

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 15, 2010
CASE OF KIMEL V. ARGENTINA
MONITORING OF COMPLIANCE OF JUDGMENT

HAVING SEEN:

1. The Judgment on merits, reparations and costs (hereinafter "the Judgment") issued in the present case by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") on May 2, 2008.

2. The Order of the Court of May 18, 2010, related to the monitoring of compliance with the Judgment, whereby it ruled:

1. In accordance with the [present] Order, the State [has] fully complied with the following duties:

- a) to pay the amounts set in the Judgment as compensation for pecuniary and non-pecuniary damage, and the reimbursement of legal costs and expenses (*operative paragraph six of the Judgment*);
- b) to immediately remove the name of Mr. Kimel off all public records where he [was] shown to have a criminal record in relation to the present case (*operative paragraph eight of the Judgment*);
- c) to carry out the publications indicated in paragraph 125 of the Judgment (*operative paragraph nine of the Judgment*); and,
- d) to bring its domestic legislation into conformity with the provisions of the Inter-American Convention on Human Rights, so that the inaccuracies acknowledged by the State be amended, in order to comply with the requirements of legal certainty so that, consequently, the exercise of the right to freedom of thought and expression is not affected (*operative paragraph eleven*).

2. The monitoring proceedings [will] remain open until full compliance with the outstanding measures is achieved in the present case, namely to:

- a) nullify the criminal sentence imposed on Mr. Kimel and all the effects thereof (*operative paragraph seven of the Judgment*); and,

* Judge Leonardo A. Franco, of Argentine nationality, was excused from hearing this case prior to the issuance of the Judgment on May 2, 2008. Consequently, he did not participate in the deliberation or signing of the present Order.

** Order adopted by the Court at its XLII Period of Special Sessions, held in Quito, Ecuador from 15 to 19 November, 2010.

- b) hold a public act of acknowledgement of responsibility (*operative paragraph ten of the Judgment*).

3. The brief of August 19, 2010, by which the Republic of Argentina (hereinafter “the State” or “Argentina”) presented its report about compliance with the outstanding points of the Judgment .

4. The briefs of July 8 and September 20, 2010 and their annexes, by which the representatives of the victim (hereinafter “the representatives”) presented information about the compliance with the Judgment and their comments on that set forth by the State concerning the issue.

5. The communication of October 8, 2010, by which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented its comments on the information issued by the State and on the briefs of the representatives regarding compliance with the Judgment.

CONSIDERING THAT:

1. Monitoring of compliance with its decisions is an inherent power of the judicial functions of the Court.

2. Argentina has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “Convention”) since September 5, 1984, and accepted the compulsory jurisdiction of the Court on the same date.

3. Pursuant to Article 68(1) of the American Convention, “[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, States must ensure that the rulings set out in the decisions of the Court are implemented domestically.¹

4. In view of the final and incontestable character of the judgments of the Court, as established in Article 67 of the American Convention, the State should comply with them fully and promptly.

5. The duty to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of international responsibility of the State, supported by international jurisprudence, according to which States must comply with their international treaty obligations in good faith (*pacta sunt servanda*).

6. The States Parties to the Convention must guarantee compliance with the provisions thereof and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of

¹ Cf. *Case of Baena Ricardo and others v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, paragraph. 131; *Case of Albán Cornejo and others v. Ecuador*. Monitoring of Compliance with Judgment. Order of the Court of August 27, 2010, third Considering Clause, and *Case of Tristán Donoso v. Panama*. Monitoring of Compliance with Judgment. Order of the Court of September 1, 2010, third Considering Clause.

human rights treaties.²

1. Regarding the obligation to nullify the criminal sentence imposed on Mr. Kimel and all the effects thereof (operative paragraph seven of the Judgment).

7. The State reported that it had consulted different State entities about “the possibility that the State [would] promote the adoption of a ruling that [would] declare the illegality of the sentence imposed on Mr. Kimel.” It indicated that the Supreme Court of Justice of the Nation had manifested that, “the aspects related to the operative paragraph in question ‘...must [be] processed in the respective judicial proceedings following our legal system’s most suitable proceedings...’” In light of this recommendation, the Board of Legal Matters of the Ministry of Foreign Affairs issued a ruling on the legal viability of the State filing an application for review of the judgment imposed on Mr. Kimel, by which it explained that “it may file an application for review through the retrospective application of a criminal law more benign than that applied in the judgment.” Also, in said ruling, the State manifested that “the persons able to [exercise said recourse would be:] 1) the convicted and/or his defense, if he were unable, his legal representatives, or, if he had died, his spouse, his ancestors, descendants or siblings[, and] 2) the Public Prosecutor.” Following this ruling, on February 5, 2010, the administrative proceedings were sent to the Attorney General’s Office of the Nation “for the purposes of considering the possibility that the Public Prosecutor’s Office [would] present the corresponding application for review.” On April 13, 2010, the Attorney General’s Office indicated that “it deem[ed] that [said] petition [would] not be an issue that concerns [the] Attorney General given that slander is privately actionable [, and that a]ccording to [the] criminal system and criminal proceedings [of Argentina], the Public Prosecutor’s Office [would] not be procedurally competent for such crimes and therefore, [would] not have the power to file a application for review for a condemnatory judgment.” According to the Attorney General’s Office, the following persons are qualified to file such an application for review, “the convicted, and if he had died, his spouse, his ancestors, descendants or siblings.” In virtue of the conclusions of these bodies, Argentina manifested that “the State lacks the procedural legitimacy to file an application for review in the present case.” Nevertheless, the State manifested “its determination to send [...] an *amicus curiae* to the respective court in the eventuality that the petitioners decide to file the aforementioned application for review.”

8. The representatives manifested their concern for, and rejection of, “the stance adopted by certain Argentine state-run agencies that maintain that it is the victim himself – or, in this case, his next of kin- that must make new legal and procedural efforts so that the State can comply with this point of the [J]udgment of the Court.” They consider that the State “has not made sufficient efforts to comply, in a comprehensive and holistic manner, with the [J]udgment.” They that, in light of an international duty, “reasons related to the limitations of domestic law do not justify the non-compliance;” therefore, the different State agencies must adapt their practices so as to effectively comply with the measures set forth by the Inter-American Court, including encouraging any necessary legal amendments. They expressed their concern regarding the State’s inability to nullify a civil or criminal sentence when ordered to do so by an international human rights body; however, they insist that this does not constitute an excuse to cease implementing the decisions. Accordingly, they referred to the jurisprudence of the Supreme Court of Justice of the Nation of Argentina, according to which “the lack of guarantees or mechanisms to uphold these rights must addressed by the Judicial Power that acts as the final guarantor of [such] rights.” They

² Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, paragraph 37; Order of the Court of September 1 2010, Considering sixth and *Case of Tristán Donoso v. Panama*, *supra* note 1, Considering Clause six.

stated that the solution proposed by the State “implies imposing on the victim, once again, the burden of ensuring compliance with a judgment, in their favor, after years of litigation before both national and international courts.” Notwithstanding the prior considerations, they stated that in the coming days they would file the respective application for review, “so as to speed up full compliance with the [J]udgment.” To this end, they expressed that “they [undertook] the [State’s] commitment to either act as *amicus curiae* or interested third party in the case” after filing the application, and they would also inform the Court of the stance held by those judicial authorities that must take part in the case. They added that the State “[must], at least, bear the costs and expenses that this work entail[ed],” manifesting that they hoped the Court would set an amount “as it has been doing in recent judgments, making evidentiary standards flexible and executed [in] an fair manner.”

8. The Commission stated that “as a general rule, it is not acceptable that the State cites domestic legal obstacles as a reason to not comply with their international obligations,” which include the orders issued by the Inter-American Court. Nevertheless, the Commission observed that given, *inter alia*, the representatives stated that they would file an application for review and that the State manifested that it would support said filing as an *amicus curiae*, they were following the development of the proceeding and hoped that it would be processed promptly so that that the Tribunal could acknowledge compliance with all the reparation measures ordered in the present case. Also, the Commission considered that Argentina must pay the expenses incurred by the representatives throughout the judicial proceedings.

9. The Court reminds that in paragraph 123 of the Judgment it ordered that the State must, within six months of its notification, “nullify [the condemnatory judgment imposed on Mr. Kimel that constituted a violation of his right to the freedom of expression], in every aspect, including the implications that it [would] have upon third parties, namely: 1) labeling Mr. Kimel as the author of slander; 2) imposing a one year suspended prison sentence, and 3) the order to pay \$20,000 (twenty thousand Argentine pesos).”

11. The Tribunal values the willingness shown by the representatives to file an application for review in order to advance towards compliance with the aforementioned reparation, given that the State would not do so on in its own accord. Nevertheless, the Court deems it appropriate to remind that the duty established in operative paragraph seven of the Judgment is an obligation of the State, and it cannot ignore its pre-established international responsibility based on domestic order grounds.³ Accordingly, the Tribunal notes that in other cases in which this Court also ordered, as a reparation measure, to nullify the criminal conviction imposed on a victim for slander, in violation of his rights, the State proceeded on its own accord to comply with the reparation ordered, but rather the intervention of the victim or his next of kin is also necessary.⁴ Accordingly, the Court notes that the present obligation is not fulfilled by the mere intervention of the State as an *amicus curiae* in the appropriate proceedings, but it requires that the corresponding State authorities nullify the criminal sentence imposed against Mr. Kimel, as well as all the effects thereof, as set forth in the Judgment. Likewise, the Court reminds that the treaty

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, par. 35; *Case of De la Cruz Flores v. Perú*, *supra* note 2, Considering fifth, and *Case Tristán Donoso v. Panama*, *supra* note 1, Considering Clause five.

⁴ Cf. *Case of Tristán Donoso V. Panama*, *supra* note 1, Considering Clause twelve to nineteen.

obligations of the State Parties bind all the branches and bodies of the State,⁵ including the bodies of the Judicial Branch. Consequently, although it positively values the collaboration offered by the representatives of the victim to comply with this duty, the Court reiterates that it is the State's, by means of the appropriate bodies, responsibility to adopt the necessary measures to fully comply with that set forth by the Court, even if there is a recourse that may be initiated by the victim or his next of kin, under domestic law. However, due to the willingness shown by the representatives regarding the filing of the aforementioned recourse so as to expedite compliance with the Judgment and the willingness of the State to send the aforementioned *amicus curiae*, the Tribunal continues to await information from the representatives and the State regarding the development and result of the aforementioned application for review, in the understanding that it is the duty of the State to adopt the measures necessary to comply, through its own initiative⁶, with that set forth by this Court, complying within six months from the notification of the Judgment.

12. Furthermore, the Tribunal takes note of the request of the representatives regarding the incidental expenses that could be incurred through the aforementioned application for review (*supra* Considering Clause 0). Accordingly, the Court considers that compliance with the reparation measures provided for in the Judgment shall not entail new expenditure for the victim and his next of kin, such as those entailed by filing a new judicial application and its processing.⁷ Therefore, the Tribunal requires the State, in its next report on Compliance with the Judgment, to refer specifically to this request of the representatives.

13. By virtue of the foregoing considerations, the Court deems that the reparation ordered in operative paragraph seven of the Judgment is pending compliance, and requests the State to submit detailed and complete information regarding the measures and actions adopted for the effective and total compliance with this reparation measure.

II. Regarding the obligation to perform a public act of acknowledgement of responsibility (operative paragraph ten of the Judgment)

14. The State reported that on July 5, 2010, it performed a public act of acknowledgement of responsibility, that took place in the offices of the Legal and Social Studies Center (hereinafter "CELS"), an organization that acts as the representative in this case, and it was led by the President of the Argentinean Nation. Likewise, it stated that the Minister of Foreign Affairs, International Trade and Worship; the Minister of Justice, Security, and Human Rights; the Secretary of Human Rights; and the President of CELS were also present. By virtue of the foregoing, it requested that the present operative paragraph is deemed to be complied with.

15. The representatives agreed with the information submitted by the State and added that the mother and the daughter of Mr. Eduardo Kimel, and recognized journalists and

⁵ Cf. *Case of Castillo Petruzzi and others v. Peru. Compliance with the Judgment*. Order of November 17, 1999, Series C No. 59, Considering third; *Case De la Cruz Flores v. Peru, supra* note 2, Considering Clause three, and *Case of Tristán Donoso v. Panama, supra* note 1, Considering Clause five.

⁶ Cf. *Case of Herrera Ulloa v. Costa Rica. Monitoring of Compliance the Judgment*. Order of the Court of September 22, 2006, Considering Clause sixteen.

⁷ Cf. *Case of "Instituto de Reeducción del Menor" v. Paraguay. Monitoring of Compliance with the Judgment*. Order of the Court of November 19, 2009, Considering Clause forty-six.

representatives of the social organization, attended the aforementioned act. Likewise, they highlighted some of the most relevant parts of the speech made by the President of the Nation in this act. The representatives expressed their profound satisfaction with the attitude of the State by carrying out an act with the presence of the highest political authority of the country. Furthermore, they stated that the decision to perform the act at CELS was mutually agreed upon by the petitioners and high-ranking officials of the federal government, due to the resistance shown by members of the Church of San Patricio.

16. The Commission observed that Argentina had fulfilled this reparation measure.

17. The Court values highly the act performed on July 5, 2010, in the offices of CELS, in accordance with that provided for by the State as well as the representatives, and also takes note of the conformity expressed by the representatives with such act. Likewise, it observes with satisfaction that such act was presided over by the President of the Nation and that other high-ranking officials of the government were also present, as well as the next of kin of the victim, and that the planning of such act had the due participation, cooperation, and agreement of the latter (*supra* Considering Clause 15), pursuant to the Order of the Court of May 18, 2010.⁸ Furthermore, the Tribunal deems that the words of the President, according to that established by the representatives, achieved the purpose of the State acknowledging responsibility for the Human Rights violations committed against Mr. Eduardo Kimel, and, therefore, they contribute to dignify the memory of the victim. Furthermore, the Court deems it important to highlight the widespread coverage that such act received, through several means of communication,⁹ because this contributes to a greater preservation of the historical memory of the human rights violation carried out, promoting, at the same time, the non-repetition of facts such as those seen in the present case.¹⁰ Based on the foregoing, the Tribunal deems that the State has fully complied with operative paragraph ten of the Judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its power of monitoring compliance with its 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 Articles 31 and 69 of its Rules of Procedure,¹¹

⁸ Cf. *Caso Kimel v. Argentina*. Monitoring of Compliance with Judgment. Order of the Court of May 18, 2010, Considering Clause twenty eight.

⁹ In their brief of July 8, 2010, (*supra* Having Seen 4), the representatives included several electronic links to press notes published in Argentina, regarding the aforementioned act of acknowledgement of responsibility on behalf of the State.

¹⁰ Cf. *Case of La Cantuta v. Peru*. Supervision of Compliance with Judgment. Order of the Court of November 20, 2009, Considering Clause eighteen.

¹¹ Rules of Procedure approved by the Court during its LXXXV Ordinary Period of Sessions, celebrated between November 16 and 28, 2009.

DECLARES:

1. That the State has fully complied with the obligation to perform a public act to acknowledge its responsibility (*operative paragraph ten of the Judgment*), according to that set forth in the Considering Clause 17 of the present Order.
2. That it will keep the monitoring procedure open until compliance with the outstanding obligations in the present case, namely, nullifying the criminal sentence imposed on Mr. Kimel and all the effects thereof (*operative paragraph seven of the Judgment*), according to that set forth in paragraphs 11 and 13 of the present Order.

AND RESOLVES:

1. To require the State to immediately adopt all the measures necessary to give effective and prompt compliance with the outstanding paragraph that was ordered by the Tribunal in the Judgment on merits, reparations and costs of May 2, 2008, pursuant to Article 68(1) of the American Convention of Human Rights.
2. To request the State to submit to the Inter-American Court of Human Rights, no later than March 1, 2011, a detailed report in which it highlights all the actions adopted to comply with the reparation measure pending compliance, pursuant to the Declarative Paragraph two of this Order, as well as the information requested in paragraph twelve.
3. To request to the representatives of the victim and to the Inter-American Commission on Human Rights, to submit their observations on the report of the State mentioned in the last resolution paragraph, within four to six weeks, respectively, after the reception of such report.
4. To continue monitoring the point pending compliance of the Judgment of merits, reparations and costs of May 2, 2008.
5. To request the Secretariat of the Court to notify the State, the Inter-American Commission on Human Rights, and the representatives of the victim of this present Order.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So directed,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary