bill has been introduced in the Legislative Assembly [...], it is necessary to [wait] for the outcome of that new process of reform first and then for more appropriate information on the effectiveness of the procedural law reform, not in numerical terms but in real terms".

28. That the Inter-American Court positively values the passage of Law No. 8503 called the "Law Extending Criminal Review Proceedings" and the fact that such law was enacted one year and seven months after the Judgment was notified. Furthermore, the Court also values the fact that the Costa Rican Judiciary adopted "immediate measures", even before enacting the Law Extending Criminal Review Proceedings in order to bring judicial practice into conformity with the terms of the Judgment (*supra* Considering clause No. 19.i).

29. That the Court observes that the representatives and the Inter-American Commission have positively valued the State's efforts associated with the reform introduced through the Law Extending Criminal Review Proceedings, even though they find such modifications inadequate in terms of deeming this reparation measure complied with. For its part, the Court appreciates the information furnished by the State that a legislative process is currently underway in connection with compliance with the Judgment, among other aspects. In view of the information provided by the parties, the Inter-American Court takes notice of the evolution of the compliance process and deems it convenient to defer its evaluation until the State furnishes current information on the progress and outcome thereof.

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30. That, with regard to the obligation to pay default interest incurred by virtue of paying Mr. Mauricio Herrera-Ulloa compensation for non-pecuniary damage and the reimbursing him for expenses after the expiration of the term set forth in the Judgment (*operative paragraphs No. 6, 7 and 9*), the State informed that, through tender No. 06T20 of May 24, 2006, it deposited one hundred and fifty-five, seven hundred and ninety-nine colones (CRC 155,799.00) for Mr. Herrera-Ulloa as default interest. The State attached the documents evidencing the deposit.

31. That the representatives ratified that the above-mentioned amount was indeed deposited in favor of the victim. However, they reported that Mr. Herrera-Ulloa stated that such amount failed to cover the entire default interest owed, surely owing to a time lapse between the time the payment order was issued and the time the funds were made available. In spite of this, Mr. Herrera-Ulloa considered that, even though there is a small

balance of outstanding default interest and in spite of the delays, the State has evidenced a will to compensate him and has covered almost the entirety of the amounts owed on these grounds, so he is "willing to consider the Judgment to be complied with as to this aspect". Therefore, they requested the Court to "declare that the State has complied with [this] obligation".

32. That the Inter-American Commission took notice of the briefs of the State.

33. That, in accordance with the parties' briefs and the victim's intention, the Court deems it appropriate to consider the State to have complied with the obligation to pay default interest owed to Mr. Herrera-Ulloa pursuant to operative paragraphs No. 6, 7 and 9 of the Judgment.

Therefore:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In exercise of its powers to supervise compliance with its decisions under 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 30 and 63 of its Rules of Procedure,⁷

DECLARES,

1. That, pursuant to Considering clause No. 33 hereof, the State has implemented the following reparation measure:

(a) Payment of interest incurred as a result of having paid Mr. Mauricio Herrera-Ulloa compensation for non-pecuniary damage and reimbursed him for expenses incurred after expiry of the term set out in the Judgment (*operative paragraphs No. 6, 7 and 9 of the Judgment*).

2. That, pursuant to Considering clauses No. 17, 18, 28 and 29 hereof, the Court shall keep open the compliance with judgment proceedings for the following items:

⁷ Rules adopted by the Court in its XLIX Ordinary Session held from November 16 to 25, 2000, as partially amended during the LXXXII Ordinary Session, held from January 19 to 31, 2009, pursuant to Articles 71 and 72 thereof.

(a) repealing the judgment issued on November 12, 1999 by the Criminal Court for the First Judicial Circuit of San José (*operative paragraph No. 4 of the Judgment*). The State has paid the principal associated with the damages award, though there is an outstanding balance of interest and costs as explained in Considering clause No. 18 hereof.

(b) adjusting its domestic legal system to the terms of Article 8(2)(h) of the American Convention on Human Rights, in relation to Article 2 thereof (*operative paragraph No. 5 of the Judgment*).

3. That it will continue to monitor compliance with the following items pending compliance in this case, to wit:

(a) repealing in full the judgment issued on November 12, 1999 by the Criminal Court for the First Judicial Circuit of San José (*operative paragraph No. 4 of the Judgment*), with regard to the balance of interest and costs pursuant to Considering clause No. 18 hereof, and

(b) adjusting its domestic legal system to the terms of Article 8(2)(h) of the American Convention on Human Rights, in relation to Article 2 thereof (*operative paragraph No. 5 of the Judgment*).

And Decides:

1. To require the State to adopt all such measures as are necessary to effectively and promptly comply with the pending operative paragraphs in the Judgment on the Merits, Reparations and Costs of July 2, 2004, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To require the State to submit to the Inter-American Court of Human Rights, no later than October 15, 2009, a report stating the measures adopted to comply with the reparation measures ordered by this Court which are pending compliance, pursuant to Considering clauses No. 18 and 29 and in declaratory paragraph No. 2 hereof.

3. To require the Inter-American Court of Human Rights and the victim's representatives to submit such comments to the State's report mentioned in the above operative paragraph as they deem appropriate, within two and four weeks, respectively, from receipt of the State's report.

4. To continue monitoring compliance with the operative paragraphs of the Judgment on the merits, reparations and costs of July 2, 2004, pending compliance.

5. To request the Court's Secretariat to notify this Order to Costa Rica, the Inter-American Commission on Human Rights and the victims' representatives.

Cecilia Medina-Quiroga
President

Diego García-Sayán

Sergio García-Ramírez

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary