

**Order of the
Inter-American Court of Human Rights*
of February 4, 2010
Case of Cesti-Hurtado v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter, the "Court," the "Inter-American Court," or the "Tribunal") on September 29, 1999.
2. The Judgment regarding the interpretation of the judgment on the merits delivered by the Court on January 29, 2000.
3. The Judgment on reparations delivered by the Court on May 31, 2001.
4. The Judgment regarding the interpretation of the judgment on reparations delivered by the Inter-American Court in the instant case on November 27, 2001.
5. The Orders issued by the Court on November 17, 2004, and September 22, 2006, regarding compliance with the Judgment on reparations delivered in the instant case.
6. The Order rendered by the Court on August 4, 2008, whereby it declared, *inter alia*:
 - [..]
 2. [t]hat it will keep the proceedings open to monitor compliance with [...] all the reparations ordered by th[e] Court in [said] Judgment, namely:
 - a) payment of interest on the amount of compensation for moral damage;
 - b) annulment of the military proceedings and the effects resulting therefrom;
 - c) payment of pecuniary damages, and
 - d) investigation of the facts surrounding this case and punishment of the perpetrators.
7. The brief of November 14, 2008, in which the State of Peru (hereinafter, the "State" or "Peru") reported on the status of compliance with the judgment on reparations in the instant case.
8. The communication of December 5, 2008, whereby Gustavo Adolfo Cesti-Hurtado, the victim in this case, requested the Court to hold a hearing on monitoring compliance with the Judgment on reparations (*supra* Having Seen clause No. 3,) and the brief of December 29, 2008, whereby Gustavo Adolfo Cesti-

* Judge Diego García- Sayán, a Peruvian national, excused himself from hearing this case, pursuant to Article 19 of the Statute of the Court and Article 21 of the Rules of Procedure of the Court, as approved during its 85th Regular Session, held from November 16 to November 28, 2009, which was accepted by the Court. Therefore, Judge García-Sayán delegated the Presidency under Article 4(2) of the Rules of Procedure of the Court to the Vice-President, Judge Leonardo A. Franco, who shall serve as President for monitoring compliance with judgment in the instant case.

Hurtado submitted his observations on the report filed by the State (*supra* Having Seen clause No. 7) and requested again that the Court hold a hearing.

9. The writ of January 20, 2009, whereby the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") presented its observations on the report submitted by the State (*supra* Having Seen clause No. 7.)

10. The private hearing held by the Court at its venue in San Jose, Costa Rica, on February 1, 2010.¹

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That Peru ratified the American Convention on Human Rights (hereinafter, the "American Convention") on July 28, 1978, and recognized the contentious jurisdiction of the Court on January 21, 1981.

3. That Article 68(1) of the American Convention sets forth 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." The treaty obligations of the States Parties are binding for all the powers and functions of the States.²

4. That by virtue of the definite and not subject to appeal nature of the Court judgments, according to what is set forth in Article 67 of the American Convention, these must be immediately and completely fulfilled by the State.

5. That the obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.³

¹ Pursuant to Article 62 of the Rules of Procedures, the Court held the hearing together with the following commission of Judges: Judge Manuel Ventura-Robles, Judge Margarete May Macaulay, Judge Rhadys Abreu-Blondet and Judge Eduardo Vio-Grossi. The following parties were present at the hearing: by the Inter-American Commission, Lilly Ching and Silvia Serrano; Gustavo Adolfo Cesti-Hurtado; by the representatives, attorneys Alberto Borea-Odría and Julio Silva-Santiesteban, and Carmen Cardó de Cesti, and by the State, attorneys Delia Muñoz and Erika Ramos, attorneys César San Martín and Stephen Haas, Ambassador Moisés Tambini del Valle, Gustavo Lembcke, Minister of the Peruvian Embassy in Costa Rica, and David Tejada, First Secretary of the Peruvian Embassy in Costa Rica.

² Cf. *Case of Baena-Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003, Series C No. 104, para. 60; *Case of La Cantuta v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 20, 2009, Considering clause No. 5, and *Case of Cantoral-Benavides v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 20, 2009, Considering clause No. 5.

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. Series A No. 14, para. 35; *Case of the "Five Pensioners" v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clauses No. 6, and *Case of Ivcher-Brostein v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering clause No. 5.

6. The States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic laws. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also with regard to procedural rules, such as those 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, bearing in mind the special nature of human rights treaties.⁴

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7. As regards the obligation to annul "the military proceedings and the effects resulting therefrom" (*Operative paragraph No. 8 of the Judgment on the merits, and Operative paragraphs No. 2 and 3 of the Judgment regarding the interpretation of the judgment on the merits,*) the State informed that "the military proceedings instituted against Cesti-Hurtado have been annulled." In this sense, during the private hearing held in relation to the instant case (*supra* Having Seen clause No. 10,) the State affirmed that it would provide the Court with a written report backed by supporting documents that prove compliance with this paragraph. Said report would refer, in particular, to "the lifting of the attachments made in several types of registries, from the public registry to the convictions and pending cases registry [...]" Moreover, it noted that "in the event the Commission considers [...] that the lifting should be made in any other registry [*infra* Considering clause No. 9] it would appreciate it if this is made known to proceed to verify the situation."

8. In said private hearing (*supra* Having Seen clause No. 10,) the representatives of the victim noted that "a look at the name of Gustavo Cesti on the screen suffices [...] to see in how many proceedings, after the Court decided [...] to archive them, [...] and in which he was eventually acquitted, obviously in all of them, [...] he had to litigate for years after this situation."

9. During the private hearing (*supra* Having Seen clause No. 10,) the Commission noted that even though it was undisputed "that the military proceedings were annulled and that the attachments were lifted, [...] the representatives expressed their concern about the fact that there would be some public registries showing that Cesti-Hurtado would still be subject to prosecution, *i.e.* that the public registries have not been updated and that it would be important that [...] the State submit [information] on the measures adopted to wipe out these effects, alongside the information already furnished on the lifting of the attachments."

10. The Court looks forward to the information and supporting documents offered by the State about compliance with this obligation. To this respect, the Court requests the State to furnish copies of the judicial decisions ordering the annulment of the military proceedings against Cesti-Hurtado, together with any supporting documents evidencing the lifting of the attachments made in the pertinent registries.

⁴ Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the "Five Pensioners"*, *supra* note 3, Considering clause No. 7, and *Case of Ivcher-Bronstein*, *supra* note 3, Considering clause No. 6.

11. Furthermore, the Court highlights that the Commission and the representatives referred in general terms to the fact that, according to some public registries, Cesti-Hurtado would still be subject to prosecution. The Court requests the Commission and the representatives to accurately specify which registries are those and to define, in particular, in which registries the attachments executed against Cesti-Hurtado have allegedly not been lifted.

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12. As regards the investigation of the events occurred in the instant case and, ultimately, the punishment of the perpetrators (*Operative paragraph No. 5 of the Judgment on reparations*), the State informed that during the private hearing (*supra* Having Seen clause No. 10) "based on the reports that in due time submitted the National Prosecutor's Office, [the Judiciary of Peru] instituted criminal proceedings against two persons, [...] the then acting Board Prosecutor [...] and [...] the Chairman of the Military Justice Board, [...] for the commission of the crime of abuse of authority, and convicted the board prosecutor on June 13, 2003, which decision was affirmed by the court of appeals on January 30, 2004." The State pointed out that it was awaiting the resolution of the "Inter-American Court [on] whether [...] this sanction, this investigation, meets the overall standard set in its judgment." The State further noted that "in Peru, the criminal investigations may be instituted by two ways: by individual report or by [...] the Prosecutor's Office;" thus, it stated that Cesti and his representatives "ha[ve] failed to request [...] a new investigation [...]," even though they were entitled to do so, although it acknowledged that this is a state obligation. It highlighted that the Judiciary is awaiting "the Prosecutor's Office's request for further measures," nonetheless "there are no pending proceedings [involving] other individuals [...]"

13. The victim and his representatives noted that "the Peruvian State has also failed to comply with" this paragraph. In this regard, they affirmed that the convicted defendant, Raúl Aurelio Talledo-Valdivieso, is not the only responsible one, however "[n]o proceedings have been instituted against the Prosecutor or the officers who ordered the institution of proceedings [against Cesti-Hurtado,] the judges of the Military Court who unduly prosecuted and [...] convicted him, the military authorities who denied [his] release from prison, and the political authorities then in office who should have ordered his release." According to the statements of Cesti-Hurtado and his representatives, the State "mention[ed] a judgment [against the] weakest member of the establishment, who served as executing judge, pretending to show that the State had complied with its obligations." During the private hearing held in the instant case (*supra* Having Seen clause No. 10), the representatives of the victim stated again that, "a state of impunity is visible," and noted that a conviction for the "crime of abuse of authority" renders inconsistent with the nature of the violations committed against Cesti-Hurtado. For this, they requested that the Prosecutor's Office be required to report the persons involved in the violations.

14. The Commission noted that the "State is obliged to investigate and inform in full detail about the judicial proceedings and sanctions against those responsible for the violations which the Court have determined since 1999 [...]" In this respect, during the private hearing (*supra* Having Seen clause No. 10,) it asserted that the obligation to investigate "is not satisfied with the conviction of one individual," and reminded that "a great amount of judges were responsible for the defiance of writs of habeas corpus." Apart from that, it mentioned that, "the State should explain how it has resorted to all available means [...] in the investigation and punishment of those responsible [...]"

15. According to the State, an individual has been prosecuted as perpetrator of the crime of abuse of authority (*supra* Considering clause No. 12,) in relation to the events of the instant case. The Court views favorably the State's express willingness to comply with the obligation to investigate the events occurred in this case and, ultimately, punish those responsible. Nevertheless, taking into account that it has been noted that the investigation of other potential perpetrators would depend upon a decision of the National Prosecutor's Office, the Court considers it convenient to recall that treaty obligations of States Parties are binding upon all state powers and bodies (*supra* Considering clause No. 3.) Thus, in relation to the fact that the victim is entitled to move for an investigation, as observed by the State, in the case of *García-Prieto et al. v. El Salvador*, the Court indicated that the obligation to investigate "does not derive solely from the Treaty norms of International Law binding upon the States Parties, but also from the domestic legislation that makes reference to the duty to investigate certain unlawful conducts, and from the norms that allow the victims or their family members to present a complaint such that they may participate in the criminal proceedings in order to establish the truth of the events."⁵

16. In the Judgment on reparations (*supra* Having Seen clause No. 3, para. 64,) this Court decided that "the State has the obligation to investigat[e] the human rights violations in this case and prosecute those responsible in order to avoid impunity." In this regard, the Court emphasizes that the State itself has noted that it is obliged to investigate the events amounting to human rights violations against Cesti-Hurtado (*supra* Considering clause No. 12.) This is an obligation compliance with which is independent of any individual action that the victim may take in the instant case, considering that the State has failed to indicate that the involved crimes should be prosecuted at party's initiative.

17. However, the Court has stated that the duty to investigate is not breached merely because the investigation does not produce a satisfactory result.⁶ In this sense, the Court requests the State to submit information on all and every action taken to fully comply with this obligation.

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18. As regards the obligation to make payment of pecuniary damages (*Operative paragraph No. 1 of the Judgment on reparations and Operative paragraph No. 3 of the Judgment regarding the interpretation of the judgment on reparations*), the State informed that "after the Arbitral Proceedings where a compensation was awarded to Cesti-Hurtado," he "file[d] a request for execution of the arbitral award, which led to the granting and execution of a precautionary measure of attachment under the form of a withholding. This situation [...] made payment of compensation materially unviable because [...] there would be [two] payments for the same obligation [...]" Nevertheless, during the private hearing (*supra* Having Seen clause No. 10,) the State affirmed that "[c]urrently, the controversy [...] is based on the payment of default interest, which has been determined by the Judiciary in five million [forty-seven thousand eight hundred forty] dollars [...]" According to the

⁵ Cf. Case of *García-Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 104.

⁶ Cf. Case of *Velásquez-Rodríguez Vs. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; Case of *González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 289; and *Case of Radilla-Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 192.

State, three weeks ago the Judiciary dismissed "a motion to set aside filed by the Peruvian State [...]" Therefore, in the domestic system it is only disputed whether, under the Code of Civil Procedure, the amounts paid should be applied firstly on account of interest or on account of principal. The State also observed that, "as of last year, a new Law governing the State's legal defense is in force [in Peru, according to which] the prosecutors are no longer under [an] absolute duty to appeal against or challenge all procedural acts within a judicial process [...]"

19. Cesti-Hurtado stated that "[t]he Peruvian State did not act in good faith in the execution of the [J]udgment or the payment of due reparations." During the private hearing (*supra* Having Seen clause No. 10,) the representatives of Cesti-Hurtado pointed out that "upon the failure by the State to comply with its obligations[, the victim] was forced to file a request for execution of the arbitral award [...] on March 23, 2005 [...]" According to the representatives, "even though is true that [...] Cesti has collected part of the sums under the arbitral award," the execution process "is till pending." They further informed that an expert examination on the amounts due was approved, so the representatives are "again [involved in a process] of execution, requesting attachments." They noted that it is untrue that the controversy is only on the order in which interest and principal are to be cancelled, because "pursuant to the domestic laws of Peru, first the costs [associated with payment] are paid[, then] interest and [finally] principal." The representatives also stated that Peruvian judges who passed orders granting execution of the arbitral award were subject to harassment and reports aiming at their punishment or dismissal. Furthermore, they noted that under the Peruvian "Prosecutor's Office Law" (*Ley de Procuraduría*) state prosecutors are required to file "all types of motions" in order to halt the execution of judgments "ordering the State to make any kind of payment." Based on the foregoing, they requested the Court to notify all international credit organizations of the failure by the State to comply with the Judgments of the Court, and to require the State to cancel forthwith all due amounts and amend the "Prosecutor's Office Law" (*Ley de Procuraduría*) to avoid further delays in the "administration of justice."

20. During the private hearing (*supra* Having Seen clause No. 10,) the Commission commented that the "parties agree in that there are amounts due" and that "the judicial proceedings have been definitely closed" as to the payments to be made. In this sense, it pointed out that, "it hopes that payments are made without delay and that no major obstacles affect the execution proceedings, in consideration of the fact that the Judgment on reparations was passed nine years ago."

21. As the way in which this obligation has been partly performed is at issue between the parties, the Court finds it convenient that the State submit a detailed report on the measures adopted in this regard. Particularly, the Court looks forward to relevant information allowing full knowledge of the decisions passed in the domestic judicial system, including the amounts due, and any information on the domestic rules and actions that have allegedly halted full compliance with this obligation.

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22. As regards payment of interest on the amount of compensation for moral damage (*Operative paragraphs No. 2 and 3 of the Judgment on reparations,*) during the private hearing (*supra* Having Seen clause No. 10,) the State informed

that it would provide the Court with the documents containing the calculations made in the domestic system relative to default interest pending payment.

23. Cesti-Hurtado informed that, "no sum has been paid [...] as default and legal interest, for the sum determined [...] as moral damage." During the private hearing (*supra* Having Seen No. 10,) the representatives of Cesti-Hurtado failed to specifically address the issue of interest for moral damage pending payment.

24. The Commission referred to "the lack of information allowing acknowledgement of effective payment." During the private hearing held in the instant case (*supra* Having Seen clause No. 10,) the Commission noted that the State "referred in general terms" to the payment of due interest for moral damage.

25. The Court looks forward to comprehensive and detailed information that may allow the proper monitoring of compliance with this paragraph. It is imperative that, in particular, the State furnishes information on the accrued interest on the amount of compensation for moral damage.

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, 25(1) and 30 of its Statutes and 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. That it will keep open the procedure to monitor compliance with the obligations not yet fully complied with, specifically:

a) annulment of the military proceedings and the effects resulting therefrom (*Operative paragraph No. 8 of the Judgment on the merits and Operative paragraphs No. 2 and 3 of the Judgment regarding interpretation of the judgment on the merits;*)

d) investigation of the facts surrounding this case and punishment of the perpetrators (*Operative paragraph No. 5 of the Judgment on reparations;*)

c) payment of pecuniary damages (*Operative paragraphs No. 1 of the Judgment on reparations and Operative paragraph No. 3 of the Judgment regarding the interpretation of the judgment on reparations,*) and

d) payment of interest on the amount of compensation for moral damage (*Operative paragraphs No. 2 and 3 of the Judgment on reparations.*)

AND DECIDES:

1. To call upon the State of Peru to adopt all necessary measures to comply promptly and effectively with the paragraphs pending compliance mentioned in

declarative paragraph No. 1 *supra*, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request the State of Peru to submit a report to the Inter-American Court of Human Rights, no later than March 17, 2010, informing about all such measures as may have been adopted to fully comply with the reparations ordered by this Court which are pending fulfillment, in accordance with the provisions of Considering clauses No. 7 to 25 and of paragraph No. 1 *supra*.

3. To call upon the victim or the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations on the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

4. To request the Secretariat of the Court to give notice of this Order to the State of Peru, the Inter-American Commission on Human Rights, and the victim or his representatives.

Leonardo A. Franco
President in exercise

Manuel Ventura-Robles

Margarette May Macaulay

Rhadys Abreu-Blondet

Alberto Pérez-Pérez

Eduardo Vio-Grossi

Pablo Saavedra-Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra-Alessandri
Secretary