

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS,
OF NOVEMBER 24, 2010**

**CASE OF VARGAS ARECO V. PARAGUAY
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on merits, reparations and costs (hereinafter "the Judgment") passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on September 26, 2006.

2. The Order of the Court of October 30, 2008, whereby, *inter alia*, it declared:

[...]

2. It shall keep the monitoring process open for the outstanding points in the present case, namely:

a) to undertake, in full compliance with judicial guarantees and within a reasonable time, all actions necessary to identify, prosecute and punish all those responsible for violations committed in the present case (*operative paragraph nine of the Judgment*);

b) to carry out a public apology and recognition of international responsibility in relation to the violations set forth in the Judgment, in the community where the family of Gerardo Vargas Areco lives, in the presence of said family and civil and military authorities of the State, in which a plaque will be installed in memory of the child Vargas Areco (*operative paragraph ten of the Judgment*);

c) to provide medical, psychological and psychiatric treatment, as appropriate, to the De Belén Areco, Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of whom have the surname Vargas Areco, if they so require, and for as long as necessary (*operative paragraph eleven of the Judgment*);

d) to implement regular training programs and human rights courses for all members of the Paraguayan Armed Forces (*operative paragraph twelve of the Judgment*);

e) to publish in a nationally circulated newspaper, on a sole occasion, the chapter on proven facts of the Judgment, without footnotes of the corresponding pages, and the operative paragraphs of the Judgment (*operative paragraph thirteen of the Judgment*);

f) to bring domestic legislation on voluntary recruitment of minors under 18 years of age in the armed forces of Paraguay, in accordance with international standards on the matter (*operative paragraph fourteen of the Judgment*); and,

g) to pay the moratory interest on the compensation awarded for pecuniary and non-pecuniary damages and reimburse costs and expenses (*operative paragraphs fifteen, sixteen and seventeen of the Judgment*).

3. The briefs of February 4, April 3 and December 30, 2009, and March 15, 2010, whereby the Republic of Paraguay (hereinafter "the State" or "Paraguay") reported on compliance with the Judgment (*supra* Having Seen 1).

4. The briefs of September 14, 2009 and May 4, 2010, whereby the representatives of the victims (hereinafter "the representatives") presented their observations on the report submitted by the State (*supra* Having Seen 5).

5. The brief of December 10, 2010, whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the State report (*supra* Having Seen 3).

6. The briefs of the Secretariat of February 19 and March 24, 2010, whereby, following the instructions of the plenary of the Court, it responded to the consultation filed by the State on December 30, 2009 on "the criteria followed by [the Court] to calculate the interest accrued in the [present] case."

7. The Order issued by the President of the Court (hereinafter "the President") on July 20, 2010, whereby he summoned the State, representatives and the Commission to a private audience in order to receive full and up-to-date information from the State on the implementation of the reparation measures ordered in the Judgment that are outstanding (*supra* Having Seen 2) and listen to the observations of the Commission and the representatives.

8. The private hearing held by the Court at its headquarters in San Jose, Costa Rica, September 2, 2010.¹

9. The report of September 20, 2010, whereby the State provided the information requested in the aforementioned hearing, and the comments of representatives on the brief submitted on October 1, 2010.

10. The briefs of the Secretariat of September 8 and 22 and October 21, 2010, whereby, following the President of the Court, requested the Commission presented its comments on the State report and the comments of the representatives (*supra* Having Seen 9), which had not been received on the date this Order was issued.

CONSIDERING:

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

¹ At this hearing, the following were in attendance: a) representing the Inter-American Commission: Lilly Ching Soto, specialist for the Executive Secretary b) for the representatives of the victims: Liliana Tojo (CEJIL), and c) for the State of Paraguay: Salvador Meden Peláez, Chargé d'Affaires of the Embassy of Paraguay in Costa Rica; Nury Montiel, Director of Human Rights of the Supreme Court, and Gustavo Dávalos, Major of Military Justice and Representative of the Ministry of National Defense.

2. Paraguay is a State Party to the American Convention on Human Rights (hereinafter "the American Convention") since August 24, 1989 and acknowledged the jurisdiction of the Court on March 26, 1993.

3. In accordance with the provisions of Article 67 of the American Convention, the State should fully comply with the Court's Judgments. 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 the domestic implementation of the provisions set forth in the Court's rulings.²

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 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 pre-established international responsibility.³ The treaty obligations of State Parties are binding on all branches and bodies of the State.⁴

5. The States Parties to the Convention must ensure compliance with the treaty provisions and their effects (*effet utile*) in terms of their domestic laws. 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.⁵

a) *Regarding operative paragraph seven of the Judgment*

6. Regarding the obligation to undertake, in full compliance with judicial guarantees and within a reasonable time period, all actions necessary to identify, prosecute and punish, if applicable, all responsible for the violations committed in the present case (*operative paragraph nine of the Judgment*), the State raised during the written procedure "[its] inability to effectively comply with [this point] of the Judgment" based on two arguments: a) the alleged violation of constitutional rights and guarantees in criminal matters by reopening investigations into other perpetrators, and b) the alleged impossibility to reopen the case for further investigations into torture, considering the State that it would be

² Cf. *Case of Baena Ricardo et al.. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Tristán Donoso v. Panama. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering Clause three, and *Case of Ivcher Bronstein v. Peru. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 27, 2010, Considering Clause three.

³ Cf. *International responsibility the issuance and application of laws that violate the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Tristán Donoso*, *supra* note 2, Considering Clause five, and *Case of Ivcher Bronstein*, *supra* note 2, Considering Clause four.

⁴ Cf. *Case Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment* Order of the Court of November 17, 1999. Series C No. 59, Considering Clause three; *Case of Tristán Donoso*, *supra* note 2, Considering Clause five, and *Case of Ivcher Bronstein*, *supra* note 2, Considering Clause four.

Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Tristán Donoso*, *supra* note 2, Considering Clause six, and *Case of De la Cruz Flores v. Peru. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering Clause six.

"double jeopardy for the same offense."⁶ However, during the private hearing, the State expressed its willingness to comply with this measure and reported that, according to a report issued by the Supreme Court of Justice, "the Paraguayan State must comply with the operative paragraph [, so it has been agreed] to request that the Public Ministry open an investigation into torture against "unnamed persons" in events which occurred on December 31, 1989." At the same time, it reaffirmed that "it is possible to reopen the case into [those people who were] already sentenced on charges of [culpable homicide] and acquitted [respectively]" since the inquiry was driven by homicide and torture.

7. Representatives and the Commission agreed that more information is needed regarding the action being initiated before the Public Ministry. The Commission also valued the change in the State's position but noted that "the Court has already ordered the reopening of the investigation [...] because [...] the investigation into the causes of death did not meet the minimum standards of diligence to determine whether or not an act of torture had been committed" and manifested that no State may resort to the constant invocation of domestic law vis-a-vis the obligations set forth in the Judgment. Finally, the representatives reiterated that, in its Judgment, the Court ruled to identify, prosecute and, when applicable, punish those responsible for all violations were committed against Gerardo Vargas Areco, not just those violations that can still be investigated under domestic law.

8. Firstly, it is important to remember that in its Judgment on merits, reparations and costs (*supra* Having Seen 1), this Court considered that "the investigation into the extrajudicial execution of Gerardo Vargas Areco, and into his alleged torture, was not carried out effectively and fully."⁷ Indeed, the Court determined that "the State did not conduct an investigation that made it possible to establish whether the child was tortured or suffered other ill-treatment."⁸ Therefore, it ordered the State "to undertake, in full compliance with judicial guarantees and within a reasonable time period, [...] the actions necessary to identify, prosecute and punish all those responsible for the violations committed in this case."⁹

9. The information provided it becomes apparent that more than 20 years after the extrajudicial execution of the child Vargas Areco and four years after the notification of the Judgment under supervision, there has been no progress with the implementation of this reparation measure and, therefore, the partial impunity continues to affect the next-of-kin of the child Vargas Areco. Therefore, the will to comply expressed by the State during a private audience is essential, since the elimination of impunity by all legal means available constitutes a fundamental element to eradicate extrajudicial killings, torture and other crimes.¹⁰

See *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 Clause six.

⁷ Cf. *Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 155, para. 87.

⁸ Cf. *Caso Vargas Areco*, *supra* note 7, para. 154.

⁹ Cf. *Case of Vargas Areco*, *supra* note 7, operative paragraph nine.

¹⁰ Cf. *Case of the "Street Children" (Villagran Morales et al.) v. Guatemala Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering Clause twenty one. See also, *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 299; *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 5, 2006. Series C No. 150, para. 137, *Case of Vargas Areco v. Paraguay*, *supra* note 7, para. 81.

10. A principle reiterated by this Court is that the investigation should be conducted using all available legal means, and aimed at determining the truth and the investigation, arrest, prosecution and possible punishment of those responsible for the facts, especially when State agents are involved.¹¹ Thus, the State must exhaust all lines of investigation into all those allegedly involved in the alleged torture and subsequent execution of the child Vargas Areco.

11. In this regard, the Court deems it appropriate to reiterate that States cannot invoke domestic reasons to avoid pre-established international responsibility.¹² Once the international process has been completed and the Judgment has been passed, the State must avoid the repetition of the conduct that led to litigation. The Judgment, and the reparations thereof, should provide a new framework and a new vision that makes it possible to effectively and promptly overcome the problems so identified.¹³ Thus it is unacceptable to use any obstacles of domestic law in order to impede the investigation and punishment of those responsible for serious violations of human rights such as torture or summary, extrajudicial and arbitrary executions.¹⁴ A contrary interpretation would negate the effectiveness of the provisions of the Convention in the domestic law of States parties, and would deprive international procedure of one of its main functions, fostering the impunity of those responsible.¹⁵

12. In view of the foregoing, this Court considers that the application under way that shall be made to the State Prosecutor General, so that an investigation is opened into other possible suspects of alleged torture, is a principle of execution of this reparation measure. However, it is still necessary that the State take all measures to carry out diligent and effective investigations to identify, prosecute and, if necessary, punish those responsible for the alleged acts of torture suffered by the child Gerardo Vargas Areco. Therefore, the Court is waiting for updated information on whether the investigation request was accordingly made to the Office of the Public Prosecutor and the measures taken to this regard.

b) Regarding operative paragraph ten of the Judgment

¹¹ Cf. *Case Ximenes Lopes v. Brazil. Merits, Reparations and Costs*. Judgment of July 4, 2006. Series C No. 149, para. 148; *Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 256, and *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 111.

¹² Cf. *International responsibility for the issuance and application of laws that violate the Convention*, *supra* note 3, para. 35; *Case of Tristán Donoso*, *supra* note 2, Considering Clause five, and *Case of Ivcher Bronstein*, *supra* note 2, Considering Clause four.

¹³ Cf. *Case of Molina Theissen v. Guatemala Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 16, 2009, Considering Clause twenty four, and *Case of the Serrano Cruz Sisters v. El Salvador Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering Clause seventeen.

¹⁴ In a similar sense, in the Judgment on merits in this case, the Court held that "according to the constant jurisprudence of the Court, based on international law, [...] no law or provision of a domestic law may prevent a State from complying with their duty, recognized by the Court, to investigate and punish those responsible for certain human rights violations, such as those found in this case." Cf. *Case of Vargas Areco*, *supra* note 7, para. 156.

¹⁵ Cf. *Case of Benavides Cevallos v. Ecuador. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 9, 2003, Considering Clause twelve; *Case of Caballero Delgado and Santana v. Colombia. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering Clause twenty six, and *Case of Caballero Delgado and Santana v. Colombia. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 27, 2003, Considering Clause nine.

13. Regarding the State's obligation to make a public apology and recognition of international responsibility in relation to the violations set forth in the Judgment, in the community where the family of Gerardo Vargas Areco lives in the presence of the family and State civil and military authorities, as part of which a plaque was installed in memory of the child Vargas Areco (*operative paragraph ten of the Judgment*), the State reported that on December 15, 2008 a public apology was made, as well as recognition of international responsibility, in the City of Bella Vista Norte, which was attended by civil and military authorities, as well as parents, family and legal representatives of the family, and was presided over by the Minister of National Defense.

14. The representatives confirmed that the public act of apology and international responsibility was carried out in accordance with the terms set forth in the Judgment. Furthermore, they recognized the "good will shown by the State to facilitate the attendance of representatives of the victims in the community where the Vargas Areco family live," therefore, they consider that this reparation measure has been fulfilled.

15. The Commission took note with satisfaction of the information provided by the State.

16. The Court notes that in accordance with the "Compliance with Judgment Act" provided by the State (*supra* Having Seen 3), on December 15, 2008 in the City of Bella Vista Norte, Department of Amambay, a public ceremony was held in presence of various civil and military authorities of the State of Paraguay, as well as the relatives of Gerardo Vargas Areco and representatives of the victims. An act where, among others, the Director of Legal Affairs, Human Rights and International Humanitarian Law, read the "Operative Paragraphs of the Judgment of the Inter-American Court" (*supra* Having Seen 1), the Director of Human Rights of the Ministry of Foreign Affairs read out the text of the "Public Apology and Acceptance of International Responsibility," and, finally "the plaque was [u]nveiled" by the parents of Gerardo Vargas Areco and the Minister of National Defense, who also took the floor. In the engraving of the unveiled plaque it says the following:

[I]n memory of the child soldier Gerardo Vargas Areco, beloved son from the City of Bella Vista Norte, who passed away on December 30, 1989 during compulsory military service. In tribute to his family, who for years fought relentlessly and with much love searching for truth and justice, which came thanks to the Judgment of the Inter-American Court of Human Rights.

17. The Court considers that the unveiling of the plaque in memory of the child Gerardo Vargas Areco, and in tribute to his family, has a clear healing value for his next-of-kin and contributes to a greater preservation of the historical memory of the human rights violations committed, while promoting non-recurrence of facts such as those in the present case.¹⁶ The Court also notes that the aforementioned act included the appropriate participation of various civil and military authorities of the Paraguayan State and with the consent and satisfaction of the next-of-kin of the victim. Based on information provided by the parties, the Court stresses the importance of the act performed in the present case and considers operative paragraph ten of the Judgment to be fully complied with.

c) *Regarding operative paragraph eleven of the Judgment*

¹⁶ Cf. *Case of Heliodoro Portugal V. Panama. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause seventeen; *Case of La Cantuta v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 20, 2009, Considering Clause eighteen, and *Case of Goiburú et al v. Paraguay. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 19, 2009, Considering Clause twenty four.

18. Regarding the State's obligation to provide medical, psychological and psychiatric treatment, as appropriate, to De Belén Areco, Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of whom have the surname Vargas Areco, if they so require, and for as long as necessary (*operative paragraph eleven of the Judgment*), the State reported on the signing of a cooperation agreement between the Ministry of National Defense and AFAVISEM (Association of Relatives of Victims of Compulsory Military Service) on July 30, 2008, which allows medical care to be given to soldiers injured and affected by Compulsory Military Service, as well as the families of deceased soldiers, through the Hospital Central de las Fuerzas Armadas de la Nación [Central Hospital of the Armed Forces of the Nation]. Furthermore, it indicated that the Human Rights Unit of the Ministry of Public Health and Social Welfare was created, which "channels the requirements that arise in the health area," and "it already has the background facts of the case, in order to offer appropriate treatment in any eventuality." In the private hearing, the State manifested that Mr. Vargas had attended the Military Hospital, who has given cards to the parents of Vargas Areco so as to expedite any medical treatment, and the Regional Director has taken charge of their cause so as to compile a report. Finally, it stated that the Director of the XIII Región Sanitaria Amambay [XIII Health Region, Amambay], is familiar with the case of Ms. De Belén Areco de Vargas and will be responsible for monitoring the visits necessary to safeguard her health, manage the diagnosis and provide medications as needed. The counseling will be conducted through the Department of Mental Health, once you have obtained the approval of family members.

19. The representatives noted that "[t]he information provided by the State does not account for effective compliance," as "an agreement for the exclusive benefit of 'parents, spouses and minors of military personnel with disabilities and killed in duty' and limited only to certain medical benefits [...], does not satisfy the State obligation." They further pointed out that the hospital is based in Asunción, thus it "can hardly be useful for purposes of providing effective care to victims of the case living in Bel[.]a Vista Norte some 570 km from Asuncion." They stated that at a meeting in February 2009, the State committed to oversee the health care in the public hospital in the city of Pedro Juan Caballero, considering that the victim's parents expressed difficulties in receiving specialist care. Regarding the recent appointment of the Director of the XIII Región Sanitaria Amambay [XIII Health Region, Amambay], next-of-kin said they will contact the Director as soon as possible for the health care. Finally, they confirmed that the families have a card and access to psychological care.

20. The Commission noted that the State must take important actions to give close and appropriate attention to all the victims named in this case, and noted "with concern that more than three years after the issuance of the Judgment, the State had not complied with these important reparation measures." Also at the hearing, it said the visit to the family constitutes a first step but it does not represent effective compliance with the orders of the Judgment.

21. The Court takes note of the various initiatives undertaken by the State related to the provision of "[the] medical services to people who [were left] with injuries and were affected as a result of the Compulsory Military Service," as well as to the next-of-kin "of military personnel left disabled or killed on active service." Notwithstanding the foregoing, it is necessary that the State, in addition to the measures taken in the framework of this cooperation agreement between the Ministry of National Defence and AFAVISEM (*supra* Having Seen 18), to grant preferential treatment to victims¹⁷. In this regard, the Court has

¹⁷ Cf. *Case of 19 Tradesmen v. Colombia*. Monitoring compliance with Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering Clause thirty four; *Case of Heliodoro Portugal*, *supra* note 16,

indicated that the provision of social services by State cannot be confused with the reparations that the victims of human rights violation are entitled to, due to the specific damage produced by the violation,¹⁸ this includes the expansion and improvements that the State makes to the aforementioned services. Thus, the Court considers that the victims in this case should receive different treatment in relation to the process and procedure that should be followed in order to be treated at public health institutions. Similarly, when providing psychological treatment the circumstances and needs of each person should be considered in order to provide individual and family treatment, as agreed with each party and after an individual assessment.¹⁹

22. The Court values the recent progress reported by the State and the representatives regarding the measures taken, or that are set to be taken, that strive to effectively and comprehensively implement this reparation measure for all beneficiaries, if they so desire. The Court also notes that compliance with this obligation by the State may depend, to a large extent, on the cooperation and information provided by the representatives and beneficiaries. Therefore, it stresses the importance of continuing and advancing coordination between the State and the representatives to finalize compliance with this measure, such that it effectively reaches all beneficiaries.

d) *Regarding operative paragraph twelve of the Judgment*

23. With regard to the obligation to implement training programs and regular courses on human rights for all members of the Paraguayan Armed Forces (*operative paragraph twelve of the Judgment*), the State reported that under the "Programa Patrón de Enseñanza de Derechos Humanos y Derecho Internacional Humanitario" [Master Program for Education in Human Rights and International Humanitarian Law], adopted in 2002,²⁰ various institutes that make up the Comando de Institutos Militares de Enseñanza del Ejército [Commando of Military Institutes of the Army] (CIMEE in Spanish) have been implementing programs that cover subjects related to human rights and international humanitarian law. These courses are aimed at officers, cadets, noncommissioned officers, aspiring noncommissioned officers and soldiers. The subjects are dealt with "through lectures, talks, conferences, seminars, discussions and assessments," and the use of the core text "ME 33-400 Humanitarian Standards Manual - Human Rights and International Humanitarian Law in the Armed Forces." It noted that the learning material "Soldier's Guide" and "Human Rights ...everyone's commitment" had been distributed. During the private hearing, the State reported that the number of military personnel trained in human rights and international humanitarian law between 2003 until 2010 amounts to 3106 people, at the different levels, the courses are held monthly, and are part of the curriculum of military training centers. Finally, it reported that according to the consensus reached with the representatives, they would attend the headquarters of the Commander in Chief of the Armed Forces of the Nation, to verify the different documents, for which it is agreeing the time and date.

Considering Clause twenty eight, and *Case of the Massacre of Pueblo Bello v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering Clause thirty.

¹⁸ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of the Inter-American Court of Human Rights of November 16, 2009. Series C No. 205, para. 529, and *Case of Heliodoro Portugal*, *supra* note 16, Considering Clause twenty-eight.

¹⁹ Cf. *Case of 19 Tradesmen v. Colombia. Monitoring Compliance with Judgment*. Resolution of the Inter-American Court of Human Rights of July 10, 2007, Considering Clause eleven; *Case of Heliodoro Portugal*, *supra* note 16, Considering Clause thirty, and *Case of Goiburú et al.*, *supra* note 16, Considering Clause forty-one.

²⁰ Cf. *Case of Vargas Areco v. Paraguay. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of October 30, 2008, Considering Clause twenty-five.

24. The representatives stated that the information provided by the State is disjointed, making it impossible to assess the level of compliance and determine if human rights courses are being offered to all students of the various military academies, if courses are annual or biannual, or if they form part of the permanent training curricula of the armed forces. They also stated that the "Programa Patrón de Enseñanza de Derechos Humanos y Derecho Internacional Humanitario" [Master Program for Education in Human Rights and International Humanitarian Law] was approved in 2002, prior to the Judgment of the Court, and that the reports "refer to the academic per[i]od of 2008 and the information is yet to be updated." They expressed the need to know if the training is reaching the upper levels of the military because from the information provided by the State it can be deduced that of 3106 people trained, 2371 are conscripts. Finally, they stated that, as agreed at the private hearing, they will meet soon to discuss this operative paragraph in detail, so that both parties negotiate the key points to conduct human rights training.

25. The Commission valued the information provided, however, it observed that it had not mentioned the number of members of the Armed Forces trained or their rank, and that the State "goes off data from 2008, without any documentation on the training programs or regular courses from 2009 and so far in 2010. " Also, it deemed it necessary that the State report on the regularity and continuity of the courses.

26. The Court takes note of the use, as a core text in the "Programa Patrón de Enseñanza de Derechos Humanos y Derecho Internacional Humanitario" [Master Program for Education in Human Rights and International Humanitarian Law], of the "Handbook on Humanitarian Standards - Human Rights and International Humanitarian Law in the Armed Forces," as well as the distribution of educational material such as the "Soldier's Guide" and "Human Rights ...everyone's commitment." Furthermore, the Court values the will expressed by the parties to hold a meeting to obtain information necessary to verify the regular curriculum and who leads the training courses on human rights.

e) Regarding operative paragraph thirteen of the Judgment

27. Regarding the obligation to publish in a nationally circulated newspaper, on a sole occasion, the chapter on the proven facts of the Judgment, without the footnotes of the corresponding pages, and the operative paragraphs of the Judgment (*operative paragraph thirteen of the Judgment*), the State reported that it published the article in the newspaper *La Nación* on October 18, 2007, and attached a copy of it.

28. Representatives and the Commission deem this point to be complied with.

29. The Court notes that the State has provided documentation that supports the publication of the chapter on proven facts from the Judgment, without the corresponding footnotes and with the operative part of the Judgment in the newspaper *La Nación* on 18 October 2007, thus declaring that the State has complied fully with this reparation measure.²¹

f) Regarding operative paragraph fourteen of the Judgment

²¹ According to the provisions of the Order of October 30, 2008, issued by this Court as part of monitoring compliance with this case, the State sent, on a previous opportunity, a copy of the publication of the proven facts and the operative points of the Judgment in the Official Gazette of the Republic of Paraguay on May 11, 2007. Cf. *Case of Vargas Areco*, *supra* note 20, Considering Clause twenty-nine.

30. As for the obligation to adapt domestic legislation on recruitment of children under 18 years of age in the armed forces of Paraguay, in accordance with the relevant international standards (*operative paragraph fourteen of the Judgment*), the State indicated that it has complied fully with this point. In this regard, in addition to measures already reported,²² the State added that on May 20, 2008, Law 3485 was passed, which amends Law No. 123/52 for the Centros de Instrucción Militar para Formación de Estudiantes de Reserva [Military Education Centres to Train Standby Students] (hereinafter "CIMEFOR"), setting forth in Article 10 that "special Military Instruction course and Training of Officers and Standby Noncommissioned Officers" is directed at students who are citizens over eighteen years of age."

31. The representatives stated that the information provided by the State accounts for "full compliance with [this] obligation." The Commission, meanwhile, considered this point to be complied with and stressed the importance of this legislative reform, while stressing the need to verify the "effective implementation of the amended legislation on voluntary recruitment of minors under 18 years of age."

32. In the Judgment (*supra* Having Seen 1), the Court determined that since the date of issuance, "it ha[d] not been informed about the amendment of law 569/75 ('Compulsory Military Service ') or law 123/52 (relating to CIMEFOR),it [was] necessary to order the State to ame[nd] its domestic legislation on the recruitment of children under 18 years of age in the Armed Forces of Paraguay, in accordance with the relevant international standards."²³

33. In this regard, Law 3360 of November 2, 2007, which annuls Article 10 and amends Article 5 of Law 569/75 "On Compulsory Military Service," in the relevant part of the amendment of Article 5 it stipulates that "[i]n no circumstances may the provision of services be admitted before the age of eighteen." Furthermore, Law 3485 of May 20, 2008, amending the Law 123/52 of CIMEFOR, in the relevant part of the amendment of Article 10 sets forth that "[t]he special Military Instruction course and the courses to Train Officers and Standby Noncommissioned Officers are targeted at students who are citizens over eighteen years of age." As such, the above amendments of the Paraguayan legal system set 18 as the minimum age for compulsory military service and for the special Military Instruction courses and courses to Train Officers and Standby Noncommissioned Officers.

34. The changes to the Paraguayan legal system resulted in the expulsion from the internal legal order of the rule that allowed the Defensores de Incapaces [Defenders of the Incapable] and, subsequently, the Judges of the First Instance of the Juvenile Court, to grant permission for children under 18 years of age to enter CIMEFOR.²⁴ However, in relation to the Commission's comments on the amended legislation, without denying the possibility that in practice the legal operators might give the new legislation an interpretation contrary to the purposes that led to its issuance, the Court urges the State to monitor, at all times, that the rules whose contents have been adapted to the American

²² Cf. *Case of Vargas Areco*, *supra* note 20, Considering Clause thirty-three and thirty-six.

²³ Cf. *Case of Vargas Areco*, *supra* note 7, para. 164.

²⁴ In the Judgment on the merits, the Court held that "Article 36 of Law No. 569/75 authorizing [ed] a special regime in relation to Military Education Centres to Train Standby Students (CIMEFOR), which creat[ed] the possibility for students that [had] passed the fourth year of secondary school to give military service for 5-week period during the school holidays. To enter CIMEFOR it was necessary, up until March 2000, to have the authorization from the Defenders of the Incapable and, from April of that year, the Judges of First Instance of the Court of Minors." Cf. *Case of Vargas Areco*, *supra* note 7, para. 71.25.

Convention are implemented effectively and in accordance with the principles that inspired their introduction and amendment.²⁵

35. The Court considers that amendments to the legal system of the State of Paraguay are measures that nullify domestic laws contrary to the Convention, and whose contents are geared towards meeting international standards and the terms of the provisions of the operative paragraph fourteen of the Judgment (*supra* Having Seen 1). The Court acknowledges the efforts made by the State and considers this operative paragraph to be complied with, on the understanding that the State's obligation to adapt domestic legislation to the treaty conventions is not limited to legislative changes, but should result in the effective practical implementation of international human standards.

g) Regarding paragraphs fifteen, sixteen and seventeen of the Judgment

36. Regarding the obligation to pay moratory interest on the compensation for pecuniary and non-pecuniary damages, and reimbursement of costs and expenses (*operative paragraphs fifteen, sixteen and seventeen of the Judgment*), during the private audience (*supra* Having Seen 8) the State requested "the Court's review of" the response, through the Secretariat notes, made by the Court to the consultation sent on December 30, 2009 by Paraguay (*supra* Having Seen 6) as it considered that "[in said] clarification the merits [of the Judgment] are amended," which referred to State legislation "in terms of rates and the payment system," "in light of [...] a new period [in] which the State [...] shall be subject to pay [...] interest," a system under which the State" will always [...] be in debt because the budget system make take some time to effect payment. "Furthermore, it clarified that it is not "indifferent to paying," but for "the 96 days that elapsed[ed] from the last day of the [first] year, until actual payment of the compensation." It stated that "if the Court maintains the terms of its clarifying order the Paraguayan State will pay the interest upon agreement with the petitioners for the purpose of giving a certain amount and trying to definitely comply and not with transitory amounts." Finally, the State proposed the sum of USD 2.000,00 (two thousand dollars of the United States of America) to the representatives so as to comply with this obligation, with the obligation to pay within the 2011 fiscal year.

37. During the private audience (*supra* Having Seen 8) the representatives let it be known that they agree with the response issued by the Court regarding the means of calculating the moratory interest (*supra* Viewed 6). Also, it stated that in order to expedite the payment they remain open to find a way to "pay the interest owed by [the State] in a one-off payment" by calculating "a fixed amount" agreed upon with the State. With regard to the proposal submitted by the State in its last report, the representatives presented, based on certain considerations, a counterproposal for the State to pay the sum of USD 3,000.00 (three thousand dollars of the United States of America) until December 31, 2011, date on which this counter expires.

38. The Commission, during a private audience (*supra* Having Seen 8), noted that it "agrees with the interpretation made by the Court, [which] is a constant practice that has been applied in this case and other cases in Paraguay," therefore "there [was] no confusion in that sense. "

39. In virtue of the statements made by the State during the hearing, the Court notes that it responded promptly to the State's consultation (*supra* Having Seen 6)²⁶, therefore it

cf. Case of Zambrano Vélez et al. v. Ecuador. Monitoring compliance with Judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering Clause forty-six.

refers to the terms set forth thereof. Furthermore, the Court notes that as stated in paragraph 174 of its Judgment(*supra*Viewed 1), in the sense that "[i]f the State fall into arrears, duty [would] pay interest on the amount owed to the bank interest on arrears in Paraguay," refers to the rate interest should be applied in the particular case, namely the rate in Paraguay, being that the criteria for compliance with the respective interest payment are those already mentioned in response to that query. Accordingly, the Court notes the will of the parties to achieve progress on this point based on an agreement and is waiting for updated information on efforts and results achieved regarding the compliance with this aspect of the reparation.

40. In monitoring compliance with the outstanding issues in this case, the Court assess the usefulness of the hearing held to this end, which has been reflected in the goodwill and cooperative spirit shown by the parties. The Court will consider the general state of compliance with the pending points of the Judgment rendered in this case, once it receives the relevant information.

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), 67, and 68(1) of the American Convention on Human Rights, Article 24 and 30 of the Statute, and Article 31.2 and 69 of its Rules of Procedure,

DECIDES:

1. In accordance with the provisions of Considering Clauses 17, 29 and 35 of this Order, the State has complied with operative paragraphs set forth in the Judgment:

- a) make a public apology and recognition of international responsibility in relation to the violations set forth in [the] Judgment, the community where the family of Gerardo Vargas Areco, in the presence of the family and State civilian and military authorities, as part of which a plaque will be installed in memory of the child Vargas Areco (*operative paragraph ten of the Judgment*);
- b) to publish in a nationally circulated newspaper, on a sole occasion, the chapter on proven facts of this Judgment, without the footnotes of the corresponding page, and the operative part of the [...] Judgment (*operative paragraph thirteen of the Judgment*), and
- c) to bring domestic legislation on voluntary recruitment of minors under 18 years in the armed forces of Paraguay, in accordance with international standards in the field (*operative paragraph fourteen of the Judgment*).

²⁶ In this regard, the State was informed that "when fixing of moratory interest for the payment of compensation for pecuniary damage and non-pecuniary, two points should be considered: 1) the time between the deadline to comply with the main obligation to pay and the date of payment, and 2) the time between the date of such payment and that on which all the moratory interests generated were paid. [...] Regarding the first period, the sum of the compensation plus the moratory interests for non-timely payment must be paid. Regarding the second period, the difference between the payment and debt (the capital plus the interest for the three month delay in payment), difference on which moratory interests will still be charged up until the date of the full payment of the debt."

2. It shall keep the monitoring process open for the following outstanding points:
 - a) undertaken, in full compliance with judicial guarantees and within a reasonable time, all actions necessary to identify, prosecute and punish all those responsible for violations committed in this case (*operative paragraph nine of the Judgment*);
 - b) provide medical, psychological and psychiatric treatment, as appropriate, to De Belén Areco Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all of whom have the surname Vargas Areco, if they so require, and for the time needed (*operative paragraph eleven of the Judgment*);
 - c) to implement training programs and regular human rights courses for all members of the Paraguayan Armed Forces (*operative paragraph twelve of the Judgment*), and
 - d) to pay moratory interest for the compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses (*paragraph fifteen, sixteen and seventeen 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, set forth in declarative paragraph two *supra*, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. Request the State of Paraguay to submit to the Inter-American Court of Human Rights, by no later than March 28, 2011, a report indicating all the measures taken to comply with the reparations ordered by this Court that are pending compliance, in accordance with the provisions of Considering Clauses 8 to 12, 21 to 22, 26 and 39, and the second declarative point of this Order.
3. To request that the representatives 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 request the Secretariat to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victim.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary