

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF AUGUST 26, 2010**

CASE OF CANTOS V. ARGENTINA

MONITORING COMPLIANCE WITH JUDGEMENT

HAVING SEEN:

1. The Judgment on merits, reparations and costs issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "the Tribunal") on November 28, 2002 (hereinafter "the Judgment").

2. The Order of the Inter-American Court of November 28, 2005; July 12, 2007, and July 6, 2009, about the compliance with judgment. In this last Order the Tribunal stated:

1. [t]hat [...] the State ha[d] complied with the following obligations:
 - a) refrain from charging Mr. José María Cantos the filing fee and late charge (*operative paragraph one of the Judgment*); [and]
 - b) lift the attachments, general property encumbrances and other measures ordered against the assets and commercial activities of Mr. José María Cantos to guarantee payment of the court filing fee and the regulated professional fees (*operative paragraph four of the Judgment*).
2. [t]hat [...] the State ha[d] partially complied with the following obligation:
 - a) assume the payment of the fees and expenses corresponding to the experts (*operative paragraph three of the Judgment*).
3. [t]hat [...] the following obligations are pending compliance:

* Judge Leonardo A. Franco, of Argentinean nationality, excused himself from knowing the compliance with judgment of the present case, in conformity with articles 19(2) of the Statute, and 19 and 21 of the Rules of Procedure of the Court, passed on its LXXXV Ordinary Period de Sessions, carried out from November 16 to November 28, 2009, which was accepted by the Court.

- a) set at a reasonable sum the professional fees regulated in case C-1099 of the Supreme Court of Argentina (*operative paragraph two of the Judgment*), and
 - b) assume the payment of the fees and expenses of the attorneys engaged by the State and the Province of Santiago del Estero (*operative paragraph three of the Judgment*).
4. It will maintain open the procedure for monitoring compliance with all of the obligations pending compliance mentioned in the two previous declaratory paragraphs.

And decide[d]:

- 1. To call upon the State to adopt all measures necessary to promptly and effectively comply with all pending aspects that were ordered by the Court in the Judgment on merits, reparations, and costs of November 28, 2002, in conformity with the provisions of Article 68(1) of the American Convention on Human Rights.
- 2. To request the State to submit to the Inter-American Court of Human Rights, on October 15, 2009, a full and detailed report indicating all measures adopted to comply with the reparations ordered by this Court that are still pending compliance and, specifically, to refer to the information required by this Court [...].
- 3. To request the victim's representative and the Inter-American Court of Human Rights to submit their observations on the State report mentioned in the previous operative paragraph, within four and six weeks, respectively, of receipt of the report.
- 4. To continue monitoring compliance with the paragraphs pending compliance of the Judgment on merits, reparations, and costs of November 28, 2002.

[...]

3. The brief of October 15, 2009, through which the Argentine Republic (hereinafter "the State" or "Argentina") attached a copy of a document regarding the compliance of operative paragraph fourth of the Judgment.

4. The report of the Secretariat of the Court (hereinafter "the Secretariat") of October 20, 2009, in which it indicated the State that in the brief presented on October 2009, it did not referred to that ordered by the Court in declarative paragraphs second and third of the Order of July 6, 2009. Because of this, following the instructions of the Presidency, the State was requested to present a complete, detailed State report in which it indicated all the measures adopted to comply with the reparations ordered by the Court on the Judgment that are still pending to be complied with, according to the stated in the Order of July 6, 2009. This requirement was reiterated on November 27, 2009; and February 25, May 14, and June 30, 2010.

CONSIDERING:

- 1. That the monitoring of compliance of the decisions is an inherent faculty to the jurisdictional functions of the Court.
- 2. That Argentina is State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") from September 5, 1984, and acknowledged the mandatory jurisdiction of the Court that same day.

3. That the obligation to comply with the rulings of the Tribunal concerns the basic principle of the law over the international responsibility of the State, supported by the international jurisprudence, through which the States are required to comply with their conventional international obligations in good faith (*pacta sunt servanda*).¹

4. That the State Parties in the Convention must guarantee the compliance of the conventional dispositions and their inherent effects (*effet utile*) regarding their corresponding domestic law. This principle applies not only according with the substantive forms of the human rights treaties (that is to say, the ones containing the dispositions on the protected rights), but also regarding the Rules of Procedure, like those referring to the compliance of the decisions of the Court. These obligations must be interpreted and applied in such way that the protected warrantee would be practical and effective, considering the special nature of the human rights treaties.²

5. That the State Parties that have acknowledged the mandatory jurisdiction of the Court ought to comply with the obligations stated by the Tribunal. This obligation includes that the State must inform the Court about the measures adopted to comply with that ordered by the Court in the Judgment. The opportune observance of indicating the Tribunal how the State is complying with each of the aspects ordered by the Court is essential for the evaluation of the compliance with the case.³ Likewise, the General Assembly of the Organization of American States (OAS) has reiterated that in order for the Tribunal to comply with the obligation of reporting them about the compliance of its judgment, it is necessary for the State Parties to report opportunely with the information required by the Court.⁴

6. That the State was reminded, repeatedly (*supra* Having Seen 4), about its obligation of reporting on the measures adopted for the compliance with Judgment through notes sent by the Secretariat, following the instructions of the Presidency.

¹ 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, par. 35; *Case Baena Ricardo et al. V. Panama*. Monitoring Compliance with Judgment. Order of the Court of May 28, 2010, Considering fifth, and *Case Vargas Areco V. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Court of July 20, 2010, Considering fourth.

² Cf. *Case Ivcher Bronstein V. Peru*. Competence. Judgment of September 24, 1999, Series C No. 54, Par. 37; *Case Vargas Areco V. Paraguay*, *supra* note 1, Considering fifth; and *Case Baena Ricardo et al. V. Panama*, *supra* note 1, Considering sixth.

³ Cf. *Caso Barrios Altos Vs. Perú*. Monitoring Compliance with Judgment. Order of the Court of September 22, 2005, Considering seventh; *Case Baena Ricardo et al. V. Panamá*, *supra* note 1, Considering seventh, and *Case Ximenes Lopes V. Brasil*. Monitoring Compliance with Judgment. Order of the Court of May 17, 2010, Considering seventh.

⁴ AG/RES. 2292 (XXXVII-O/07) Order of the General Assembly of the OAS passed on the fourth plenary session, celebrated on June 5, 2007, titled "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights," operative paragraph fourth; AG/RES. 2408 (XXXVIII-O/08) Order of the General Assembly of the OAS passed on the fourth plenary session, celebrated on June 3, 2008, titled "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights," operative paragraph fourth; and AG/RES.2500 (XXXIX-O/09) Order of the General Assembly of the OAS passed on the fourth plenary session, celebrated on June 4, 2009, titled "Observations and Recommendations to the Annual Report of the Inter-American Court of Human Rights," operative paragraph fourth.

7. That according to the stated in article 67 of the American Convention, the judgments of the Court must be complied with promptly and entirely by the State. Likewise, article 68(1) of the American Convention stipulates that “[t]he State Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” The conventional obligation of the State Parties to comply with the decisions of the Court promptly binds all the State branches and organizations.⁵

8. That the State has not informed about the compliance with judgment and, therefore, has failed to carry out its conventional obligation.

9. That without the due information from the State, this Court cannot practice its supervision functions on the execution of the judgments issued. For the sake of ensuring and guaranteeing the application of the reparation measures issued, this Tribunal ought to be able to have and check the information about the execution of the Judgment. Consequently, the Court considers necessary for the State to inform about the compliance with the obligations relative to fixing a reasonable amount for the fees regulated in case C-1099 of the Supreme Court of Justice of the Argentine Nation, and assume the payment of the fees and costs corresponding to the lawyers of the State and the Santiago del Estero Province, as was stated in operative paragraphs second and third of the Judgment.

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10. That when monitoring the integral compliance with Judgment issued in the present case (*supra* Having Seen 1), the Court considers it indispensable for the State to present information about the operative paragraphs pending compliance according to that considered in this Order (*supra* Considering 9).

11. That the Court will consider the general state of compliance for such Judgment once it receives the appropriate information about the operative paragraphs related to the economical reparations pending compliance.

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, Article 25(1) and 30 of its Statute and Article 31(2) of its Rules of Procedure,

⁵ Cfr. *Caso Castillo Petruzzi y otros Vs. Perú*. Supervisión de Cumplimiento de Sentencia. Resolución de la Corte de 17 de noviembre de 1999. Serie C No. 59, Considerando tercero; *Caso Baena Ricardo y otros Vs. Panamá*, *supra* nota 1, Considerando quinto, y *Caso Vargas Areco Vs. Paraguay*, *supra* nota 1, Considerando cuarto.

DECLARES THAT:

1. According to what is stated in Considerings 6 to 9 of the present Order, the state has failed to carry out its obligation of informing this Court about the measures adopted to comply with that ordered in the Judgment on merits, reparations and costs issued on November 28, 2002.
2. It will keep open the process of monitoring compliance with Judgment to those operative paragraphs of the Judgment of November 28, 2002, that are still pending compliance.

AND DECIDES:

1. To request the State to adopt all the measures necessary for the prompt and effective fulfillment of the paragraphs pending compliance of the Judgment on Merits, Reparations and Costs of the present case, according to that considered in the present Order, and with that stipulated on article 68(1) of the American Convention on Human Rights.
2. To request the State to present to the Inter-American Court of Human Rights, no later than November 13, 2010, a report in which all the adopted measures for the compliance with that ordered by the Supreme Court are indicated.
3. To request the victim's representative and the Inter-American Commission on Human Rights to present the observations that are deemed pertinent to the State report, mentioned in the latter operative paragraph, within the periods of four and six weeks respectively, computed as of the receipt of the State's report.
4. To continue monitoring the paragraphs pending compliance with the Judgment on merits, reparations and costs of November 28, 2002.
5. To require the Secretariat to notify the present Order to the State, to the Inter-American Commission on Human Rights, and to the victim.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

Comuníquese y ejecútese,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary