

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 1, 2010**

**CASE OF TRISTÁN DONOSO V. PANAMÁ
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on Preliminary Objections, Merits, Reparations, and Costs of January 27, 2009 (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), whereby it decided, *inter alia*, that:

13. The State shall pay Mr. Tristán Donoso the amount set forth in paragraph 191 of the [...] Judgment for non-pecuniary damages, within one year from the date of notification and pursuant to the provisions of paragraphs 217 to 222 of the [...] Judgment.

14. The State shall annul the criminal conviction against Mr. Santander Tristán Donoso and all the consequences arising from it, within one year from the date of notification of the [...] Judgment, under the terms of paragraph 195 [t]hereof.

15. The State shall publish paragraphs 1 to 5; 30 to 57; 68 to 83; 90 to 130; 152 to 157 and the operative part of the [...] Judgment, only once and without footnotes, in the Official Gazette and in another newspaper of nationwide circulation. Such publications shall be made within six months from the date of notification of the [...] Judgment, as required in paragraph 197 [t]hereof.

16. The State shall pay the amount established in paragraph 216 of the [...] Judgment, in reimbursement of costs and expenses, within one year from the date of notification of the [...] Judgment and in the manner provided by paragraphs 217 to 222 of the [...] Judgment.

2. The briefs of August 26, 2009, and annexes, of May 12, 2010, and annexes, of July 22, 2010, and annexes, and August 25, 2010, and annexes, whereby the

Republic of Panama (hereinafter “the State” or “Panama”) reported on the status of compliance with the Judgment.

3. The briefs of June 11, 2010, and annexes, and of August 10 and 26, 2010, whereby the victim’s representatives (hereinafter “the representatives”) submitted their observations on that reported by the State regarding compliance with the Judgment.

4. The briefs of July 28, 2010 and annex, and of August 10 and 27, 2010, whereby the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”), submitted its observations on that reported by the State with regards to compliance with the Judgment.

CONSIDERING THAT:

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

2. Panama has been a State Party to the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) since June 22, 1978, and that it recognized the obligatory jurisdiction of the Court on May 9, 1990.

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.” Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

4. Considering 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 judgment 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 bind all powers and organs of the State.³

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Baena Ricardo et al. v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering three; and *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of July 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 Baena Ricardo et al. Monitoring Compliance with Judgment*, *supra* note 1, Considering five; and *Case of Vargas Areco*, *supra* note 1, Considering four.

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. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁴

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8. With regards to the payments ordered for non-pecuniary damages, costs, and expenses (*operative paragraphs thirteen and sixteen of the Judgment*), Panama reported that on March 29, 2010, it paid Mr. Tristán Donoso B/. 30.000,00 (thirty thousand balboas, equivalent to thirty thousand US dollars). The state submitted a copy of the settlement agreement signed by the Secretary of Economy and Finance of Panama and Mr. Tristán Donoso.

9. The representatives confirmed that the payments “were duly made,” therefore they requested the Court to establish that this reparation measure “has been complied by the State.”

10. The Commission took note of the information provided by the State.

11. Based on the information provided by the parties, the Court concludes that the State has fully complied with the payments corresponding to the compensation for non-pecuniary damages and the reimbursement of costs and expenses set forth in operative paragraphs thirteen and sixteen of the Judgment.

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12. In relation to the obligation to annul the criminal conviction against Mr. Tristán Donoso and all the consequences arising from it (*operative paragraph fourteen of the Judgment*), the State reported and submitted a copy of the documents that confirm the actions taken. On May 12, 2010, through Agreement Number 240, the Full Supreme Court of Justice expressed that “the Republic of Panama, as a member of the international community, recognizes, respects, and complies with the decisions of the Inter-American Court of Human Rights,” and decided to submit this Court’s

³ Cf. *Case of Castillo Petrucci et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering three; *Case of Baena Ricardo et al. Monitoring Compliance with Judgment*, *supra* note 1, Considering five, and *Case of Vargas Areco*, *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 Baena Ricardo et al. Monitoring Compliance with Judgment*, *supra* note 1, Considering six, and *Case of Vargas Areco*, *supra* note 1, Considering five.

Judgment to the Criminal Chamber of the Supreme Court of Justice “so as to review the criminal judgment of April 1, 2005, whereby Mr. Tristán Donoso was convicted, and all the consequences stemming from it [...]”.

13. On May 12, 2010, the Second Criminal Chamber of the Supreme Court of Justice issued a judgment indicating that:

Article 2462 of Judicial Code establishes that if after executing a conviction a criminal law is enacted, or as a result of a constitutional motion, the law or the decision favor the accused, the Supreme Court of Justice, Criminal Chamber, will review the conviction so as to apply this law or *decision*, indicating as well that the revision can be made of its own motion.

In this regard, since the decision of the Inter-American Court of Human Rights clearly favors the situation of Mr. **SANTANDER TRISTÁN DONOSO**, it is necessary, based on the aforementioned article, to revise the Judgment of April 1, 2005 issued by the Second Supreme Court of Justice of the First Judicial District of Panama, so as to apply it.

It is worth noting that the Republic of Panama, as a State Party to the American Convention on Human Rights since June 22, 1978, recognized, without reservations, on May 9, 1990, the obligatory jurisdiction of the Inter-American Court of Human Rights.

Consequently, based on that set forth in the Judgment of January 27, 2009, delivered by the Inter-American Court of Human Rights, this Superiority considers necessary to acquit Mr. **SANTANDER TRISTAN DONOSO** from the charges of **FALSE ACCUSATION** to the detriment of **JOSÉ ANTONIO SOSSA** and, consequently, to annul the **EIGHTEEN (18) MONTH** prison sentence to which he had been convicted, replaced by a **SEVENTY-FIVE (75) DAYS-FINE** which totaled **SEVEN HUNDRED FIFTY BALBOAS (B/.750.00)**; the disenfranchisement from serving as government employee for the same term as the prison sentence that had been imposed as additional punishment; as well as the payment of the civil compensation for pecuniary damages and pain and suffering to the victim, of which he had also been convicted.

Therefore, the Department of Judicial Investigation of the National Police must be notified, to omit from Mr. **SANTANDER TRISTÁN DONOSO**'s criminal history any criminal record related to the Judgment of April 1, 2005; and also orders to annul any communication made for the execution of the aforementioned Judgment, decision which shall be applied immediately.

OPERATIVE SECTION

Based on the foregoing, the Supreme Court of Justice, Criminal Chamber, **ACQUITS SANTANDER TRISTÁN DONOSO** of the charges of perpetrator of the crime of **FALSE ACCUSATION** to the detriment of **JOSÉ ANTONIO SOSSA**.

The punishment of **EIGHTEEN (18) MONTHS** of prison imposed on Mr. **SANTANDER TRISTÁN DONOSO IS ANNULLED**, as well as its replacement for a **SEVENTY-FIVE (75) DAYS-FINE**, at a ratio of **TEN BALBOAS (B/.10.00) PER DAY**, which totaled **SEVEN HUNDRED FIFTY BALBOAS (B/.750.00)**;

The disenfranchisement from serving as government employee for the same term as the prison sentence that had been imposed on **SANTANDER TRISTÁN DONOSO** as additional punishment **IS ANNULLED**;

The payment of the civil compensation for pecuniary damages and pain and suffering to the victim, of which **SANTANDER TRISTÁN DONOSO** had also been convicted **IS ANNULLED**.

The communications made for the execution of the Judgment of April 1, 2005, **ARE ANNULLED**.

The Department of Judicial Investigation of the National Police **IS ORDERED** to omit from Mr. **SANTANDER TRISTÁN DONOSO**'s criminal history any criminal record related to the Judgment of April 1, 2005.

13. The representatives valued the issue of the agreement and the judgment and considered that these constitute "a substantial step to effectively comply with the reparation ordered by [the] Court." They added that the decisions submitted by the State "allow concluding that they effectively comply with operative paragraph [fourteen] of the [J]udgment." Without detriment to the above, they indicated that "it is necessary for the State to prove that these orders have been adequately followed;" specifically, they requested a document to be sent indicating the correction of Mr. Tristán Donoso's criminal history.

14. The Commission "value[d] the decisions issued domestically and consider[ed] that they constitute significant progress in complying with the obligation to annul the conviction imposed on the victim." Likewise, it awaited information from the State "regarding steps that, in practical terms, are necessary for the materialization of said decisions by the different state entities involved."

15. Panama, in response to the request of the Court's President and the previous observations, submitted a certification dated August 20, 2010, of the criminal history of Mr. Tristán Donoso, "to prove that the State [...] duly complied with the Judgment of the Second Criminal Chamber of the Supreme Court of Justice of May 12, 2010." In this certificate of criminal history it is observed that Mr. Tristán Donoso "as recorded in the Department of Personal Identification and Files for Individual Arrest, has not been convicted of any police contraventions or any common crimes."

17. The representatives reported that they spoke with Mr. Tristán Donoso, "who expressed [that] he is pleased with the certification submitted by the [...] State [...], which shows that his criminal history has been corrected."

18. The Commission observed "with satisfaction the certificate by the National Police regarding Mr. Tristán Donoso's criminal history and consider[ed] that the elimination of the criminal records is an essential step to eliminate the effects of his conviction."

19. The Court observes and values the decision of the Supreme Court of Justice of Panama, as well as the Judgment by the Criminal Chamber, whereby it decided to annul the Judgment of April 1, 2005 and all of its consequences, including prison sentence, its replacement by days fine, the additional punishment of temporary disenfranchisement from serving as government employee, the payment of the civil compensation for pecuniary damages and pain and suffering to which Mr. Tristán Donoso had been convicted, the communications made for the execution of the domestic Judgment, and ordered the elimination from the criminal history of any

criminal record related to the aforementioned domestic judgment. In this regard, the Court takes cognizance that, according to the information provided by the State, there is no criminal record related to the domestic proceeding which ended with this Court's judgment. Based on the foregoing, the Court considers that Panama complied with the obligation to annul the criminal conviction imposed on Mr. Tristán Donoso and all of the consequences stemming from it, established in operative paragraph fourteen of the Judgment.

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20. Regarding the obligation to publish once specific paragraphs of the Judgment in the Official Gazette and another newspaper of nationwide circulation (*operative paragraph fifteen of the Judgment*), Panama reported that the publications ordered were made in the newspaper La Crítica of August 19, 2009, and in the Official Gazette of August 21, 2009, and submitted copies of both publications.

21. The representatives expressed that they reviewed the copies submitted and found several errors. In both "the numbers of the paragraphs in the publication do not correspond to the numbers of the paragraphs in the Judgment, which implies that the references in several sections –for example in the operative paragraphs- do not correspond to the numbering in the published text." On the other hand "in both cases the titles of the sections which [the] Court ordered to be published were omitted." Consequently, they requested the Court to take these observations into account when assessing compliance with this reparation.

22. The Commission considered that "[b]ased on the information available [...] the State has complied with this point of the [J]udgment."

23. The Court observes that the State made the publications ordered in the Judgment on August 19 and 21, 2009. With regards to the representatives' observations, the Court observes that the paragraphs ordered were indeed published, although with a different numbering, and that the titles of some of the sections were not included, as was indicated in the Judgment. Without detriment to the above, the Court considers that the errors in the publication do not affect the goal or compliance with this reparation. The Court takes into consideration, in addition, that the representatives did not consider that these errors entailed non-compliance with the reparation ordered, but limited themselves to expressing that the Court should take those aspects into consideration. Therefore, based on the information submitted by the parties, the Court concludes that the State complied with the obligation to publish the Judgment established in operative paragraph fifteen thereof.

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24. The Inter-American Court values that the State has fully complied with the reparation measures ordered by the Judgment in the instant case. Specifically, the Court recognizes the efforts by the Supreme Court of Justice of Panama to implement the adequate proceeding, in conformity with its domestic legislation, to

comply with a reparation measure that initially, as indicated, presented complexities.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its decisions, pursuant to Articles 67 and 68(1) of the American Convention on Human Rights and Articles 30 of the Statute and 31(1) of the Court's Rules of Procedure,

DECLARES:

1. That in conformity with that set forth in Considering paragraphs 11, 19, and 23 of the instant Order, the State has fully complied with the operative paragraphs of the Judgment issued in the instant case, which establish that the State shall:

a) pay Mr. Tristán Donoso the amount set forth in paragraph 191 of the [...] Judgment for non-pecuniary damages, within one year from the date of notification and pursuant to the provisions of paragraphs 217 to 222 of the [...] Judgment (*operative paragraph thirteen of the Judgment of January 27, 2009*);

b) annul the criminal conviction against Mr. Santander Tristán Donoso and all the consequences arising from it, within one year from the date of notification of the [...] Judgment, under the terms of paragraph 195 [t]hereof. (*operative paragraph fourteen of the Judgment of January 27, 2009*);

c) publish paragraphs 1 to 5; 30 to 57; 68 to 83; 90 to 130; 152 to 157 and the operative part of the [...] Judgment, only once and without footnotes, in the Official Gazette and in another newspaper of nationwide circulation. Such publications shall be made within six months from the date of notification of the [...] Judgment, as required in paragraph 197 [t]hereof. (*operative paragraph fifteen of the Judgment of January 27, 2009*);

d) pay the amount established in paragraph 216 of the [...] Judgment, in reimbursement of costs and expenses, within one year from the date of notification of the [...] Judgment and in the manner provided by paragraphs 217 to 222 of the [...] Judgment. (*operative paragraph sixteen of the Judgment of January 27, 2009*).

2. That, consequently, the Republic of Panama has fully complied with the Judgment of January 27, 2009 in the case of Tristán Donoso, in conformity with the stipulations of Article 68(1) of the American Convention of Human Rights, which

establishes the obligation of the States Parties to comply with the judgments issued by the Court.

AND DECIDES:

1. To declare closed the case of Tristán Donoso, on the grounds that the State of Panama has fully complied with that ordered in the Judgment issued by the Inter-American Court of Human Rights of January 27, 2009.
2. To close the file on the instant case.
3. To communicate this Order to the General Assembly of the Organization of American States in their next regular period of sessions, through the Annual Report of the Inter-American Court of Human Rights 2010.
4. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the State of Panama, to the Inter-American Commission on Human Rights, and to the victim's representatives.

Diego García-Sayán
President

Leonardo A. Franco

Manuel 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