

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

**OF NOVEMBER 18, 2010\*\***

**CASE OF ALMONACID ARELLANO V. CHILE**

**MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal") on September 26, 2006, whereby, regarding reparations, it ruled the following:

5. The State must ensure that Decree Law 2.191 does not continue to hinder the continuation of investigations into the extrajudicial execution of Mr. Almonacid Arellano and the identification and, where appropriate, the punishment of those responsible, as stated in paragraphs 145 to 157 of [the] Judgment.

6. The State must ensure that Decree Law 2.191 does not continue to hinder the investigation, prosecution and, if applicable, the punishment of those responsible for other similar violations in Chile, as stated in paragraphs 145 to 157 of [the] Judgment.

7. The State must reimburse the costs and expenses within one year following the notification [of the] Judgment, in accordance with paragraph 164 of [the] Judgment.

8. The State must execute the publications listed in paragraph 162 of the [...] Judgment, within six months following the notification thereof.

2. The briefs of June 5, June 29 and August 29, 2007, May 30 and August 12, 2008, February 12 and July 14, 2009, and their respective annexes, whereby the Republic of Chile (hereinafter "the State" or "Chile") provided information on compliance with the Judgment.

3. The communications of December 18 and 29, 2008, whereby the representative of the victim and next-of-kin (hereinafter "the representative") sent copies of two domestic decisions taken in connection with the investigation of the facts in the present case.

4. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of August 10, January 6, February 17 and September 17, 2009, whereby, following the Presidency of the Court's instructions (hereinafter "the Presidency"), it requested the

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\* Judge Eduardo Vio Grossi, of Chilean nationality, did not take part in the deliberation or signing of the present Order, in accordance with the provisions of Article 19(2) of the Statute of the Court and Article 19 and 21 of the Rules of Procedure of the Court, approved during the LXXXV Extraordinary Sessions held from 16 to 28 of November, 2009.

\*\* Order adopted by the Court in its XLII Extraordinary Sessions, held in Quito, Ecuador from November 15 to 19, 2010.

representative of the victim and his next-of-kin to submit, as soon as possible, their observations on the State reports, since the timeframe to do so had expired without any observations being presented." The representative submitted no observations on the State reports.

5. The briefs of June 26, July 18 and October 12, 2007, September 25, 2008, May 8 and September 17, 2009, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations on reports submitted by the State.

6. The note of the Secretariat of the Court of September 23, 2009, whereby, following the Presidency's instructions, it requested the State to submit a new report on compliance with the Judgment, by November 17, 2009, at the latest.

7. The note of the Secretariat of May 31, 2010, whereby, following the instructions of the President of the Court, it requested the State to submit, as soon as possible, the report that was requested through the note of September 23, 2009 (*supra* Having Seen 6), since it had not been submitted.

8. The communication of June 30, 2010, whereby Chile stated that it would forward "in the coming days" the requested report on progress made regarding compliance with the Judgment.

9. The brief of August 23, 2010, and its annexes, whereby the State presented the report on compliance with the Judgment requested on September 23, 2009 (*supra* Have Seen 6).

10. The notes of the Secretariat of October 20, November 2, 9 and 19, 2010, whereby, following the instructions of the President of the Court, it requested that the representative and the Inter-American Commission submit their observations on the last State report as soon as possible (*supra* Having Seen 9). These observations have not been submitted to the Court as of yet.

#### **CONSIDERING:**

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

2. Chile is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 21, 1990, and it acknowledged the contentious jurisdiction of the Court on that same day.

3. In accordance with the provisions of Article 67 of the American Convention, the judgments of the Court should be promptly and fully complied with by the State. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the decision of the Court in any case to which they are parties." To this end, States should ensure domestic implementation as set forth by the Court in its decisions.<sup>1</sup>

4. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt*

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<sup>1</sup> Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case Albán Cornejo et al. v. Ecuador*. Monitoring Compliance with Judgment. Order of the Court of August 27, 2010, Considering Clause three, and *Case of Tristán Donoso v. Panama*. Monitoring Compliance with Judgment Order of the Court of September 1, 2010, Considering Clause three.

*servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, ignore their international responsibility.<sup>2</sup> The treaty obligations of State Parties are binding on all branches and bodies of the State.<sup>3</sup>

5. The States Parties to the Convention must guarantee compliance with the provisions thereof and their effectiveness (*effet utile*) within their domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>4</sup>

***1. In relation to the obligation to investigate, identify, try and, where appropriate, punish those responsible for the extrajudicial execution of Mr. Almonacid Arellano and the duty to ensure that Decree Law No. 2.191 does not continue to hinder the continuation of investigations (operative paragraph five and paragraphs 145 to 157 of the Judgment)***

6. The State provided information on actions that "have nullified resolutions and judgments that dismissed the cause through the enforcement [of] the Decree Law 2.191 (Amnesty DL)," the remanding of the case to the ordinary courts and the progress of the criminal proceedings. Chile reported that:

- a) In October 2007, it ordered the reopening of the judicial investigation into the death of Mr. Almonacid, and the Rancagua Appeals Court appointed a special visiting judge as the judge to hear the case on the murder of Mr. Almonacid. Subsequently, a peremptory challenge was lodged between said judge and the Second Military Court of Santiago. On December 3, 2008, the Supreme Court of Chile ruled that "regarding case No. 876-96 (40.184) of the First Criminal Court of Rancagua, on the homicide of Luis Almonacid Arellano, a peremptory challenge [could] not be lodged with military justice "based on a report issued by the Prosecutor of the Supreme Court, whereby it stated that the ruling of the Inter-American Court "deemed it necessary to reopen proceedings before the ordinary judiciary and manifested the inapplicability of the amnesty for the accused." Therefore, consequently, the Supreme Court ruled that the case should be heard by the special visiting judge appointed by the Court of Appeals of Rancagua. On December 24, 2008, the judge issued a resolution in which he decided that, in compliance with the Judgment of the Inter-American Court, it [was] necessary "to pursue—in a civil court—the preliminary criminal investigation No. 40.184 of the First Criminal Court of Rancagua on the murder of Luis Almonacid Arellano." The Home Under-Secretary and the Human Rights Program of the Ministry of the Interior "have participated in said criminal case," which "will make it

<sup>2</sup> Cf. *International responsibility the issuance and enforcement of laws that violate the Convention (Art. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of De la Cruz Flores v. Peru*. Monitoring Compliance with Judgment Order of the Court of September 1, 2010, Considering Clause five, and *Case of Tristán Donoso v. Panama*, *supra* note 1, Considering Clause five.

<sup>3</sup> Cf. *Case Castillo Petrucci et al. v. Peru. Compliance with Judgment. Order of November 17, 1999. Series C No. 59, Considering Clause three; Case of 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.

<sup>4</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 33; *Case of De la Cruz Flores v. Peru*, *supra* note 2, Considering Clause six, and *Case of Tristán Donoso v. Panama*, *supra* note 1, Considering Clause six.

- possible to access the investigation and request measures that contribute to the clarification of the death of Mr. Almonacid Arellano;"
- b) Through the Resolution of December 24, 2008, said Judge also ordered: the reopening of case No. 40.184 of the First Criminal Court of Rancagua to continue its processing; the nullification of the Resolution of the Second Military Court of Santiago of 28 January, 1997, that acquitted two suspects in the murder case of Mr. Almonacid Arellano, and nullify the Resolution of March 25, 1998, which confirmed the acquittal; and, reestablish the indictment against one of them, who is the retired Major of the Carabineros, on suspicion of murder. As regards to the other accused party, a retired *Suboficial Mayor* [Chief Non Commissioned Officer] of the Carabineros, the State reported that he had died on June 21, 2005. In relation to the progress of criminal case No. 40.184, the State explained that: "this case had to be heard according to the rules that formerly governed criminal proceedings;" it is in the preliminary stage, which is secret; on July 6, 2009, it requested that the preliminary investigation be heard and it was waiting for the respective judicial resolution; and, in August 2010, it added that as a result of the inquiries carried out by the Examining Magistrate, it was possible to determine "the identity of the officer who drove the vehicle in which a badly wounded Mr. Almonacid was transported to the hospital in Rancagua," and the involvement of the defendant in the present case was established "through oral testimonies, confrontations, and his own confession, [which] is extremely relevant because [the defendant] has always denied any involvement with the death of Luis Almonacid;" and,
- c) Similarly, Chile sent a copy of the amendment bill for the Code of Military Justice, which "was submitted for consideration before the National Congress" on July 3, 2007. As indicated in the bill, one of the proposed amendments suggested that, as a rule of jurisdiction for military justice, said jurisdiction should be exercised "over military when ruling on cases pertaining to military jurisdiction" and that "the jurisdiction of military courts only be applied to military crimes against the sovereignty of the State and its domestic and foreign security, when such crimes are committed by soldiers," which would be subject to certain exceptions.

7. The representatives did not make observations on any of the State reports, despite the various submission requests that were made, following the President of the Court's instructions, stating that such submissions be made as promptly as possible given the expiration of the submission deadlines (*supra* Having Seen 4 and 10), and the only information submitted to the Court were copies of two decisions adopted domestically in relation to the investigation of the facts in this case,<sup>5</sup> without making any assessment about it.

8. The Commission stated that it "positively value[d] the information provided by the State in relation to justice measures taken" but it noted that this information showed that, "the investigation is still in its early stages, only one person was accused [...], and no detailed information has been submitted about the investigative measures that had been exhausted to determine other possible perpetrators." It also positively valued proceedings carried out as part of the investigation initiated in civil courts and it believed the State should continue to report on progress in the investigation.

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<sup>5</sup> The representative submitted a copy of the resolution issued by the Supreme Court of Justice of Chile, whereby it ordered to make the background facts available to the special visiting judge appointed by the Appeals Court for Rancagua as well as the order passed down by the first instance judge, which provided for the nullification of the enforcement of the amnesty law and the dismissal ordered in the case.

9. When ordering the reparation measure concerning the obligation to investigate, the Court took into account that the violation of judicial guarantees and judicial protection in this case were based on two factors: i) the granting of jurisdiction to military courts, by means of a Supreme Court decision, to hear the case concerning the death of Mr. Almonacid Arellano; and, ii) the enforcement of Decree Law No. 2.191 by which the military tribunals that ruled on the case granted themselves amnesty.<sup>6</sup> Consequently, in order to ensure that these violations are not repeated in this case, the Court ordered that the State, so as to fulfill its obligation to investigate the extrajudicial execution of Mr. Almonacid Arellano and to identify and, where appropriate, punish those responsible, should: i) ensure that the Decree Law does not continue to hinder the investigation into what happened to Mr. Almonacid Arellano, ii) nullify the decisions and judgments issued domestically that authorize jurisdiction to the military courts and allowed the investigation to be closed under the Decree Law; and, iii) refer the case to the courts, so that as part of criminal proceedings those responsible for the death of Mr. Almonacid Arellano be identified and punished.<sup>7</sup>

10. The Court also stated, *inter alia*, that the investigation should comply with the following: not enforce the Decree Law No. 2.191, not invoke prescription periods, non-retroactivity of criminal law, the principle of *ne bis in idem*, as well as not implementing any other measures to eliminate responsibility, or avoid the duty to investigate and punish those responsible;<sup>8</sup> ensure that all public institutions provide the necessary facilities to the ordinary court that hears the case of Mr. Almonacid Arellano;<sup>9</sup> and ensure that Ms. Elvira del Rosario Gómez Olivares and Alfredo, Alexis and José Luis Almonacid Gómez have full access and ability to participate in all phases and stages of the investigations, in accordance with domestic law and the norms of the American Convention.<sup>10</sup>

11. To assess the state of compliance with the obligation to investigate what happened to Mr. Almonacid Arellano, the Court has referred to the information provided by Chile, which was not disputed by the representative or the Commission. However, the Court notes that, with the exception of two decisions taken in December 2008 in domestic criminal proceedings,<sup>11</sup> the Court does not have copies of the rulings and proceedings taken in connection with said investigation, both with respect to granting jurisdiction to ordinary courts and the execution of criminal proceedings pending before said jurisdiction, since the State has not provided copies of these actions and rulings. The Court also considers that the only occasion when the representative addressed the Tribunal in relation to monitoring compliance with the Judgment was to present a copy of the two judicial resolutions that relate specifically to the progress reported by the State (*supra* Considering Clause 7). The Court also notes that, regarding the rulings and proceedings carried out in the preliminary stage of the criminal proceedings pending before the ordinary courts, the

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<sup>6</sup> Cf. *Case of Almonacid Arellano v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 146.

<sup>7</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra* note 6, para. 145-147.

<sup>8</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra* note 6, para. 151-155.

<sup>9</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra* note 6, para. 156.

<sup>10</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra* note 6, para. 157.

<sup>11</sup> In particular, in the case file concerning monitoring compliance with the Judgment there are copies of the Resolution issued on December 24, 2008, by the aforementioned special visiting judge (*supra* Considering Clauses 6(a) and 6(b)), as well as the ruling of December 3, 2008 of the Supreme Court of Justice for Chile (*supra* Considering Clause 6(a)).

State explained that such a stage is secret and on July 6, 2009, it was ordered that the investigation be heard and it was awaiting the respective court resolution. Subsequently, in August 2010, it reported on some progress in the investigation (*supra* Considering Clause 6(b)).

12. The Court notes that during the monitoring compliance with the Judgment stage it is essential that the State provide the Court information and complete documentation that makes it possible to verify compliance by the responsible State with the obligations ordered in the ruling. In order to fulfill the role of monitoring compliance with the reparation measures for the violations committed against the victims, and in view of the principle of adversary proceedings, in each case the Court will assess the need, suitability or appropriateness of upholding the confidentiality of information provided with regard to its use in the Order, but not regarding the Parties' access to it.<sup>12</sup>

13. Firstly, regarding the duty to ensure that Decree Law No. 2.191 does not continue to hinder the investigation of the extrajudicial execution of Mr. Almonacid, the Court believes that from the information provided by the State it can be deduced that this duty has been guaranteed in this case to date through actions taken by judicial authorities who have not implemented said Decree, respecting the provisions of the Court to the effect that the Decree Law has no legal effect as it is incompatible with the American Convention. Because the criminal proceedings recently started the preliminary stage, it must be stressed that the State must take steps to continue to ensure this factor in all phases and stages of said proceedings, including the total and effective fulfillment of the obligation to investigate, prosecute and, where applicable, punish those responsible for the extrajudicial execution of Mr. Almonacid.

14. Secondly, the Court acknowledges that Chile has fulfilled the duties to rescind the resolutions and judgments issued domestically which in turn gave jurisdiction to the military courts and led to the conclusion of the investigation pursuant to Decree Law No. 2.191 and that, consequently, allowed the case to be referred to ordinary courts in order to continue with the criminal investigation. In this regard, the Court values that in December 2008 the Chilean Supreme Court took the important decision to rule that in this case "it is not possible to lodge a peremptory challenge with a military court." As a result, the case was brought before the ordinary criminal courts. Furthermore, in that same month the special visiting judge, designated by the Rancagua Appeals Court to hear the investigation, issued a resolution ruling to "pursue—in a civil court—the criminal preliminary investigation of case No. 40.184 of the First Court of Rancagua into the murder of Luis Almonacid Arellano." Furthermore, said Judge also ordered: the reopening of case No. 40.184 of the First Criminal Court of Rancagua to continue with its processing; the nullification of the Resolution of the Second Military Court of Santiago of 28 January, 1997, that acquitted two suspects in the murder case of Mr. Almonacid Arellano, and nullify the Resolution of March 25, 1998, which confirmed the acquittal; and, prosecute one of them, who is the retired Major of the Carabineros, on suspicion of murder. As reported by the State, the case is at the preliminary stage before the ordinary criminal courts and the Examining Magistrate has taken some steps to investigate the death of Mr. Almonacid, in particular to determine the corresponding liability, whereby it has been possible to prove the sole defendant's participation in the case concerning the execution of Mr. Almonacid (*supra* Considering Clause 6(b)). The State has not submitted information on what specific actions were taken as a result of said attestation. However, the Court believes the aforementioned domestic decisions comply with an important point of the obligation to investigate provided for in the Judgment.

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<sup>12</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering Clause ten.

15. Similarly, regarding the obligation to ensure the investigation be executed in ordinary courts, the State sent a copy of the amendment bill for the Military Justice Code, which "was submitted for consideration before the National Congress" on July 3, 2007, and is yet to be approved. The Court values that the Executive Branch proposed this initiative and that it has been submitted to the Chilean Legislative Branch for its consideration, particularly due to the effects that an appropriate and complete legislative reform could have on the State's appropriate compliance with its general obligation to ensure the rights to judicial guarantees and judicial protection, and in particular the principle of natural law. However, bringing the Chilean legal system into conformity with international standards on military criminal jurisdiction and the creation of legal restrictions for jurisdiction of military courts in terms of subject matter and people is part of monitoring compliance with the ruling issued by this Court in the *Case of Palamara Iribarne v. Chile*.<sup>13</sup>

16. The Court considers that the information provided by the State reflects Chile's principle of compliance with its international obligations to investigate and punish those responsible for the human rights violations identified in this case. Accordingly, the Court is waiting for complete and updated information on ongoing criminal proceedings covering: (i) information on compliance with the criteria established by the Court regarding the proper way to fully comply with the obligation to effectively investigate, including those highlighted in Considering Clause ten of this Order; and, (ii) information on measures or actions taken by the authorities, as a result of proving the participation of the only defendant in this case in the extrajudicial execution of Mr. Almonacid (*supra* Considering Clause 14).

***II. Regarding the obligation to ensure that Decree Law 2.191 does not continue to hinder the investigation, prosecution and, if applicable, the punishment of those responsible for other similar violations in Chile (operative paragraphs 145 of [the] Judgment)***

17. The State indicated that it had studied "various ways" to comply with this aspect of the Judgment and that "it [had] deemed that the enactment of a bill to interpret Article 93 of the Penal Code to be the most viable option." Said article stipulates the grounds for the extinction of criminal liability. Furthermore, the State indicated that it had sought to "harmonize the non-enforcement of DL 2191, an Amnesty law, with the principles of *res judicata* and *ne bis in idem*, [and thus], in that sense, it [had] entered into a legal course of action." With respect to the first legislative amendment mentioned, Chile reported that in May 2008 "a bill intended to interpret Article 93 of the Penal Code [was] pending, with a view to preventing the enforcement of amnesty, pardon and prescription periods in cases on war crimes, genocide and crimes against humanity." According to the State, this bill "seeks to comply with the [J]udgment of [the] Court regarding the provision that Decree Law 2.191 must not hinder the investigation, prosecution and, where appropriate, punishment of those responsible for the human rights violations that occurred in Chile between 1973-1978." It added that the bill strives to enact an interpretive law to clarify the true meaning and scope of existing domestic laws relating to "the extinction of criminal liability in light of International Law on Human Rights." In its August 2010 report, it submitted a copy of that bill<sup>14</sup> and said it was in the second

<sup>13</sup> Cf. *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 135, dispositive point fourteen; *Case of Palamara Iribarne v. Chile*. Monitoring Compliance with Judgment. Order of the Court of November 30, 2007, Considering Clause twenty, and *Case of Palamara Iribarne v. Chile*. Monitoring Compliance with Judgment Order of the Court of September 21, 2009, Considering Clause fourteen and nineteen.

<sup>14</sup> In the sole article of the aforementioned bill it envisages "establish[ing] the true meaning and scope of the grounds for the extinction of legal liability provided for in Article 93 of the Penal Code, such that it must be understood that the use of prescription periods, amnesty and pardon in criminal

constitutional procedural stage in the Senate, where it had been submitted on May 6, 2009.<sup>15</sup> With respect to the second legislative procedure mentioned, the State also submitted a copy of its text, along with its August 2010 report, and indicated that it was a bill to "[m]odif[y] Article [657] of the Criminal Procedure Code, providing a new review channel for human rights violations."<sup>16</sup> It added that the bill was in the first stage of consideration and that it "mark[ed] the first report of the Lower House Committee on Human Rights, Nationality and Citizenship as a substage." The State also noted that both legislative procedures referred to the Judgment of the Court in this case.

18. The representative of the victim and his family did not make observations on any of the State reports.

19. In its observations, the Commission did not refer to the information provided by Chile regarding compliance with operative paragraph six of the Judgment.

20. The Court notes that the State took a first step towards fulfilling its duty to ensure that the Decree Law does not continue to represent an obstacle to guaranteeing the right to judicial guarantees and judicial protection in Chile. The Court notes that the effective implementation of this reparation measure is an essential part of complying with the Judgment, as it aims to ensure that violations, such as those in the present case, do not recur by adopting domestic legal measures (legislative, administrative or otherwise) to correct the root causes of violations. While there may be different domestic law measures through which the State could ensure such an outcome, the Court notes that the State considers the most appropriate way to do so is through a legislative amendment.

21. Regarding the possibility of establishing specific grounds for filing a recourse to review in cases of serious human rights violations, the Court notes that, in such a case, a judicial review of these cases would be possible, so long as the review is not impeded by the enforcement of the principle of legality and retroactivity of criminal law.

22. Because of the foregoing, the Court deems that Chile needs to explain how the two aforementioned legislative amendments would ensure that Decree Law No. 2.191 is not enforced by domestic bodies and authorities in the investigation and punishment of violations similar to those that took place in the this case. On the other hand, the Court notes that the State reported on the initiation of the processing of the bill to interpret the grounds for the exclusion of criminal responsibility in May 2008 (*supra* Considering Clause 17) and more than two years later, this bill is still pending before the Senate. Since this reparation measure should be fulfilled within a reasonable time, the Court urges the State to take any steps that

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proceedings and punishments is not enforceable for crimes and single offences that, in accordance with International Law, constitute genocide, war crimes and crimes against humanity. Furthermore, it must be understood that Art[icle] 103 of the Penal Code [that provides for the gradual, or semi, prescription of punishments] will not be enforceable for crimes and single offenses that, in accordance with International Law, constitute genocide, war crimes and crimes against humanity, committed by State agents or individuals acting on the State's behalf."

<sup>15</sup> Previously, by means of a brief of May 30, 2008, (*supra* Having Seen 2), the State had informed the Court that the Senate Committee on Constitution, Legislation, Justice and Regulations had "analy[zed] and report[ed] on the bill" and once it had been brought before the Senate and this process concluded, the State would present the text of the bill to the Court.

<sup>16</sup> The text of the second bill presented by the State proposes, in its sole article, "add[ing] two new grounds [for the recourse to review] to Article 657 of the Criminal Procedure Code: '5. When facts recognized in a judicial resolution showing that the judgment is based on statements made under torture. 6. When the judgment has been made in violation of obligations assumed by the State of Chile, under customary international law, conventional law, general principles of law and *jus cogens* norms, in matters concerning war crimes or crimes against humanity.'"



may be necessary to promptly and effectively comply with this reparation measure. Accordingly, the Court believes that paragraph six of the Judgment is pending compliance and requests the State to continue to report in detail, timely and completely on the progress made with the processing of the bills and the measures taken, or those that will be taken, so that they be adopted, as well as the effectiveness of the aforementioned legislative amendments for the compliance with this reparation measure. Chile also must disclose whether it has adopted any administrative action or otherwise aimed at fulfilling the guarantee of non-repetition.

***III. In relation to the obligation to reimburse the costs and expenses (operative paragraph seven and paragraph 164 of the Judgment)***

23. The State reported that on May 30, 2007 it paid the amount awarded by the Court as costs and expenses, depositing said amount "in the Savings Account of the State Bank, whose holder is Ms. Elvira del Rosario Gómez Olivares."

24. The representative of the victim and his family did not make observations on any of the State reports.

25. The Committee noted "with satisfaction the fulfillment of what was ordered by the Court in operative paragraph seven of the [J]udgment."

26. The State reported that it had complied fully with this point in the report submitted on June 29, 2007, which was duly transmitted by the Court to the representative, who, despite repeated requests by the President of the Tribunal to submit observations on this report and other reports (*supra* Having Seen 4 and 10), did not make any observations. Taking into account the observations of the Commission, as well as the fact that more than three years have passed since the State reported that it had reimbursed all costs and expenses, without the representative submitting any comments or objections thereto, the Court concludes that Chile has complied with the provisions of operative paragraph seven of the Judgment within the one year timeframe set forth in the Judgment.

***IV. In relation to the obligation to publish the Judgment in the Official Gazette and another newspaper that is widely circulated nationally (operative paragraph eight and paragraph 162 of the Judgment)***

27. In its first report, the State manifested that it made such publication "in the Official Gazette of Chile and in the *La Nación* newspaper on May 14 and 13, [2007] respectively," and provided copies of these publications.

28. The representative of the victim and his family did not make observations on any of the State reports.

29. The Committee noted "with satisfaction the fulfillment of what was ordered by the Court in operative paragraph eight of the [J]udgment."

30. In its first report on June 5, 2007, the State reported that it had complied fully with this point. Said report was duly transmitted by the Court to the representative, who, despite repeated requests by the President of the Tribunal to submit observations on this report and other reports (*supra* Having Seen 4 and 10), did not make any observations. Taking into account the proof of publication in the Official Gazette of Chile—and in a newspaper that is widely circulated nationally—provided by the State, the Commission's observations, as well as the fact that more than three years have passed since the State reported the execution of said publications without the representative making any comments or objections thereto, the Court

concludes that Chile has complied with the provisions of operative paragraph eight of the Judgment.

***V. In relation to the obligation to inform the Court of compliance with the Judgment***

31. To monitor the total compliance with the Judgment issued in this case, the Court has reviewed the information provided by the State in their reports and the Inter-American Commission in its observations on the reports. However, the Court notes that on September 23, 2009, following instructions of the President of the Court, the State was requested to submit a further report on compliance with the Judgment, which was not presented until August 23, 2010, almost a year after it was requested (*supra* Having Seen 6 and 9).

32. The Court reminded that the obligation to respect the rulings of the Court includes the State's duty to inform the Court about the measures taken to comply with the Court's provisions in aforementioned Judgment. The obligation to inform the Court about compliance with the Judgment requires, for its effective implementation, the formal presentation of a document, within time limits, as well as specific, accurate, up-to-date and detailed reference material on the issues related to the obligation.<sup>17</sup> Timely fulfillment of the State's obligation to advise the Court how it is complying with each of the reparations it ordered is essential in order to assess the status of compliance with the Judgment.<sup>18</sup>

33. The Court also highlights the particular importance of the observations of the Commission and the representatives of the victims in order to assess the implementation, by the State, of the measures to comply with the Judgment.<sup>19</sup> Consequently, for proper and complete assessment of compliance with the Judgment it is essential that the representative present observations without any delay (*supra* Having Seen 4 and 10) —as seen in this proceeding— on the information provided by the State and requested by this Court regarding compliance with the reparations measures ordered.

**THEREFORE:**

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

in exercising its authority to monitor compliance with its decisions in accordance with Articles 33, 61(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Article 25(1) and 30 of the Statute, and Article 31 and 69 of its Rules of Procedure,

**DECLARES:**

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<sup>17</sup> Cf. *Case of Liliانا Ortega et al.* Provisional Measures regarding Venezuela. Order of the Court of December 2, 2003. Considering Clause twelve; *Case of the Moiwana Community v. Surinam*. Monitoring Compliance with Judgment. Order of the President of the Court of December 18, 2009, Considering Clause ten, and *Case of El Amparo v. Venezuela*. Monitoring Compliance with Judgment. Order of the Court of February 4, 2010, Considering Clause twenty-one.

<sup>18</sup> Cf. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Court of September 22, 2005, Considering Clause seven; *Case of Baena Ricardo et al. v. Panama*. Monitoring Compliance with Judgment. Order of the Court of May 28, 2010, Considering Clause seven, and *Case of Cantos v. Argentina*. Monitoring Compliance with Judgment. Order of the Court of August 26, 2010, Considering Clause five.

<sup>19</sup> Cf. *Case of Ricardo Canese v. Paraguay*. Monitoring Compliance with Judgment. Order of the Court of February 2, 2006, Considering Clause ten.

1. The State has complied fully with the following points:
  - a) To reimburse costs and expenses (*operative paragraph seven of the Judgment*); and,
  - b) To publish the Judgment in the Official Gazette and another newspaper that is widely circulated nationally (*operative paragraph eight of the Judgment*).
2. It shall keep the monitoring process open for the following outstanding points:
  - a) To investigate, identify, try and, where appropriate, punish those responsible for the extrajudicial execution of Mr. Almonacid Arellano and the duty to ensure that Decree Law No. 2.191 does not continue to hinder the continuation of investigations (*operative paragraph five and paragraphs 145 to 157 of the Judgment*); and,
  - b) To ensure that Decree Law No. 2.191 does not continue to hinder the investigation, prosecution and, if applicable, the punishment of those responsible for other similar violations in Chile (*operative paragraphs six and paragraph 145 of [the] Judgment*).

**AND RESOLVES:**

1. To request that the State adopt all measures necessary to effectively and promptly comply with those points ordered by the Court in the Judgment that are outstanding, in accordance with the provisions of Article 68(1) of the Convention.
2. To request that the State submit, by no later than March 30, 2011, a report containing detailed, up-to-date and accurate information on those points that are pending compliance.
3. To request that the representative of the victim and next-of-kin, and the Inter-American Commission on Human Rights, submit their observations on the State report mentioned in the previous operative paragraph, within four and six weeks respectively, following the receipt of said report.
4. To continue to monitor all operative paragraphs of the Judgment on preliminary objections, merits, reparations and costs of September 26, 2006 that are pending.
5. To request the Secretariat to notify this Order to the State of Chile, the Inter-American Commission on Human Rights and the representative of the victim and next-of-kin.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary