Order of the
Inter-American Court of Human Rights*
of September 21, 2009
Case of Palamara Iribarne *v.* Chile
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on merits, reparations, and costs (hereinafter, "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal") on November 22, 2005.

2. The Order on monitoring compliance with Judgment issued by the Inter-American Court on November 30, 2007 (hereinafter, "the Order"), whereby the Court decided to keep open the proceedings regarding the items pending compliance in the instant case, to wit:

> a) Take all necessary measures to annul and amend, within a reasonable period of time, any domestic provisions which are incompatible with the international standards regarding freedom of thought and expression, in the terms of paragraphs 254 and 255 of the […] Judgment *(operative paragraph thirteen of the Judgment […]);*
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> b) Align the domestic legal system to the international standards regarding criminal military jurisdiction within a reasonable period of time, so that in case it considers the existence of a military criminal jurisdiction to be necessary, this must be restricted only to crimes committed by military personnel in active service. Therefore, the State shall set limits to the material and personal jurisdiction of the military courts through its legislation, so that under no circumstances may a civilian be subjected to the jurisdiction of military criminal courts *(operative paragraph fourteen of the Judgment […]), and*
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> c) Guarantee due process in the military criminal jurisdiction, and judicial protection regarding the actions of military authorities *(operative paragraph fifteen of the Judgment […]*).

3. The briefs of May 30, August 12 and September 9, 2008, and of June 11, 2009 and their respective annexes, among other submitted briefs, whereby the Republic of Chile (hereinafter, "the State" or "Chile") reported on the items of the Judgment pending compliance.

4. The briefs of June 23 and October 21, 2008 and of July 16, 2009, whereby the victim's representatives (hereinafter, "the representatives") submitted their comments to the reports of the State on the items of the Judgment which are pending compliance.

5. The briefs of November 24, 2008 and July 31, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the

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* Judge Cecilia Medina-Quiroga, of Chilean nationality, excused herself from hearing the instant case pursuant to Articles 19(2) of the Statute and 19 (currently, 20) of the Rules of Procedure of the Court. Accordingly, said Judge did not take part in the deliberation and signing neither of the Judgment nor of the instant Order.

Commission") submitted its comments on the reports of the State and on the comments submitted by the representatives.

6. The Order regarding the instant case issued by the President in exercise of the Inter-American Court on December 15, 2008, whereby, in consultation with the other judges of the Tribunal, he convened the parties to a private hearing on monitoring compliance.

7. The statements and the information furnished by the parties at the private hearing on monitoring compliance with the Judgment held on January 20, 2009, during the LXXXII Ordinary Period of Sessions of the Court, at the city of San José, Costa Rica.[1]

8. The communications of July 25 and August 14, 2008; January 21, May 22 and June 18, 2009, of the Secretariat of the Inter-American Court (hereinafter, "the Secretariat"), whereby it: a) called upon the State, in light of the fact that it had failed to submit the report on compliance within the extension granted to it, to submit said report forthwith; b) urged the State to furnish additional information on any progress made regarding the items of the Judgment which are pending compliance, and c) informed the parties that, because the State had failed to report on the progress made regarding the amendment of domestic law to conform to international freedom of expression standards, Chile had been granted an additional period of time to submit the relevant information.

9. The communications of June 2, July 10 and 11, and September 17, 2008, whereby Mrs. Anne Ellen Stewart-Orlandini referred to the lack of payment by Mr. Palamara-Iribarne of the amounts payable to her pursuant to the Judgment.

CONSIDERING:

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

2. That Chile has been a State Party to the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention") since August 21, 1990, and accepted the compulsory jurisdiction of the Court that same day.

3. That Article 68(1) of the American Convention establishes that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." To such end, States are required to guarantee implementation of the

[1] Pursuant to Article 6(2) of the Rules of Procedure, the Court held a hearing with a commission of Judges made up by: Judge Diego García-Sayán, incumbent President for the instant case; Judge Leonardo A. Franco and Judge Rhadys Abreu-Blondet. At said hearing, there appeared: a) for the Inter-American Commission on Human Rights: Lilly Ching, Advisor; b) for the State of Chile: Gonzalo García, *Subsecretario de Guerra* [Under-Secretary of War]; Juan Aníbal Barría, *Director de Derechos Humanos del Ministerio de Relaciones Exteriores* [Human Rights Director of the Ministry of Foreign Affairs]; Marcos Opazo, *Asesor del Ministerio Secretario General de la Presidencia* [Advisor at the Ministry General Secretariat of the Presidency], and Pablo Contreras, *Asesor de la Subsecretaría de Guerra* [Advisor at the Under-Secretariat of War], and c) for the victim: Alejandra Arancedo and Francisco Quintana, Representatives.

Court's rulings at the domestic level.[2]

4. That, given the final and unappealable nature of the judgments delivered by the Court, and pursuant to Article 67 of the American Convention, the Court's Judgments must be fully complied with as soon as possible.

5. That the obligation to comply with the Court's judgments 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 noted by the Court and provided for in Article 27 of the 1969 Vienna Convention on the Law of Treaties, States cannot invoke their internal laws as a justification for failing to honor their pre-established international responsibility.[3] States Parties' obligations under the Convention bind all branches and organs of State.[4]

6. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and secure 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 protected rights), but also in connection with procedural rules, such as those concerning compliance with the decisions of the Court. Such obligations must be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.[5]

7. That the States Parties to the Convention which have accepted the compulsory jurisdiction of the Court are bound to observe the obligations set forth by the Tribunal. Such obligation includes the duty of the State to inform the Court about the steps taken to comply with the judgments delivered by the Court. Timely compliance with the State's duty to report to the Court on how said State is complying with each of the items ordered by the Court is fundamental for assessing the degree of compliance with the judgment as a whole.[6]

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[2] *Cf. Case of Baena-Ricardo et al. v. Panama*. *Competence.* Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Herrera-Ulloa v. Costa Rica.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering clause three, and *Case of the Pueblo Bello Massacre v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering clause three.

[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 Herrera-Ulloa, supra* note 2, Considering clause five, and *Case of Pueblo Bello Massacre, supra* note 2, Considering clause five.

[4] *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, Considering clause three; *Case of Herrera-Ulloa, supra* note 2, Considering clause five, and *Case of the Pueblo Bello Massacre, supra* note 2, Considering clause five.

[5] *Cf. Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37*; Case of Herrera-Ulloa, supra* note 2, Considering clause six, and *Case of the Pueblo Bello Massacre, supra* note 2, Considering clause six.

[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 seven; *Case of Herrera-Ulloa, supra* note 2, Considering clause seven, and *Case of the Ituango Massacres v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 7, 2009, Considering clause seven.

8. That the Court appreciates the usefulness of the hearing that was held in order to monitor the operative paragraphs pending compliance in the instant case. Likewise, the Tribunal makes a positive assessment of the fact that it was the State that asked for said hearing to be held so that it could report on its progress regarding the international obligations involved in the instant case.

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9. That, in relation to the duty to take all the necessary measures to annul and amend, within a reasonable period of time, any domestic provisions which are incompatible with the international standards regarding freedom of thought and expression, (*operative paragraph thirteen of the Judgment*), the State informed that "[r]egarding Chile's obligation to abrogate or amend the crime of contempt which is currently in force under the [Code of Military Justice], in order to bring domestic standards regarding freedom of expression in line with those established [in the American Convention], full consensus has been reached on the abrogation of the existing crime", since it indeed restricts public speaking and the role of public opinion in a democratic society. It added that the manner in which the crime is to be abrogated has not been decided yet and that different options are being studied, although "the substantive agreement is to eliminate said domestic law provision, thus causing legislation to conform to the decision of [the Court]."

10. That the representatives noted that the State "omit[ted] the information on the measures adopted to annul and amend the domestic provisions referring to the criminal definition of 'threats' that are incompatible with international freedom of expression standards." Likewise, they highlighted the fact that the manner in which the crime of contempt will be abrogated has not been decided yet. The asked the Court to: i) reiterate the request made to the State "to furnish information on the measures adopted to annul or amend the domestic provisions referring to the criminal definition of 'threat'", and ii) call upon the State to "furnish updated information on the measures adopted to annul or amend the definition of the crime of contempt as established in the Code of Military Justice."

11. That the Commission reiterated its concern over the State's failure to furnish specific, adequate and detailed information on the measures adopted in order to comply with the obligation to bring domestic provisions on freedom of thought and expression in line with international standards. It added that, in its last report, the State "did not include any information on the progress made regarding the amendment of section 284 of the Code of Military Justice, which applies the definition of 'threats to the Armed Forces' to punish the crime of 'contempt.'" Therefore, no information is available regarding compliance with this obligation, which, as the State has confirmed, is pending compliance.

12. That the Court observes that although the reports of the State refer to the criminal definition of contempt provided for in section 284 of the Code of Military Justice, they do not refer to the criminal definition of threats provided for in section 264 of the Criminal Code. Information was not made available even after the State was specifically and repeatedly called upon to report on said crime. In this regard, it is worth recalling that, in the Judgment of the instant case, the Court held that "[section 264 of] the Criminal Code includes an ambiguous description and does not clearly specify the scope of the criminal conduct, thus leaving room for broad interpretation and, as a result, the conduct previously regarded as

contempt may be unduly punished through the use of the criminal offense of threats."[7] Therefore, in said Judgment, the Court held that if Chile decided to maintain said provision it had to "specify the kind of threats concerned in order to prevent suppression of freedom of thought and expression of valid and legitimate opinions or whatever disagreement and protests against government bodies and their members."[8]

13. That the Court also wishes to recall that in its Order of November 30, 2007 it called upon the State to report on the stages, deadlines and content of the reform bills introduced to comply with this operative paragraph of the Judgment, in relation to both the crime of threats set forth in section 264 of the Criminal Code and the crime of contempt set forth in section 284 of the Code of Military Justice.[9] While the Court appreciates the fact that the State is currently assessing different alternatives to repeal section 284 of the Code of Military Justice, it must be highlighted that it has been almost four years since the Judgment was handed down without the State having informed any substantial progress regarding compliance with this reparation. Hence, in its next report Chile must include detailed and updated information on the amendment of domestic law so as to bring provisions on the aforementioned crimes of threats and contempt in line with international standards regarding freedom of expression.

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14. That, as regards the duty to: i) bring the domestic legal system in line with international standards regarding criminal military justice and to set limits to the subject-matter and personal jurisdiction of military courts through its legislation *(operative paragraph fourteen of the Judgment)* and ii) to guarantee due process in military criminal courts, and judicial protection regarding the actions of military authorities *(operative paragraph fifteen of the Judgment)*, the State informed, *inter alia*, that:

> i) the bill that "modifies the jurisdiction of military courts and abolishes capital punishment" sent by the Executive Power to the National Congress in 2007 is being processed in the Senate. This bill is "the first step in the process of partial reform of military criminal justice", and, although "it does not solve all the problems arising from an all-encompassing reform [of said military criminal justice,] it does limit jurisdiction in a qualitative manner and it does abolish capital punishment."
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> ii) on the other hand, as regards the progress made regarding the all-encompassing reform of military criminal justice, the decree that created the *Comisión de Estudios para la Reforma de la Justicia Militar* (CERJM) [Commission for the Study of the Reform to Military Justice] (hereinafter, the "CERJM") established that the deadline to complete its activities was December 2008, and that, by said date, it had to submit a legal reform proposal including the modification of military criminal proceedings and military criminal definitions;

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7 *Case of Palamara-Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135, para. 92.

8 *Case of Palamara-Iribarne, supra* note 7, para. 92.

9 *Cf. Case of Palamara-Iribarne v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 30, 2007, Considering clause twenty-six.

iii) the first stage of said process, that included the establishment of twenty-seven principles setting forth the action framework that all modifications to military criminal justice – introduced pursuant to international standards- had to respect, has already been completed. The first six principles incorporate International Humanitarian Law rules and the following five principles establish the organic structure of the military criminal jurisdiction system, incorporating military courts into the Judicial Power of the State. The CERJM agreed to apply rules of regular criminal proceedings to military criminal courts, taking into account the particular and specific nature of the military. Principles twelve to twenty refer to different guarantees of due process: public, oral and previous proceedings, in which documents or background information which, due to their seriousness, may affect the defense of national security, are kept secret and confidential; prohibition against multiple criminal prosecution; presumption of innocence; prohibition against compelling a person to be a witness against himself/herself and right to remain silent; legality of measures depriving a person of or limiting his/her freedom; the in *dubio pro reo* principle; the *habeas corpus* guarantee, and the independence of military courts. Principles twenty-one to twenty-six establish the formal and material safeguards to be taken into account in the definition and application of conduct considered criminal by the military, such as the *nullum crimen nulla poena sine lege praevia* principle, the freedom from ex post facto military criminal laws principle, the injuriousness principle, the principle of proportionality between sentence and guilt, and the prohibition against analogy. It pointed out that the CERJM has established that 'military courts, in light of their special jurisdiction, have authority to hear cases involving military crimes committed by military personnel', and that 'only under certain circumstances that are extremely grave and particularly sensitive in relation to the maintenance of order, hierarchy and discipline, will these courts have jurisdiction to hear cases concerning certain ordinary crimes […] in times of war or crisis";

iv) likewise, work has been done to prepare a draft reform bill intended to amend applicable military law, readapting criminal and criminal procedural rules and the organic institutional design, as well as that of the operators of the system. Among other changes, the bill includes a list of definitions that modify concepts like 'times of war', excluding the notion of 'domestic security" from its meaning and it eliminates expressions such as 'state of siege', which made it possible to classify situations of domestic commotion as war. Likewise, it includes more accurate definitions of concepts like 'order', thus clarifying a fundamental notion for Military Criminal Law and prohibiting compliance with any command that outrages personal dignity or whose compliance may entail committing a crime. The bill also puts forward the abolition of capital punishment and the establishment of aggravated life imprisonment in a military prison as the maximum applicable sentence for committing a military crime. The proposed classification of military crimes involves four categories: insubordination crimes, including rioting, disobedience or insulting seniors; war duty crimes, which presuppose the occurrence of the conduct in times of war; crimes concerning senior officers' duties, including usurpation or dishonoring juniors; and crimes related to the duty to provide military service. Regarding the crimes, it added that "[a]ll definitions identify a specific perpetrator –the military person-, so that there exists no ambiguity as to [who] must comply with these criminally protected duties;"

v) as regards the procedural aspects of the reform, full consensus has been reached on the application of the system of the 2000 Criminal Procedural Code to military criminal courts. However, "some modifications have been introduced with regard to ordinary criminal proceedings" which are "aimed at ensuring the confidentiality or secrecy of certain background information and documents that, if disclosed, communicated or made known, could affect the security of the Nation," pursuant to the international standards established by the Court for Chile in the Case of Claude Reyes. The possibility of jurisdictional control is nevertheless admitted, in order to protect the right to legal defense and not to undermine the condition of the accused in the criminal proceedings, in such a manner that "the prosecuting body will have controlled access to said information, enabling the courts to have the final say as to whether said incriminating elements may be made available during the criminal investigation." Regarding the creation of a military criminal system of an adversarial nature, "it involves not only replacing the procedure inherent in the inquisitorial system that is currently in force in the military justice, but also modifying the very manner in which the State administers justice in military courts." Likewise, work has been done on sections that depend on and supplement the Criminal Procedural Code "that is in force for all other Chilean citizens", but that restrict the application of certain rules of the Criminal Procedural Code, establish the rules that can be applied under certain conditions or with certain amendments and include several rules which are applicable in times of war, and

vi) a work schedule was prepared with a view to complying with the international obligations that are pending compliance and that "[o]nce all stages are completed […], the Executive Power will introduce the bill/s dealing with the reform of military criminal justice […]. Once introduced, the debate and legislative processing stage will take place, during which the National will have to decide on the final content of the law. Introduction of the bill is expected to occur in the second half [of 2009]." Nonetheless, passing the bill depends on a stage of publication and discussion with the civil society and on a technical and financial feasibility study.

15. That in relation to what the State informed regarding said operative paragraphs, the representatives observed that:

i) "the deadline for completing the work of the CERJM expired in December 2008, without the State having submitted, to date, any bill to bring its domestic legal system in line with the provisions of the Judgment. Although it pledged to finish preparing the bill, in its latest submissions Chile "reports, again, on the work done by the CERJM and refers to a new work schedule, according to which the State apparently pledges to comply with the orders of the [...] Court." Hence, they lamented the fact that the State does not have a bill yet, despite the different deadlines it has fixed and failed to observe during the instant proceedings of compliance with the Judgment. They noted that the political context of presidential elections should not be invoked as yet another justification to delay compliance with the orders of the Court;

ii) regarding the principles, as they have held before the Court on previous occasions, they enshrine guidelines of a very general and basic nature on which the reform of Chilean military criminal justice is to be based. Likewise, "the State seems

to have paid no heed to the objections made by [the representatives], especially in connection with [p]rinciples X and VIII – related to the limits of the subject-matter jurisdiction of military courts and the incorporation of military courts into the State judicial system." Principle X, which refers to functional jurisdiction, includes a time of war exception that enables military courts to hear cases concerning non-military crimes. They added that the Court ordered the State to circumscribe the jurisdiction of courts in such a manner that under no circumstances would a civilian be subjected to the jurisdiction of military criminal courts. Hence, "any extension of the jurisdiction of military courts - whether as an exception or not - to hear cases concerning non-military crimes, transgresses the orders" of the Court. In relation to principle VIII, which deals with the incorporation of military courts into the State judicial system, they observed that "Chilean guidelines remain silent as regards the filing of remedies with ordinary courts, given the strictly functional justification of military courts." The aforementioned principles do not refer to the manner in which conflicts over jurisdiction with civilian courts are to be solved, and they include no restriction preventing military courts from hearing cases concerning human rights violations, and

iii) regarding the limits of the subject-matter and personal jurisdiction of military courts, the State, in the definition of military crime, makes no reference to the specific perpetrator, that is to say, the military person. Hearing cases concerning ordinary crimes and trying civilians for said crimes account for most of the actions brought before military courts: 70% of military cases are filed against civilians and only 25,1% against military personnel. More importantly, most cases pending before the *Juzgado Militar de Santiago* [Military Court of Santiago] involve the crime of insults against *Carabineros* [uniformed national police force and gendarmerie] and the Armed Forces perpetrated by civilians. Therefore, they lamented the delay in establishing these criminal definitions concerning behavior related to the professional practice of the Chilean Navy, the Air Force and *Carabineros* [uniformed national police force and gendarmerie]. Crimes committed by senior officers against their military subordinates, such as degrading and inhumane treatment, constitute human rights violations of an ordinary and non-military nature, and so they must heard by ordinary and not by military courts. If the State applies the provisions of the Criminal Procedural Code to military courts in a limited manner, it will create exceptions to virtually all the judicial guarantees enshrined in the American Convention, for example, limits on the information to be furnished to detainees, restrictions on the public nature of oral proceedings, exceptions to the obligation to appear and testify, control of the secrecy of the investigation and autonomous regulation of military secrets. As regards rules that are to be applied in times of war, the State did not furnish enough information to disprove the extension of the jurisdiction of military courts beyond the limits set forth by international standards. Finally, as regards the organic rules of military criminal courts that must ensure the competence, impartiality and independence of their members, the representatives are concerned over the fact that the State did not report on the actors and institutions that would compose the prosecuting, jurisdictional and defense bodies of military justice.

16. That the Commission welcomed the information furnished by the State regarding the steps it is taking to comply with this reparation, positively valued the efforts that have been

made and expressed that it expects to receive information on any progress made in this important process of adaptation of military justice.

17. That the Court appreciates the information furnished by the State regarding compliance with operative paragraphs fourteen and fifteen of the Judgment, as well as the progress made in the study and preparation of guiding principles for the military criminal justice reform, among other initiatives. Nonetheless, the Court observes that, after almost four years from the date the Judgment was delivered, the proceeding to comply with these reparations is still at an initial stage and no substantial legislative progress has been made in order to bring domestic law in line with the orders of the Court.

18. That, additionally, the Court notes that objections have been made regarding the guiding principles set forth by the State in relation to the military criminal justice reform, basically as regards subject-matter and personal jurisdiction. In this regard, the Court deems it desirable to recall that in the Judgment it found that "should [Chile] consider that having military criminal courts is in fact necessary, their jurisdiction should be restricted to cases concerning crimes of a strictly military nature committed by military personnel in active service only. Therefore, through its own domestic laws, the State is required to set limits to the subject-matter and personal jurisdiction of military courts, so that under no circumstance may a civilian be subjected to the jurisdiction of military courts."[10] Therefore, if the modification of the domestic legal system to bring it in line with international standards on military criminal justice is to be consistent with the reparation ordered in the Judgment, the normative reform must respect said limits.

19. That, based on the foregoing considerations, the Inter-American Court deems it necessary that Chile: a) continue to furnish updated and detailed information on the measures adopted to comply with operative paragraphs fourteen and fifteen of the Judgment, including the forwarding of relevant documents; b) furnish special information on any progress made in the different stages and on the estimated periods of time to comply with the orders of the Court; and c) answer, in its next report, the comments included in the representatives' briefs (*supra* Considering clause 15).

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20. That, on the other hand, in its communication of July 16, 2009, the representatives reported on a petition filed by the victim with the *Contralor General de la República de Chile* [General Comptroller of the Chilean Republic] "asking for the annulment of Order No. 228 of May 28, 1993, which provided for the early termination of his contract with the Armed Forces." Said petition is related to "the claims aimed at being granted the retirement and social security rights to which he would have been entitled if his [employment] contract [with the Armed Forces] had become effective." The representatives sent a copy of Mr. Palamara-Iribarne's petition and the denial of the *Contraloría General de la República de Chile* [General Comptroller's Office of the Chilean Republic].

21. That the Court observes that the representatives only mentioned the steps taken by their client and attached the aforementioned information, without including a legal

[10] *Case of Palamara-Iribarne, supra* note 7, para. 256.

argument or a specific request in relation to the issue. Likewise, the Court observes that, in its decision, the *Contraloría General de la República de Chile* [General Comptroller's Office of the Chilean Republic] held that "the concerned party's request lacks legal grounds". This Court, in turn, notes that the information furnished by the representatives in their brief of comments does not refer to an issue subject to monitoring by the Court. The Court recalls that, in the Judgment, it ruled on the damages caused by the stated violations and ordered the relevant reparations, which included compensation for pecuniary damages arising from the termination of the labor relationship. The State paid the amount ordered by the Court and the relevant operative paragraph was deemed complied.

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22. That, with regard to the information furnished by Mrs. Anne Ellen Stewart-Orlandini regarding the fact that Mr. Palamara-Iribarne did not pay her the amounts ordered in the Judgment (*supra* Having Seen clause 9), the State pointed out that the victim is exclusively charged with and liable for "reimbursing […] the amounts to which Mrs. Stewart is entitled, [so] it is not its duty [...] to rule on, comment or give opinions on the lack of compliance informed by Mrs. Stewart to the Court."

23. That the representatives informed that "in principle" Mr. Palamara-Iribarne would pay the owed amounts to Mrs. Stewart-Orlandini "during January 2008". Since this did not happen, "Mr. Palamara and Mrs. Stewart consider[ed] other alternatives to effect the payment, hoping to inform the conclusion of this issue to the Court as soon as possible."

24. That, despite the time elapsed, the representatives have furnished no information regarding their client's lack of compliance with the order of the Court included in the Judgment. Since this situation has already been considered in the Order of November 30, 2007 and no information has been received in relation to this issue, the Inter-American Court deems it necessary to reiterate the provisions of paragraphs 242 and 243 of the Judgment and the provisions of the aforementioned Order, in the sense that Mr. Palamara-Iribarne must reimburse "Mrs. Anne Ellen Stewart-Orlandini for the expenses she incurred."[11]

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25. That, upon monitoring full compliance with the Judgment, and after analyzing the information furnished by the State, the representatives and the Inter-American Commission, the Court deems it indispensable that the State continue to report on the operative paragraphs of the Judgment of November 22, 2005 which are pending compliance (*supra* Having Seen clause 2), within the stipulated time limits, pursuant to Considering clauses 13 and 19 of the instant Order.

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[11] *Case of Palamara-Iribarne v. Chile*. Monitoring Compliance with Judgment, *supra* note 9, Considering clause thirty-eight, and *Cf. Case of Palamara-Iribarne, supra* note 7, paras. 242 and 243.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its judgments, pursuant to Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights; Articles 25(1) and 30 of its Statute; and Articles 30 and 63 of its Rules of Procedure,[12]

DECLARES:

1. That it will keep open the monitoring procedure until full compliance with the following pending items of the instant case is accomplished, to wit:

> a) Take all necessary measures to annul and amend, within a reasonable period of time, any relevant domestic provisions regarding freedom of thought and expression, in the terms of paragraphs 254 and 255 of the Judgment *(operative paragraph thirteen of the Judgment);*
>
> b) Modify the domestic legal system so that in case the existence of a military criminal jurisdiction is deemed necessary, it is restricted only to crimes committed by military personnel in active service *(operative paragraph fourteen of the Judgment);* and
>
> c) Guarantee due process in the military criminal jurisdiction, and judicial protection regarding the actions of military authorities *(operative paragraph fifteen of the Judgment*).

AND DECIDES:

1. To call upon the State to adopt all necessary measures to effectively and promptly comply with the operative paragraphs pending compliance that were ordered by the Court in the Judgment on merits, reparations and costs of November 22, 2005, pursuant to Article 68(1) of the American Convention on Human Rights.

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[12] Rules of Procedure approved by the Court during its XLIX Ordinary Period of Sessions, held from November 16 to 25, 2000 and partially amended during its LXXXII Ordinary Period of Sessions, held from January 19 to 31, 2009, pursuant to Articles 71 and 72 of said Rules of Procedure.

2. To call upon the State to submit to the Inter-American Court of Human Rights, no later than January 29, 2010, a report specifying all such measures as may have been adopted to comply with the reparations ordered by this Court and which are still pending compliance, pursuant to Considering clauses 13 and 19 and Declarative paragraph one hereof.

3. To call upon the victim's representatives and the Inter-American Commission on Human Rights to submit their comments on the report of the State mentioned in the preceding operative paragraph, within two and four weeks respectively, as from the date the report is received.

4. To continue monitoring the operative paragraphs pending compliance of the Judgment on merits, reparations and costs delivered on November 22, 2005.

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

Diego García-Sayán
President

Sergio García-Ramírez

Manuel Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra-Alessandri
Secretary