

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF MAY 19, 2010

CASE OF CHAPARRO ÁLVAREZ AND LAPO ÍÑIGUEZ V. ECUADOR

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations, and costs (hereinafter “the Judgment”) delivered by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of November 21, 2007, whereby it decided that:

8. The State [had to] eliminate forthwith the names of Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez from the public records in which they still appear with a criminal record [...].

9. The State [had to] immediately inform the relevant private institutions that they shall eliminate from their records any reference to Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez as authors or suspects of the criminal act of which they were accused in this case [...].

10. The State [had to] publicize the [...] Judgment, within six months from notification of the Judgment [...].

11. The State [had to] adapt its legislation, within a reasonable timeframe, to the parameters of the American Convention on Human Rights [...].

12. The State [had to] adopt forthwith all the administrative or other measures necessary to eliminate *ex officio* the criminal record of those persons who are acquitted or whose cases are dismissed. Also, within a reasonable timeframe, it [had to] implement the pertinent legislative measures to this end [...].

13. The State and Juan Carlos Chaparro Álvarez [had to] submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage [...].

14. The State [had to] pay Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez the amounts established in [the] Judgment, to compensate them for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, within one year from the notification of the Judgment [...].

2. The Order on monitoring compliance with Judgment, issued by the Court on April 29, 2009, whereby it declared:

1. That the State ha[d] fully complied with operative paragraph eight of the Judgment issued in the instant case, regarding the elimination of Mr. Chaparro and Mr. Lapo's names from the public records in which they appeared with criminal records.

2. That the State ha[d] taken the following concrete actions, which implie[d] partial compliance with the corresponding operative paragraphs:

- a) communicated to the Association of Private Banks and the Superintendence of Banks that they [had to] eliminate from their records all reference to Mr. Chaparro and Mr. Lapo as authors or suspects of the criminal act of which they were accused in this case (*operative paragraph nine of the Judgment*);
- b) published the parts pertinent to the Judgment in the Official Registry and the newspaper "El Telégrafo", and also published the specific information contained in paragraph 263 of the Judgment in the newspapers "El Telégrafo" and "El Universo" (*operative paragraph ten of the Judgment*);
- c) adapted its internal legislation which regulates the writ of habeas corpus to the American Convention, and exhorted the National Council on Narcotic and Psychotropic Substances to reform their internal regulations (*operative paragraph eleven of the Judgment*), and
- d) paid the total amounts awarded in the Judgment to Mr. Lapo, as well as the majority of the compensations awarded to Mr. Chaparro (*operative paragraph fourteen of the Judgment*).

3. That the following obligations [were] pending compliance:

- a) inform the other private institutions indicated by the victims that they must eliminate from their records all reference to Mr. Chaparro and Mr. Lapo as authors or suspects of the criminal act of which they were accused of in this case (*operative paragraph nine of the Judgment*);
- b) disseminate the Judgment by radio and television (*operative paragraph ten of the Judgment*);
- c) adapt its internal legislation so that charges [would] cease to be made for the deposit and handling of the assets seized from individuals who ha[d] not been convicted by final judgment (*operative paragraph eleven of the Judgment*);
- d) adopt forthwith all the administrative or other measures necessary to eliminate *ex officio* the criminal records of those persons acquitted or whose cases are definitely dismissed (*operative paragraph twelve of the Judgment*);
- e) submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage for Mr. Chaparro (*operative paragraph thirteen of the Judgment*), and
- f) pay Mr. Chaparro the late bank interest in Ecuador indicated in paragraph 245 of the Judgment (*operative paragraph fourteen of the Judgment*).

4. That it w[ould] maintain open the instant monitoring procedure until the obligations indicated in the declaration paragraphs above are fully complied.

3. The brief of August 4, 2009, and annexes, whereby the Republic of Ecuador (hereinafter "Ecuador" or "the State") referred to compliance with the Judgment.

4. The briefs of July 7 and November 13, 2009, whereby the victim's representatives (hereinafter "the representatives") submitted their observations to the information presented by the State.

5. The brief of September 22, 2009, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the information presented by the State.

6. The note of November 17, 2009, of the Secretariat of the Court (hereinafter "the Secretariat"), whereby it requested the representatives to confirm as soon as possible "whether they still represent[ed] Mr. Lapo," and if so, to submit "updated information on compliance with the Judgment with regards to him," given that in their last communication (*supra* Having Seen 4) they only referred to compliance with the Judgment in relation to Mr. Chaparro Álvarez. The representatives did not respond to this requirement, therefore, through the note of March 9, 2010, following the President's instructions, the Secretariat

informed the parties that it understood that the representatives exercised representation of Mr. Chaparro Álvarez only, unless otherwise indicated.

7. The Secretariat's note of November 17, 2009, whereby, following the President's instructions, it requested the State to submit, as of January 28, 2010, at the latest, a new report on the advances regarding compliance with the Judgment.

8. The communication of February 3, 2010, whereby the State requested an extension for the presentation of its report.

9. The Secretariat's note of February 8, 2010, whereby it granted the extension requested by the State until March 8, 2010. However, this term elapsed and the report was not submitted to the Court.

10. The communication of March 2, 2010, whereby Mr. Lapo Íñiguez referred to compliance with the Judgment in relation to himself.

11. The communication of May 17, 2010, whereby Mr. Chaparro Álvarez submitted his observations on compliance with operative paragraph thirteen of the Judgment.

CONSIDERING THAT:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. Ecuador has been a State Party to the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") since December 28, 1977, and that it recognized the Court's obligatory jurisdiction on July 24, 1984.

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." For such purposes, States are required to ensure the implementation of the Court's rulings at the domestic level.¹

4. Article 67 of the American Convention, which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgments shall be fully and promptly complied with by the State.

5. The obligation to comply with the rulings of the Court corresponds to a basic principle of law on the international responsibility of the State, supported by international jurisprudence, according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and pursuant to Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic order reasons, avoid the international responsibility which has already been established.² The conventional obligations of the States Parties are binding on

¹ Cf. *Case of Baena Ricardo et al v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of the Saramaka people v. Suriname. Monitoring Compliance with Judgment*. Order of the President of the Court of April 20, 2010, Considering three, and *Case of Heliodoro Portugal v. Panama. Monitoring Compliance with Judgment*. Order of the President of the Court of April 20, 2010, Considering three.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Saramaka People v. Suriname*, *supra* note 1, considering five, and *Case of Heliodoro Portugal v. Panama*, *supra* note 1, considering four.

all powers and organs of the State.³

6. The States Parties to the Convention must guarantee compliance with the conventional provisions and their effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in relation to the substantive provisions of human rights treaties (meaning those that contain provisions on protected human rights), but also in relation to procedural rules such as those concerning compliance with the Court's decisions. These obligations must be interpreted and applied so that the protected guarantee is truly practical and effective, taking into consideration the special nature of human rights treaties.⁴

*

* * *

7. Regarding the State's duty to immediately inform the relevant private institutions that they must eliminate from their records all reference to Mr. Chaparro and Mr. Lapo as authors or suspects of the criminal act of which they were accused in this case (*operative paragraph nine of the Judgment*), the State reported that "in addition to informing the Association of Private Banks and the Banks Superintendence, [...] the victim's representatives [...] sent an e-mail requesting the State to submit communications to the following institutions: Banco de Guayaquil, Banco del Pichincha, Banco del Pacífico, Basf Ecuatoriana S.A., communications that were sent [by the State] on April 15, 2009." It highlighted that "[i]n the text of the communications it expressed that [the victims] were dismiss[ed] of all charges, and that the State of Ecuador was punished for infringing their rights during the process, as established by the Court's [J]udgment." Likewise, it reported that in conformity with the representatives' requests, they also sent similar communications to the embassies of Chile and the United States in Guayaquil on April 24, 2009. It therefore indicated that it considered that the instant reparation measure "has been fully complie[d] with."

8. The representatives indicated, in reference to the records of private institutions, that "new communications had to be coordinated, as Mr. Chaparro Álvarez had an inconvenience at a banking institution, as he was informed over the phone that they could not make any transaction on his behalf since he was registered in a database of individuals related to drug trafficking activities." On the other hand, Mr. Lapo Íñiguez did not refer to compliance with this reparation.

9. The Commission took cognizance of the information presented by the State and the supporting documentation. However, it observed that "from the content of the communications it does not derive that the State has adopted the necessary measures to comply with the duty of eliminating the victims' names from the records of the aforementioned institutions," therefore it indicated that "it awaits the representatives' information regarding the effectiveness of the steps taken by the State and their satisfaction with those steps, to issue an opinion in that regard."

10. The Court values the communications made by the State, and observes that these communications were effectively sent to the private institutions indicated by Mr. Chaparro's

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Court of November 17, 1999. Series C No. 59, considering three; *Case of the Saramaka People v. Suriname*, *supra* note 1, considering five, and *Case of Heliodoro Portugal v. Panama*, *supra* note 1, considering four.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of the Saramaka People v. Suriname*, *supra* note 1, considering six, and *Case of Heliodoro Portugal v. Panama*, *supra* note 1, considering five.

representatives, as evidenced in the annexes to the report submitted by the State.⁵ Likewise, it confirms that the text of these communications complies with the content requirements indicated in paragraph 260 of the Judgment.⁶ It notes that compliance with the instant obligation also required informing the private institutions indicated by Mr. Lapo, but observed that in his communication to the Court (*supra* Having Seen 10) Mr. Lapo did not express inconformity with any of the measures adopted by the State in this regard until now.

11. The Court takes cognizance of the observations presented by Mr. Chaparro's representatives; however, it notes that these statements lack supporting documentation. On the other hand, the Court calls to mind that the instant obligation consisted of "informing" the pertinent private institutions that they had to eliminate from their records all reference to Mr. Chaparro and Mr. Lapo as authors or suspects of the criminal act of which they were accused in this case.⁷ Unlike the similar obligation in relation to public records, where it was ordered to "eliminate" any reference to criminal records for Mr. Chaparro and Mr. Lapo, the State's responsibility with regards to compliance with the instant obligation was limited to performing the corresponding communications, according to the parameters established by the Court in its Judgment. Based on the foregoing, the Court considers that the State has fully complied with operative paragraph nine of the Judgment.

*

* *

12. Regarding the dissemination of the Judgment by radio and television (*operative paragraph ten of the Judgment*), the State reported that "it created two important products to comply with this obligation": i) the national broadcast of public apology of December 10, 2009, mentioned in the previous Court Order on monitoring compliance with judgment in the instant case; and ii) the documentary "The Right to Memory," of which it attached a copy,⁸ in which Mr. Juan Carlos Chaparro and his representatives participated. It indicated that the national broadcast was done at the primetime of television, 20:30, and it "could have been seen by a maximum of 1250000 people." With regards to the documentary, it indicated that "it ha[d been] disseminated in three forums organized during the week of December 10 [2008] in Quito, Guayaquil, and Cuenca, and [in 2009 it had been] disseminated in the Zero Latitude Festival on July 12, 13, and 17, 2009, in the cities of Guayaquil, Quito, and Cuenca." In addition, it reported that the documentary will be broadcast by "Ecuador TV." It considered that this last broadcast complied with the obligation of dissemination by television, "while dissemination by radio remains pending."

13. The representatives subsequently added that they ha[d] agreed with the State "to perform the dissemination of the [J]udgment by radio and television through a press conference convened and communicated with due anticipation, in which the victims' representatives and a top level authority of the Ministry of Justice and Human Rights would participate."

14. With regards to himself, Mr. Lapo indicated that the State had complied with the "[d]issemination of the radio and television broadcast of the apology."

⁵ Cf. Communication of March 16, 2009, by Mr. Chaparro Álvarez's representative to the State, indicating the institutions to be notified by the State (file on monitoring compliance with judgment, Volume II, folio 441).

⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 260.

⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra* note 6, para. 260.

⁸ Documentary "El Derecho a la Memoria" (The Right to Memory), (file on monitoring compliance with judgment, Volume II, folio 450).

15. The Commission did not submit observations regarding compliance with this obligation.

16. The Court recognizes the steps taken by the State to disseminate the Judgment by television. In addition, it notes that based on the information presented and in conformity with that indicated in paragraph 264 of the Judgment, the representatives and/or the victims have participated in the planning or development of the activities or instruments for the dissemination of the Judgment by radio and television. Therefore, the Court considers that the State has partially complied with the obligation to disseminate the judgment by television, through the national broadcast of apology and the documentary "The Right to Memory." Based on that indicated by the State, the Court awaits detailed information on the broadcast of the latter by "Ecuador TV," (*supra* Considering 12).

17. Additionally, based on the information provided by the parties, the obligation to disseminate the Judgment by radio is still pending compliance. Therefore, the Court requests the State, within the term indicated in the operative section of the instant Order, to submit detailed and complete information on compliance with this obligation, and specifically requests the State to refer to the activities mentioned by the representatives regarding dissemination by radio (*supra* Considering 13).

*

* *

18. With regards to the obligation to adapt its internal legislation so that charges would cease to be made for the deposit and handling of the assets seized from individuals who had not been convicted by final judgment (*operative paragraph eleven of the Judgment*), the State reported that the Management Board of the National Council on Narcotic Drugs and Psychotropic Substances (hereinafter "CONSEP") issued Resolution No. 2008 006 CD on June 4, 2008, published in Official Record 380 of July 15, 2008, whereby it modified the CONSEP's internal regulations, thus satisfying this obligation. This resolution set forth the following:

Art. 1.- Substitute Art. 31 of the Rules on the Deposit of Assets Seized or Confiscated and delivered to CONSEP:

"Art. 31.- To return the assets referred to in the previous section, Article 80.1 of the Rules on the Application of the Narcotic Drugs and Psychotropic Substances Act shall be followed, issued by the President of the Republic through Executive Decree N° 985 of March 27, 2008, published in Official Record N° 312 of April 9, 2008.

The accused individuals who were provisionally or definitely dismissed or acquitted, prior to the issue of this resolution, are not obligated to pay the warehouse, deposit, reimbursements or fees of the custodians, depositaries – managers or supervisors in which the institution incurred, as long as the return of their assets by CONSEP is still pending when this resolution becomes effective.

Individuals not accused, owners of the assets seized or confiscated delivered to CONSEP as a deposit for their assets to be restored, are not obligated to pay the warehouse, deposit, reimbursements or fees of the custodians, depositaries – managers or supervisors incurred by CONSEP for management, deposit or custody of these assets.

The obligations obtained by the owner of the assets, pending payment prior to their seizure or confiscation, and covered by CONSEP, shall be paid by the owner of those assets prior to their return.

The return of the assets, ordered by the Judge, will become effective by signing the Act of Delivery-Receipt between the CONSEP depositary and the owner of the assets."

Art. 2.- Add the following after Art. 31 of the Rules on the Deposit of Assets Seized or Confiscated and delivered to CONSEP:

"Art. 31.1.- The costs and expenses incurred by CONSEP in the withholding, seizing, deposit, management or custody of the assets returned, in the application of Executive Decree N°

985 of March 27, 2008, published in Official Record N° 312 of April 9, 2008, as well as the assets of persons not accused, will be assumed by the State, and their financing will be contemplated in the budget of the National Council on Narcotic Drugs and Psychotropic Substances (CONSEP), in conformity with the provisions of Art. 9, subsection 1 of the Law on Narcotic Drugs and Psychotropic Substances.”

Art. 3.- Annul the Substitution Rules on the collection of deposit, custody, and management of assets and liquid assets seized and confiscated delivered to CONSEP, due to violations to Law 108, approved by the Management Board of CONSEP through Resolution N° 013 CD CCC of June 17, 2004, published in the Official Record N° 376 of July 13, 2004; section 3.10 of Art. 47 of the Organic Rules for Processes of the National Council on Narcotic Drugs and Psychotropic Substances, CONSEP; Resolution N° 2008 004 CD, published in Official Record N° 330 of May 6, 2008; and any other resolution that opposes this one.

19. Mr. Chaparro’s representatives expressed their conformity with the amendments adopted by the CONSEP, included in the report by the State of Ecuador. Mr. Lapo Íñiguez did not refer to compliance with this reparation.

20. The Commission observed that although it does not have a copy of the State’s resolution, “it takes cognizance of that indicated [by Ecuador] and, unless information to the contrary is presented by the victims’ representatives or there are errors in the quoted resolution, it observes that the State has complied with this reparation.”

21. The Court calls to mind that in the Order of April 29, 2009, it declared that the State had partially complied with this obligation, to the extent that it had modified the Rules on the Application of the Law on Narcotic Drugs and Psychotropic substances, so that no charges would be made for the deposit and handling of the assets seized from individuals who have not been convicted by final judgment, but that the CONSEP’s internal regulations contrary to said modification remained in effect.

22. Based on the information provided, the Court observes that the CONSEP’s internal regulations were in effect modified, in conformity with that ordered by the Court in its Judgment. Therefore, in view of the foregoing, it declares that the State has fully complied with this obligation.

*

* * *

23. Regarding the duty to adopt forthwith all legislative, administrative or other measures necessary to eliminate ex officio the criminal records of individuals acquitted or whose cases are definitely dismissed (*operative paragraph twelve of the Judgment*), the State reported that it had performed various regulatory and institutional amendments aimed at protecting individuals’ rights. It indicated that “the Ministry of Justice and Human Rights [...] is conducting a comprehensive reform project on criminal regulations (Criminal Code, Criminal Procedural Code, Code of Execution of Sentences).” It explained that although this reform contemplates “maintaining records of detained individuals [...], these records will guarantee and respect human rights.” In addition, this comprehensive reform will “prohibit judgment based on criminal history” and “will include a provision to eliminate ex officio the criminal records of individuals that have been definitely dismissed and acquitted of the causes of which they had been accused.” Lastly, it indicated that this reform project would be presented before Congress in September 2009.

24. Mr. Chaparro’s representatives observed that “they [did] not have any information on concrete actions taken by the State, therefore they could not provide information in this regard.” Mr. Lapo Íñiguez did not refer to compliance with this reparation.

25. The Inter-American Commission took cognizance of the information presented by the State and expressed that it was awaiting information on advances in this regard.

26. The Court values the government's initiative to reform criminal regulations. However, it observes the lack of information on measures to eliminate ex officio the criminal records of individuals definitely dismissed or acquitted. Therefore, it declares that this reparation measure is pending compliance and consequently asks the State to report on the measures adopted in this regard, within the term indicated in the operative section of the instant Order.

*

* *

27. In relation to the State and Mr. Chaparro's obligation to submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage (*operative paragraph thirteen of the Judgment*), the State reported that through the Ministry of Justice and Human Rights it hired the company Acurio y Asociados on March 10, 2009, to perform the technical appraisal necessary to determine the valuation of pecuniary losses, lost wages, and intangibles generated to the detriment of Mr. Chaparro due to the seizure of Plumavit factory. It indicated that the company delivered its final report⁹ in June 2009, after incorporating the observations of the victim's representatives and the Ministry of Justice and Human Rights, "which allow[s] [it] to begin a negotiation process." It indicated that the first negotiation meeting was set for July 16, 2009.

28. The representatives indicated that in the meeting of July 16, 2009, after accepting the reports by the independent expert witness hired by the Ministry of Justice and Human Rights, the parties agreed to pay Mr. Chaparro a compensation of US \$3.954.793 (three million nine hundred and fifty-four seven hundred and ninety-three US dollars), and for purposes of signing the corresponding agreement and subsequent payment, "the Attorney General's authorization would be requested." In addition, they mentioned that the Minister of Justice and Human Rights, through communication No. 05019 of September 17, 2009, "requested the Attorney General's authorization to reach an agreement under the terms described above."

29. Subsequently, Mr. Chaparro indicated that the Director of Human Rights of the Attorney General's Office issued communication No. 12425 of February 18, 2010, whereby it expressed "several concerns of the Attorney General's Office [...] with regards to the agreement [between the parties];" but that this communication "did not constitute an official answer, but only a report." The victim indicated that based on the above, and "after more than 6 months had passed without the Attorney General's Office issu[ing] a final opinion, [...] he decided not to continue with the friendly settlement procedure" and to request the creation of an arbitration court, in conformity with the provisions of the Judgment, which he communicated to the State on April 9, 2010, through a communication addressed to the Ministry of Justice and Human Rights and the Attorney General's Office. He reported that after renouncing to the friendly settlement procedure the Attorney General's Office issued a negative ruling on the signing of the agreement, "as it considered that the transaction had to be effective and categorically in favor of the interests of the State, and the mechanism selected [was] not valid to protect the interests of the State, and that the parties [had] to submit to the arbitration procedure ordered by the Court as [...] it [was] the ideal mechanism." Finally, he expressed that "he [was] waiting for the State to appoint the arbitrator, which according to the Judgment corresponds to the State." The victim and the representative highlighted that the State "is [o]nce again [...] delaying compliance with the Court's Judgment."

⁹ Cf. Summary of activities performed during the consulting services by the company "Acurio y Asociados" (file on monitoring compliance with Judgment, Volume II, folio 451), and Communication of the Subsecretariat of Human Rights and Coordination of Public Defense of Pablo Cavallos Palomeque of July 6, 2009, (file on monitoring compliance with Judgment, Volume II, folio 453).

30. The Commission indicated that it is waiting for the State to comply with this item of the Judgment as soon as possible and to submit the pertinent information.

31. The Court recognizes that, based on the information provided by the Parties, the State performed several steps to comply with this obligation. It observes that the parties agreed to perform an appraisal to determine the value of the losses incurred by Mr. Chaparro, based on which they agreed on a compensation amount. However, it also notes that the aforementioned agreement between the parties seems to have ended without complying with the instant obligation, and that currently both parties agree to submit the determination of the compensation owed to Mr. Chaparro to an arbitration court, in conformity with that indicated in paragraphs 232 and 233 of the Judgment. However, considering that the Court has not received information from the State in this regard, the Court requests the State to submit its observations, if any, on the information presented by Mr. Chaparro with regards to the creation of an arbitration court, within the term established in the operative section of this Order.

*

* *

32. With regards to the payment to Mr. Chaparro of the late interest corresponding to the pecuniary compensation of the administration fees and CONSEP charges, indicated in paragraph 245 of the Judgment (*operative paragraph fourteen of the Judgment*), the State indicated that the Ministry of Justice and Human Rights requested the Ministry of Finance, through communication No. 2454 of May 6, 2009, to issue the corresponding budget item in order to make the payment, and that it was "waiting for this amount to be transferred in order to perform the payment."

33. The representatives observed that Mr. Chaparro "has not been paid the amounts corresponding to the late bank interest for reimbursement of the administration fees and CONSEP charges." They stated that the payment of these amounts is still in process at the Ministry of Finance.

34. The Commission expressed that, in view of the information presented by the State, "it await[ed] information regarding compliance with this measure as soon as possible."

35. The Court observes that the payment of late interest owed to Mr. Chaparro, in conformity with paragraph 245 of the Judgment, has not been performed. Based on the foregoing, it requests the State to report on the advances achieved to comply with this obligation within the term established in the operative section of the instant Judgment.

*

* *

36. In relation to the activities for education and training for public officials (*paragraph 273 of the Judgment*), the representatives expressed that "[t]he State of Ecuador has not said anything about this point," and that "it is necessary to request the State to comply with this obligation."

37. The Court calls to mind that in the instant case it was deemed pertinent to "reiterate the measures for education and training [...] already ordered in the *Case of Tibi v. Ecuador*." This reiteration does not constitute the establishment of a new obligation, therefore the Court considers that compliance with the referred measures for education and training of public officials shall be assessed within the framework of the monitoring compliance with Judgment issued by the Court in that case, and not in relation to the instant Judgment.

*

* *

38. With regards to the investigation of the facts that resulted in the violations in the instant case, both the State and the representatives have submitted certain information to the Court.

39. The Court calls to mind that during the processing of the instant case, the State affirmed that it “would initiate the respective investigations into the actions of the officials who intervened in the proceeding, and that after the corresponding judicial and administrative assessment, it would determine the individual responsibilities.”¹⁰ At that time the Court accepted and took cognizance of the State’s affirmation.

40. In this regard, the Court considers that when it “takes cognizance” of the State’s commitments offered in the international venue, it does so in the understanding that the State, in good faith, offered to make them effective independently of that ordered by the Judgment.¹¹ “Taking cognizance” of those commitments does not imply ordering the performance of the specific measure or action to which the State freely compromised. Therefore, those commitments are independent of the reparation measures ordered in the Judgment.

41. Based on the foregoing, the Court considers that the investigation of the facts of the instant case does not constitute a reparation measure ordered by the Court in its Judgment, therefore its compliance is not subject to monitoring, without detriment to the law that assists victims or their representatives to demand compliance with the commitments freely contracted by the State domestically.

*

* *

42. In addition, the representatives reported that with regards to the obligation to eliminate Mr. Chaparro Álvarez and Lapo Íñiguez from the public records in which they still appear with a criminal record (*operative paragraph eight of the Judgment*), “[t]his item of the Judgment cannot be considered complied with, as [there is] new information [...] that allow[s] them to state the contrary.” They indicated that “attorneys specialized in the management of INTERPOL information” have told them that said body manages a record with different categories identified by colors according to severity, and that “apparently, in the records of consulates and embassies there is still information linking Mr. Juan Carlos Chaparro Álvarez [w]ith the crime of drug trafficking, which causes great detriment.” They indicated that they had requested the Ministry of Justice and Human Rights for a detailed explanation in this regard, and that they “express[ed] their full disagreement with the attitude adopted by police authorities, who had not provided complete information on the criminal records.”

43. Mr. Lapo Íñiguez mentioned that regarding the proceedings to eliminate his name from the public records, “he did them in person” prior to the public hearing held in the instant case.

44. The Court advises that the measure mentioned by the representatives was declared complied with in the Order of April 29, 2009, and at that time the representatives

¹⁰ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra* note 6, para. 256.

¹¹ Cf. *Case of Valle Jaramillo et al. v. Colombia. Interpretation of the Judgment on Merits, Reparations, and Costs*. Judgment of July 7, 2009. Series C No. 201, para. 50.

“express[ed] their conformity with the steps taken by the State [in that regard].¹²” In addition, it observes that the representatives’ assertions are not accompanied by any evidence of non-compliance by the State. Therefore, it reiterates that the State has complied with operative paragraph eight of the Judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of the Statute and 31 and 69 of its Rules of Procedure,¹³

DECLARES THAT:

1. In conformity with that indicated in Considering paragraphs 11 and 22 of the instant Order, the State has fully complied with the following obligations:

- a) inform the relevant private institutions that they shall eliminate from their records any reference to Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez as authors or suspects of the criminal act of which they were accused in this case (*operative paragraph nine of the Judgment*), and
- b) adapt its internal legislation to the parameters of the American Convention on Human Rights (*operative paragraph eleven of the Judgment*).

2. The State has partially complied with the obligation to disseminate the Judgment by television (*operative paragraph ten of the Judgment*), in conformity with that indicated in Considering paragraph 16.

3. It will maintain open the monitoring procedure until the obligations pending compliance in the instant case are complied with, in conformity with Considering paragraphs 16, 17, 26, 31, and 35, namely:

- a) disseminate the Judgment by radio and television (*operative paragraph ten of the Judgment*);
- b) adopt forthwith all the legislative, administrative or other measures necessary to eliminate *ex officio* the criminal record of those persons who are acquitted or whose cases are dismissed (*operative paragraph twelve of the Judgment*);
- c) submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage for Mr. Chaparro (*operative paragraph thirteen of the Judgment*), and
- d) pay Mr. Chaparro the late bank interest in Ecuador indicated in paragraph 245 of the Judgment (*operative paragraph fourteen of the Judgment*).

¹² *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Monitoring Compliance with Judgment.* Order of the Court of April 29, 2009, considering eight.

¹³ Rules of Procedure approved by the Court in its LXXXV Ordinary Period of Sessions held from November 16 to 28, 2009.

AND DECIDES:

1. To require the State to adopt all measures necessary to effectively and promptly comply with the obligations pending compliance ordered by the Court in the Judgment on merits, reparations, and costs of November 21, 2007, in conformity with that stipulated in Article 68(1) of the American Convention on Human Rights.
2. Request the State to submit to the Inter-American Court, as of August 19, 2010, at the latest, a detailed and thorough report indicating all of the measures adopted to comply with the reparations ordered by the Court that are still pending compliance, in conformity with that indicated in Considering paragraphs 16,17, 26, 31, and 35.
3. Request the representatives and Mr. Lapo Íñiguez to submit their observations on the State's report mentioned in the operative paragraph above within four weeks as of the date of receipt of this report.
4. Request the Inter-American Commission to submit its observations on the report mentioned in operative paragraph two within six weeks of submission of said report.
5. Continue monitoring the items pending compliance from the Judgment on preliminary objections, merits, reparations, and costs of November 21, 2007.
6. Require the Secretariat to notify the instant Order to the State, the Inter-American Commission, and the representatives of Mr. Chaparro Álvarez, and Mr. Lapo Íñiguez.

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 Alesandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary