ORDER OF THE

INTER-AMERICAN COURT OF HUMAN RIGHTS

OF MAY 17, 2010

ESCHER *ET AL. V.* BRAZIL

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on preliminary objections, merits, reparations and costs (hereinafter "the judgment") of July 6, 2009, in which the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") ordered, *inter alia*, that:

> 8. The State must publish once in the official gazette, in another national newspaper with widespread circulation, and in a newspaper with widespread circulation in the state of Paraná, the cover page, Chapters I, VI to XI, without the corresponding footnotes, and the operative paragraphs of th[e] judgment, and must publish the entire text of th[e] judgment on an official web page of the Federal State and of the state of Paraná. The publications in the newspapers and on the Internet must be made within six and twelve months, respectively, of notification of th[e] judgment, in the terms of paragraph 239 [t]hereof.

2. The brief of January 15, 2010, in which the Federative Republic of Brazil (hereinafter "the State" or "Brazil") consulted the Court concerning compliance with the eighth operative paragraph of the judgment.

3. The note of January 15, 2010, in which the Secretariat of the Court (hereinafter "the Secretariat"), on the instructions of the President of the Court, asked the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") and the representatives of the victims (hereinafter "the representatives") to submit any observations they deemed pertinent with regard to the State's inquiry by January 22, 2010, at the latest.

4. The brief of January 22, 2010, in which the representatives presented their observations on the State's inquiry and, in particular, submitted a proposal concerning the publication of the judgment.

5. The brief of January 22, 2010, in which the Inter-American Commission requested a one-week extension to present its observations on the State's inquiry, because it considered it important to take into account the respective observations of the representatives.

6. The note of January 26, 2010, in which the Secretariat, on the instructions of the President of the Court, asked the representatives that, by January 27, 2010, at the latest, they clarify their proposal concerning publication of the judgment. It also advised the State and the Commission that they could send their observations on the representatives' briefs after the requested clarification had been submitted.

7. The brief of January 28, 2010, in which the representatives clarified their proposal concerning publication of the judgment

8. The brief of February 1, 2010, in which the Commission presented its observations on the State's inquiry and on the representatives' briefs (*supra* having seen paragraphs 2, 4 and 7).

9. The brief of February 5, 2010, in which the State presented its observations on the said briefs of the representatives (*supra* having seen paragraphs 4 and 7).

CONSIDERING THAT:

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

2. Brazil has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 25, 1992, and, pursuant to its Article 62, accepted the compulsory jurisdiction of the Court on December 10, 1998.

3. Article 68(1) of the American Convention stipulates 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 this end, the State must ensure implementation at the national level of the Court's decisions in its judgments.[1]

4. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly.

5. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law on 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.[2] The treaty obligations of the States Parties are binding for all the powers and organs of the State.[3]

6. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems.

---

[1] *Cf. Baena Ricardo et al. v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 131; *Cesti Hurtado v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights de February 4, 2010, third considering paragraph, and *El Amparo v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights de February 4, 2010, third considering paragraph.

[2] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights).* Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Cesti Hurtado v. Peru, supra* note 1, fifth considering paragraph, and *El Amparo v. Venezuela, supra* note 1, fifth considering paragraph.

[3] *Cf. Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, third considering paragraph; *El Amparo v. Venezuela, supra* note 1, fifth considering paragraph, and *Serrano Cruz Sisters v. El Salvador*. *Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, fifth considering paragraph.

This principle is applicable not only with regard to the substantive norms of human rights treaties (namely, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.[4]

*
* *

7. The State indicated that, according to the eighth operative paragraph of the judgment (*supra* having seen paragraph 1), the text of the judgment must be published in a newspaper with widespread circulation in the state of Paraná and in a national newspaper with widespread circulation, and it must include paragraphs 78 to 265, in addition to the introduction and the operative paragraphs. The State alleged that, owing to the size of the said text, it would have to be published in a separate insert in the newspaper, which would not fulfill the purpose of this measure of reparation because: (i) the text of the publication would be very long and the language used was not easily comprehensible for the general public, and (ii) the cost would be disproportionate, exceeding the amount awarded to the victims as compensation. It affirmed that the Court did not usually order the publication of such long excerpts from a judgment and, based on Article 76 of the Rules of Procedure, it inquired if there had been a material error in the decision. However, if there was no material error, it consulted the Court about possible alternatives for complying with the said obligation using a teleological, rather than a literal, interpretation of the judgment. In this regard, it indicated that this case required that the State be granted a certain degree of discretionary authority to apply this teleological interpretation of what had been ordered in the judgment in a way that was more in keeping with the protection of human rights. Consequently, it asked the Court to accept an alternative measure of reparation for the publication ordered, such as: (i) reading parts or a summary of the judgment on the official radio program, "*A voz do Brasil*"; (ii) publication of a summary of the judgment, in a language accessible to the public, on approximately a quarter page of a national newspaper with widespread circulation, and/or (iii) publication of the complete judgment on other official web pages that were extensively accessed

8. The representatives argued that Article 76 of the Rules of Procedure stipulates that the request to rectify the judgment owing to a material error must be presented within one month of notification of the judgment. They indicated that the parties were notified of the judgment on August 6, 2009; consequently, the State's request was time-barred. They also stated that there had been no material error and, as the Court's case law revealed, the Court has ordered the publication of numerous complete chapters of its judgments as a way of attributing responsibility to the State and as a guarantee of non-repetition. Notwithstanding the foregoing, in order to reduce the alleged cost of the publication, they proposed abridging the text to be published, but indicated that it must include: (i) the cover page; (ii) paragraphs 1 to 4, 86 to 117, 125 to 146, 150 to 164, 169 to 180, 194 to 214, and 221 to 247, of Chapters I, VII, VIII, IX and XI, indicated in the eighth operative paragraph, and (iii) the operative paragraphs. They also stated that, if the Court admitted the State's request to publish a summary of the judgment, the summary must: (i) include the full text of the cover

[4] *Cf. Ivcher Bronstein v. Peru. Competence.* Judgment of September 24, 1999. Series C No. 54, para. 37; *Cesti Hurtado v. Peru, supra* note 1, sixth considering paragraph, and *El Amparo v. Venezuela, supra* note 1, sixth considering paragraph.

page and the operative paragraphs; (ii) be made in newspapers with extensive circulation at the national level and in the state of Paraná; (iii) be of the same size as the publication of the judgment in the Ximenes Lopes case, and (iv) be reviewed previously by the representatives.

9. For its part, the Commission recalled the nature of the case and observed that the publication of the judgment represented an important step towards compliance with the aspects ordered by the Court. It also considered that, in the case of reparations, the wishes of the victims should be taken into account. Consequently, it indicated that it had no additional observations to make on the details of the said publication.

10. Regarding the representatives' observations concerning its inquiry, the State affirmed that their proposal involved reducing the text from 41 pages to 23. In this way, the publication of the ruling, as ordered in the judgment, or with the characteristics of the publication made in the Ximenes Lopes case would not respond to the public interest. Even if the text were abridged, it would still be very long, with a very small typeface and technical language, and this would not help the greatest possible number of people understand the ruling and its context. In addition, it emphasized that the cost of the publication would still be very high, almost R$200,000.00 (two hundred thousand reales) in a national newspaper with widespread circulation and R$90,000.00 (ninety thousand reales) in a newspaper of the state of Paraná. Consequently, Brazil reiterated the arguments and proposals made in its first brief, particularly as regards "the publication in [a] national and regional newspaper of a clear and concise informative text, on a quarter-page and in an appropriate section [of the newspaper], concerning the case, the judgment and the importance of the inter-American system […] about which Brazilian society knows very little." Lastly, the State asked the Court to advise it of the time frame for publishing the judgment in the form determined by the Court.

*
* *

11. In relation to the State's inquiry regarding the existence of a possible error in the judgment, Article 76 of the Court's Rules of Procedure[5] stipulates that:

> The Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent State, and, if applicable, the petitioning State shall be notified if an error is rectified.

12. Since this is the first occasion on which a party invokes Article 76 of the Rules of Procedure, the Court deems it pertinent to make the following clarification. The possibility of rectification established in the said article applies to obvious editing oversights corresponding to minor errors in calculation, spelling or typing. Consequently, the meaning of the rectification established in the said article should not be confused with the purpose of a request for interpretation of judgment established in Articles 67 of the American Convention[6] and 68 of the Rules of Procedure,[7] under

---

[5] The Rules of Procedure of the Court approved at its eight-fifth regular session held from November 16 to 28, 2009.

[6] Article 67.

> The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

which the parties can request the Court to issue clarifications about the meaning or scope of a judgment. In the instant case, the request made by Brazil does not refer to a possible editing error in the judgment that could be rectified based on Article 76 of the Rules of Procedure. To the contrary, in view of the possible anomaly of the element alleged by the State, the channel that could be in order to clarify the meaning and scope of the eighth operative paragraph of the judgment would be a request for interpretation of judgment, which must be filed within ninety days of the date of its notification, a time frame that has long been exceeded.

13. To clarify any possible doubts that the State may have, the Court finds it relevant to reaffirm that the measure of reparation questioned by Brazil is not the result of an error. Examination of the judgment reveals clearly that the Court considered and ordered this measure of reparation after assessing the request of the Inter-American Commission and in view of the absence of any specific arguments from the other parties, as can be verified in paragraphs 237 to 239 of the chapter on reparations and, thus, in the eighth operative paragraph of the judgment. These references show clearly and coherently the content, form and time frame established by the Court for the State to comply with the obligation to publish the relevant parts of the judgment.

14. Furthermore, this measure of reparation is in keeping with the provisions of the Convention and the Rules of Procedure, as well as the Court's case law. Indeed, the Court recalls that the order to publish parts of the judgment in a newspaper is a usual measure of reparation that can be found in almost all the rulings delivered by this Court in recent years. Usually, this measure complements the publication that the State in question must make in its official gazette. Depending on the circumstances of the case, on previous occasions the Court has also ordered that the same publication be made in a national newspaper and a newspaper abroad,[8] or in a national newspaper and also in other social communication media,[9] should the reparation of the violation declared and other circumstances of the case merit this. In addition, the content of the extracts of the judgment to be published depends on the violations found in the specific case, how they were committed and the extent of the damage caused. In the instant case, the content to be published is adequate in relation to the human rights violations found and, in length; it does not differ substantially from what has been ordered in other cases concerning other States.[10]

---

[7] Article 68. Request for interpretation

1. The request for interpretation referred to in Article 67 of the Convention may be made in connection with judgments on preliminary objections, on the merits, or on reparations and costs, and shall be filed with the Secretariat. It shall state with precision questions relating to the meaning or scope of the judgment of which interpretation is requested.

[…]

[8] *Cf. Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, eleventh operative paragraph.

[9] *Cf. Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, twelfth operative paragraph; *Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, seventeenth operative paragraph, and *Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, tenth operative paragraph, among others.

[10] *Cf. Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, tenth operative paragraph; *Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, thirteenth operative paragraph, and *The Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, thirteenth operative paragraph, among others.

15. Furthermore, despite the inadmissibility of the request for rectification based on Article 76 of the Rules of Procedure, the Court finds it advisable to recall that the parties may require this correction "within one month of notification of the judgment or order in question." This time frame, which is applicable to the parties but not to possible corrections that the Court could make *motu propio,* also expired some time ago, since the request was submitted on January 15, 2010; in other words, more than five months after notification of the judgment.

16. Based on the above, the Court finds that it has clarified the inexistence of the possible error alleged by the State, and the scope of the provisions of Article 76 of the Rules of Procedure.

*
* *

17. In addition, regarding the State's allegations concerning the supposed lack of effectiveness of the publication of the judgment, the Court finds that, despite the technical language that may have been used in the ruling, this does not mean that its content cannot be understood by the general public. Furthermore, neither do the size of the typeface and the length of the publication constitute reasonable arguments to assert that they prevent those who are interested from reading the text. To the contrary, the possibility of achieving the most extensive understanding of its judgments is one of the Court's concerns when drafting its rulings, since it seeks to provide interested readers with a clear account of the facts of the case and the reasons on which the Court has based itself to attribute the human rights violations to the State in question.

18. Regarding the allegedly elevated costs of the publication, first, the Court observes that the publication of the judgment constitutes a measure of satisfaction that has public repercussions and a different nature from the measures of compensation, such as the compensatory payments for non-pecuniary damage ordered for the victims. Hence, the costs involved in implementing the said measures cannot be compared, because they have a different scope and purpose. Second, the Court considers that the supposedly elevated cost of the publication cannot justify failure to comply with this measure, especially due to the nature of the facts of this case. In this regard, the Court recalls that it has been proved that private telephone conversations were recorded, without fulfilling the legal requirements, and disseminated by State agents, so that they were broadcast on the news program with the largest audience in Brazil. Hence, to contribute to the integral reparation of the victims, the content of the judgment must have public repercussions proportionate to the said dissemination.

19. In addition, the Court finds that the alternative forms of compliance proposed by the State would not have the same scope as the publication made in the newspapers in the terms established in the judgment. In this regard: (i) Brazil did not provide any information on the scope and the audience of the official radio program; (ii) publication of the judgment on web pages was already ordered in the judgment, and (iii) the mere publication of a summary of the judgment on the equivalent of a quarter-page, which also includes matters such as the importance of the inter-American system is not acceptable. This is because a summary of that length would not present the facts of the case and the violations found in detail; it would omit relevant information that appears in the judgment, and it would not set out the content of the judgment with the significance required by the nature of the human rights violations found in this case. Furthermore, with regard to Brazil's affirmation that the inter-American system is not known in that country, the Court recalls that,

irrespective of compliance with the measures of reparation ordered in this case, the State can adopt appropriate measures of different kinds to disseminate among those subject to its jurisdiction information on the protection that the regional system offers them.

20. Lastly, the Court assesses positively the helpfulness of the representatives who made a proposal to abridge the text to be published. The Court considers that their proposal can indeed decrease the alleged cost of the publication without compromising the effectiveness and repercussion of the measure of reparation or resulting in a substantial change in the measure ordered in the judgment. Therefore, based on the foregoing, the request made by the State, and the agreement expressed by the representatives, the Court orders that the State must publish, in keeping with the conditions established in the judgment, its cover page, paragraphs 1 to 5, 86 to 117, 125 to 146, 150 to 164, 169 to 180, 194 to 214, and 221 to 247 of Chapters I, VII, VIII, IX and XI, without the footnotes, and the operative paragraphs. The publication must be made within two months of notification of this Order.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, 25(1) of its Statute, and 68 and 69 of its Rules of Procedure,

DECIDES:

1. To clarify the inexistence of an error with regard to the measure of reparation established in paragraph 239 and in the eighth operative paragraph of the judgment on preliminary objections, merits, reparations and costs of July 6, 2009.

2. To order the State, in accordance with the general conditions established in the judgment and the additional elements established in the twentieth considering paragraph of this Order, to publish the cover page, paragraphs 1 to 5, 86 to 117, 125 to 146, 150 to 164, 169 to 180, 194 to 214, and 221 to 247 of Chapters I, VII, VIII, IX and XI of the judgment, without the footnotes, and the operative paragraphs. The publication must be made within two months of notification of this Order.

3. To require the Secretariat of the Court to notify this order to the State of Brazil, the representatives of the victims and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary