

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 1, 2011**

**CASE OF ACEVEDO BUENDÍA *ET AL.*
("DISCHARGED AND RETIRED EMPLOYEES OF THE OFFICE OF THE COMPTROLLER")
v. PERU**

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 Court," "the Inter-American Court" or "the Tribunal") on July 1, 2009, whereby it held that:

[...]

5. The State must pay the amounts set in this Judgment as compensation for pecuniary damages, non-pecuniary damages, and reimbursement of costs and expenses within one year as of notice of [said] Judgment, under the terms of paragraphs 134, 150, 151, 152, 153, 154 and 155 thereof.

6. The State must fully comply with the judgments of the Constitutional Court of Peru of October 21, 1997 and January 26, 2001, in relation to the reimbursement of the accruals unpaid to the victims between April 1993 and October 2002, within a reasonable term, pursuant to paragraph 138 of [this] Judgment. The payment of said amounts owed and interest thereto should not be affected by any tax, under the terms of paragraph 139 of the [...] Judgment.

7. The State shall publish, at least once, in the Official Gazette and in another newspaper of wide national circulation paragraphs 2 to 5, 17, 19, 52, 53, 61, 65, 69 to 79, 84 to 91, 104 to 107, and 113 of [this] Judgment, without the corresponding footnotes and with the titles of the respective chapters, as well as the operative paragraphs therein, in the term of six months as of notice of this Judgment, under the provisions of paragraphs 141 of the Judgment.

[...]

* Judge Diego García-Sayán, of Peruvian nationality, excused himself from the deliberation and signing of the present Order, in conformity with Articles 19(1) of the Court's Rules of Procedure. Furthermore, Judge Alberto Pérez Pérez informed the Court that, due to force majeure, he was unable to participate in the deliberation and signing of the present Order.

2. The briefs of April 16 and May 7, 2010, and the brief of January 18, 2011 and its annexes, wherein the Republic of Peru (hereinafter "the State" or "Peru") presented information on compliance with the Judgment of the Court in the present case (*supra* Having Seen 1).

3. The briefs of May 27, July 19 and 22, and December 3, 2010, February 10 and 22, and June 3, 2011 and its annexes, wherein the representative of the victims (hereinafter "the representative") presented comments to the information provided by the State (*supra* Having Seen 2), as well as additional information on the compliance with the Judgment.

4. The communication of the victims Acevedo León, Beaumont Callirgos and Chamorro Díaz and its annexes, received in April 2010, wherein information was presented on the compliance with the Judgment

5. The brief of June 30, 2010, wherein the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented comments on the information provided by the State and by the representatives (*supra* Having Seen 2 and 3).

6. The notes of the Secretariat of the Court of July 21 and December 10, 2010, wherein, following instructions of the President-in-Office of the Court for the present case, it requested the State to refer in a specific manner to some of the information provided by the representatives of the victims, as well as to the notes of the Secretariat of January 20, February 11 and 28, and June 7, 2011, wherein said request for information from the State was reiterated.

CONSIDERING:

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

2. Peru is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978 and acknowledged the jurisdiction of the Court on January 21, 1981.

3. 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 provisions set forth in the Court's rulings.¹

4. In virtue of the definitive and non-appealable nature of the Court's Judgments, according to the provisions of Article 67 of the American Convention, the State should fully comply with such Judgments.

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Tiu Tojin v. Guatemala*. Monitoring Compliance with Judgment. Order of the Court of May 16, 2011, Considering Clause 4, and *Case of Radilla Pacheco v. Mexico*. Monitoring Compliance with Judgment. Order of the Court of May 19, 2011, Considering Clause 5.

5. 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*)

6. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective 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.²

7. In accordance with the reparation measures ordered in the Judgment, the Court will now examine the measures adopted by the State to comply with the Judgment, as well as the comments of the representative of the victims and the Inter-American Commission in this regard.

A. *Obligation to pay the compensation awarded as non-pecuniary damages and costs and expenses (Operative Paragraph 17 of the Judgment)*

8. The State reported that it had fulfilled its obligation to pay USD 2,000.00 (two thousand dollars of the United States of America) "directly to each one of the victims." Moreover, it noted that it had paid USD 20,000.00 (twenty thousand dollars of the United States of America) directly to the Association of Discharged and Retired Employees of the Office of the Comptroller of the Republic (hereinafter the "Association of Discharged and Retired Employees") as reimbursement for costs and expenses. Furthermore, the State provided copies of the payment orders issued by the Comptroller of the Republic on December 2 and 3, 2009 in favor of the victims of the present case or their heirs, as well as the payment order issued on February 10, 2010 to the Association of Discharged and Retired Employees of the Office of the Comptroller, in regard to the quantity ordered as reimbursement for costs and expenses. According to the information presented, the corresponding payments were made by way of cashier's checks in the name of each one of the victims or, where necessary, their heirs, and in the name of the Association of Discharged and Retired Employees, or through direct transfers to their personal accounts.

9. The representative confirmed "as accurate" that indicated by the State concerning the payment of non-pecuniary damages and costs and expenses, and that Peru had fulfilled this reparation measure.

10. The Inter-American Commission noted that the documentation provided by the State "is consistent with the aforementioned payments, wherein the amounts correspond to that provided for in the Judgment." As such, it is of the opinion that "it should be deemed that the State has satisfied this aspect of the Judgment."

11. The Court recalls that in its Judgment it ordered the State to pay USD 2,000.00 (two thousand dollars of the United States of America) as compensation for non-pecuniary damages to each of the 273 victims in the present case. This compensation should be paid

² Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Tiu Tojín v. Guatemala*, supra note 1, Considering Clause 5, and *Case of Radilla Pacheco v. Mexico*, supra note 1, Considering Clause 6.

directly to the beneficiaries within a year period as of notification of the present Judgment. Likewise, the Court ordered the payment of USD 20.000,00 (twenty thousand dollars of the United States of America) to the Association of Discharged and Retired Persons as reimbursement for costs and expenses incurred during the processing of this case within the domestic forum and before the inter-American System, which should be paid directly to the Association within a year period as of notification of this Judgment.

12. The Court positively values the payments made by the State to comply with this reparation measure. The Court recognizes that indicated by the State, and notes that Peru in fact ordered the payments within the period established, as this Judgment was notified on August 5, 2009, and the payments were made between December 2009 and February 2010, according to the documentation presented by the State. Moreover, it notes the satisfaction expressed by the representatives and the Commission concerning the payments made. Nevertheless, the Court notes that, based on the documentation presented by the State, it is found that the payments made to the victims Nolberto Castro Zapata and Jesús Romero Pacora as compensation for non-pecuniary damages was less than the payments made to the other victims, without a justification being presented to the Court regarding this. According to the exchange rate indicated by the State as that corresponding to the date on which payments were made, and that was used to calculate the national currency equivalent of the compensation ordered in the Judgment, Mr. Nolberto Castro Zapata received a payment of USD 1,400.00 (fourteen hundred dollars of the United States of America), and Mr. Jesus Romero Pacora received a payment of USD 1,600.00 (sixteen hundred dollars of the United States of America), rather than the USD 2.000,00 (two thousand dollars of the United States of America) ordered by the Court in its Judgment (*supra* Considering Clause 11).³ Due to the foregoing, the Court considers that it is necessary for the State to submit information that explains the difference between the amounts paid to the victims Nolberto Castro Zapata and Jesus Romero Pacora and the remaining victims and the amounts ordered by this Court in its Judgment in order to determine the full compliance with this reparation measure.

13. As a consequence, the Court deems that the State has partially complied with the payments ordered in the Judgment as compensation for non-pecuniary damage, and it has fully complied with the reimbursement of costs and expenses as ordered.

B. The obligation to fully comply with the judgments of the Constitutional Court of Peru (Operative Paragraph 6 of the Judgment)

³ The State submitted a copy of Official letter No. 0034-2010-CG/PP of April 5, 2010 of the Comptroller General of the Republic together with its reports of April 16 and May 7, 2010. In said official letter, the Deputy Prosecutor of said state institution indicated that the exchange rate used to calculate the national currency value of the compensation ordered in the Judgment was PEN 2.95 (two Peruvian nuevos soles with ninety-five cents) for each US dollar. Likewise, Peru submitted, together with its report of May 7, 2010, official letter No. 0109-2009-CG/FI of December 2, 2009 of the Comptroller General of the Republic, addressed to the National Bank. In this official letter, there is proof that the order of payment in favor of 187 victims was awarded to Nolberto Castro Zapata and Jesús Romero Pacora, among others. Nevertheless, the payment in favor of the all the victims, with the exception of Nolberto Castro Zapata and Jesús Romero Pacora, was for PEN 5,900.00 (five thousand and nine hundred Peruvian nuevos soles), the equivalent of USD 2.000,00 (dos mil dólares de los Estado Unidos de América). However, the payments ordered to Nolberto Castro Zapata was for PEN 4,130.00 (four thousand one hundred and thirty Peruvian nuevos soles) and for Jesús Romero Pacora PEN 4,720.00 (four in 1700 Peruvian nuevos soles) was awarded, the equivalent to USD 1,400.00 (one thousand four hundred dollars of United States of America) and USD 1,600.00 (one thousand six hundred dollars of the United States of America), respectively, in accordance with the exchangerate indicated by the State for the date of the payment.

B.1 Regarding setting the amount due and effecting payment to the victims for accruals not received from April 1993 to October 2002

14. The State reported in April and May 2010 that the Sixth Civil Chamber of the Superior Court of Justice of Lima (hereinafter "the Sixth Civil Chamber") had not yet ruled on the appeal lodged by the Attorney General's Office of the Comptroller of the Republic regarding the amount of the severance payments to be made. In this regard, the State noted that on May 28, 2009, the Fourth Specialized Civil Court of the Superior Court of Jesus of Lima notified the Office of the Comptroller General (hereinafter "the Office of the Comptroller" or "the Office of the Comptroller General") that the "new expert report [...] set the amount owed" in accruals not received by the victims between April 1993 and October 2002. Despite the Office of the Attorney General of the Comptroller's objections to this new amount, in its Resolution 330, the Fourth Specialized Civil Court approved the severance payment and ordered it to be paid within three days. This resolution was appealed on August 14, 2009, and, as of May 2010, "it is pending adjudication before the Sixth Civil Chamber." The State added that since 2004, the Office of the Comptroller has earmarked 3% of its initial operating budget for the payment of accruals not received by the victims between April 1993 and October 2002. The "[corresponding amount] was paid as a payment on account."⁴ Additionally, the State noted that, on various occasions, the Office of the Comptroller General had requested the funds necessary for the payment from the Ministry of Economy and Finance. Furthermore, it noted that the Office of the Comptroller had requested "good offices" from the Minister of Justice and the President of the Council of Ministers in order to secure additional funds so that they could make the aforementioned payment.⁵ In its brief of January 2011 (*supra* Having Seen 2), the State reported that it was awaiting information from the Office of the Comptroller General, the "body responsible for the violation," "so that it could continue reporting and coordinating compliance with the Judgment." To this end, it intended to submit this information "as soon as possible."

15. Regarding the determination of the amount owed to the victims, the representative reported to the Court that on March 3, 2010, the Sixth Civil Chamber ruled on the Office of the Comptroller's appeal against its Resolution 330 of July 30, 2009, by affirming it and consequently affirming the expert report that calculated the amount owed by the Office of the Comptroller General to the victims for accruals and interest for the period of April 1993 to October 2002. The representative further noted that the Sixth Civil Chamber of the Superior Court of Lima had been emphatic in stressing "the considerable and prolonged

⁴ In the official letter issued by the Comptroller General of the Republic in April 2010, which formed the basis of the State's April and May 2010 reports, it is shown that this State entity "has made disbursements" of specific amounts, including an amount that it "paid out" as "a payment on account" up until that time as the reimbursement of accruals not received between April 1993 and October 2002 for the victims of the present case. Likewise, in the State's April 2010 brief, it notes that fulfillment of this Judgment "at present entails a specific sum for the Peruvian State." As part of that amount, the State includes the aforementioned amount that the Office of the Comptroller General "paid" as the "payment on account" of the amounts owed to the victims. Moreover, in June 2011, the representative of the victims provided a copy of the Comptroller's Official Letter No. 00014-2011-CG/DC of January 17, 2011, which was addressed to the Ministry of Economy and Finance, in which it indicates that, up until that time, the Comptroller "has made disbursements amounting to [a specific amount] for the payment on account of pensions accruals and other legal interests" in favor of the victims in the present case. However, no proof showing that the aforementioned amount of money has been allocated to "payments on account" has been presented to the victims.

⁵ In this regard, the State provided a copy of Comptroller's Official Letters No. 00110-2009-CG-GG and 00832-2009-CG/DC of July 16, 2009 and October 15, 2009 to the National Directorship of the Public Budget and to the Ministry of Economy and Finance, respectively. In addition, it provided copies of Official Letters 00123-2010-CG/DC and 00124-2010-CG/DC, both from February 19, 2009, addressed to the Ministry of Justice and to the President of the Council of Ministers, respectively.

delay" (of approximately 12 years) experienced by the victims in the case in order to receive effective protection of their constitutional rights. This delay was a consequence of the "successive and profuse requests formulated by the defendant during the implementation stage." According to the representative, this decision of the Sixth Civil Chamber "definitively and unquestionably ratifies the total amount owed to the dismissed and retired former employees of the Office of the Comptroller." However, the representative stressed that the Office of the Comptroller had not complied with the orders despite the ruling of the Sixth Civil Chamber and Resolutions 350 and 359 of the Fourth Special Civil Court in Lima, issued on August 23 and October 7, 2010, which once again, requested that the Office of the Comptroller pay the amount ordered.⁶ In June 2011, the representative indicated that on October 25, 2010, the Office of the Comptroller filed an appeal to nullify Resolution 359, which "directed it to proceed to pay the victims the restitution that [has been] pending for more than 14 years." This appeal was declared to be without merit in Resolution 372 of March 13, 2011, but the Office of the Comptroller appealed in turn in April 2011, "forcing another revision of the matter by the highest authority of the Superior Court of Justice of Lima [and] this delayed the procedure further still." The representative stressed that the Inter-American Court ordered compliance with this obligation within a reasonable period. After 14 and 10 years, respectively, since the issuance of the Constitutional Court's judgments, the State of Peru's actions are not consistent in any way with its obligation under the Judgment. Thus, in this regard, the representative noted that a significant number of the victims have passed away "during this long and painful process."

16. Regarding the lack of resources alleged by the State, the representative stressed in the brief of May 2010 that Peru had not made "any mention" in its briefs as to the Ministry of Economy and Finance's December 10, 2009 response to the Office of the Comptroller General's request for funds (*supra* Considering Clause 14). In this regard, the representative highlighted that the Comptroller had not followed the precise instructions and suggestions of the Ministry of Economy and Finance in order to comply with the payments indicated in the Judgment.⁷ This was because: (i) the Office of the Comptroller had not applied the budgetary balance that would have "partially covered the [J]udgment"; (ii) it had not applied the norm that would have allowed exceptions for compliance with the restrictions set forth in the Budget Law for the Public Sector and the General Law of the National Budgetary System; and, (iii) it had not prioritized the Office of the Comptroller's goals so as to have the necessary resources available to comply with the Judgment. In June 2011, the representative also noted that while the Office of the Comptroller General "spends years sending recurrent official letters to the Ministry of Economy and Finance that are not heeded,"⁸ it continues to file appeals that impede execution of the Constitutional

⁶ From the copy of Resolution 359 of October 7, 2010, provided by the representative together with his brief of December 3, 2010, it is evident that after issuance of Resolution 330 of July 30, 2009, the Peruvian court had requested that the Office of the Comptroller make the payment ordered in two other court orders (Resolutions 340 and 343) which came prior to issuance of the ruling of March 3, 2010 by the Sixth Civil Chamber regarding the appeal lodged by the Office of the Comptroller General.

⁷ In this regard, the representative submitted, along with his brief of May 27, 2010 (*supra* Having Seen **¡Error! No se encuentra el origen de la referencia.**), a copy of Official Letter No. 1399-2009-EF/10 from the Ministry of Economy and Finance of December 10, 2009, as well as report No. 412-2009-EF/76.14, written by the National Directorship of the Public Budget on November 25, 2009, which details the aforementioned suggestions and instructions to the Office of the Comptroller General for the payment of the amounts ordered in the Judgment. A copy of this report was also provided by the victims Acevedo León, Beaumont Callirgos, and Chamorro Díaz in their brief of April 2010 (*supra* Having Seen 4).

⁸ In this regard, the representative provided, along with his briefs of December 2010, February and June 2011 (*supra* Having Seen **¡Error! No se encuentra el origen de la referencia.**), copies of official letters from March 11, April 5, July 21, September 7, and November 24, 2010; January 17 and February 4, 2011 submitted by

Court's rulings. The representative pointed out that what the State "must do is provide the relevant resources by way of the entity with the jurisdiction to do so." The representative insisted that Peru is merely "[m]aking arrangements, requesting information, and carrying out coordination [activities] that, a year and a half after [the Judgment's issuance], do not lead towards the outcome sought by [...] this Court[, but rather] the contrary."

17. The representative also stressed that the State was subordinating fulfillment of its pending victim payment obligations to the provisions of the Budget Law for the Public Sector and the General Law of the National Budgetary System, which attribute the proposal of proposing a timeline for payment that can last up to five years to the public entity facing the obligation. Likewise, the representative pointed out that a bill that supposedly would have the same effect. The aforementioned bill establishes the "measures to effectuate debt obligations from budgetary specification sheets that derive from judicial judgments on a res judicata basis as well as from definitive administrative resolutions."

18. For its part, the Inter-American Commission found that it is the State's obligation to adopt the measures necessary to prevent the repetition of the patterns of denials of justice that led to the Inter-American proceeding during the monitoring compliance with the Judgment stage. Furthermore, in June 2010, the Commission declared that, up until that point, the State had not provided updated information in follow-up to steps it reported to have taken in October 2009, nor has it made specific reference to the steps it has taken to overcome the restrictions imposed by its budgetary laws. Therefore, the Commission requests that the Court order the State to comply with the judgments of the Peruvian authorities "as soon as possible" and to present updated and specific information on the measures taken in this regard.

19. The Court recalls that in its Judgment it ordered the State "to fully comply with the Constitutional Court of Peru's judgments of October 21, 1997, and January 26, 2001, concerning the reimbursement, within a reasonable time, of unpaid accruals from the period of April 1993 to October 2002."⁹ In this regard, the Court found that "the prolonged and unjustified nonobservance of the judgments of the Constitutional Court has given rise to a violation of the rights to judicial protection and private property of the 273 victims in the present case, which would not have occurred if these judgments had been complied with in a timely and complete manner."¹⁰ The Court also held that full compliance with the aforementioned judgments must take place "fully respecting and guaranteeing the victims' right to receive due payment within a reasonable period of time, taking into account that more than 11 and 8 years have passed, respectively, since the issuance of the first and last judgment of the Constitutional Court" by the date on which this Judgment was handed down.¹¹

the Office of the Comptroller General to the Ministry of Economy and Finance requesting that they provide additional resources to enable it to comply with the Judgment.

⁹ *Case of Acevedo Buendía et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, Operative Paragraph 6.

¹⁰ *Case of Acevedo Buendía et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru*, *supra* note 9, para. 138.

¹¹ *Cf. Case of Acevedo Buendía et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru*, *supra* note 9, para. 138.

20. Regarding the domestic procedure for carrying out decisions of the Constitutional Court, this Court recalls that in its Judgment it found that “[what] remain[ed] pending in that process on the date of the [...] the Judgment’s issuance, [was] the determination of the amount in question.”¹² The Court thus repeats the following from that occasion:

[Although] the Tribunal acknowledge[d] that Peruvian laws contemplate a procedure to execute judgments [in which] certain decisions must be made in order to comply with the rulings of the Constitutional Court and different orders must be issued. [The lack of judicial determination of the appropriate amount], rather than exonerating the State from its responsibility, demonstrates the ineffectiveness of the remedies instituted to guarantee those rights that the Constitutional Court found to have been violated, and this is not a reasonable justification for the non-implementation of the final judgments of said court. The State’s obligation to guarantee the efficacy of its judicial recourses is derived from the American Convention and such obligation cannot be limited by domestic procedure provisions or exclusively depend on the procedural effort of the plaintiff to the proceedings.¹³

21. The Court takes note of the State’s comments in this regard, as well as the representative’s comments, which show that it was not until March 3, 2010 that a resolution of the Sixth Civil Chamber of the Superior Court of Lima, supposedly, finally and definitively established the aforementioned amount (*supra* Considering Clause 15). Additionally, the Court finds that following issuance of its Judgment, the State authority responsible for its execution –the Office of the Comptroller of the Republic– has continued to file appeals during the implementation process of the rulings of the Constitutional Court and this has prevented effective compliance with this reparation measure. The Court stresses that the Office of the Comptroller has been engaged in this sort of litigation both before issuance of the Sixth Civil Chamber’s resolution of March 3, 2010, and after this order conclusively established the amounts owed to the victims (*supra* Considering Clause 15). The Court emphasizes that, in ruling on the Office of the Comptroller General’s appeal against the latest expert’s report carried out in the course of executing the Constitutional Court’s decisions, the Sixth Civil Chamber found that the Office of the Comptroller General’s objections were largely unfounded.¹⁴

22. Moreover, the Office of the Comptroller General has taken on said attitude despite that indicated by this Court in regard to the fact that the excessive period of time that has passed for the execution of the mentioned judgments has meant that the right to effective judicial protection of the victims is “at least partially illusory,”¹⁵ as well as that indicated by the national tribunal itself in that “a considerable and prolonged period of time has passed,” partly as a consequence of “the successive and profuse requests made by the defendant.”¹⁶ However, the Court observes that, when this Order was issued, the State had not submitted information nor had it referred in its reports to the cited decision of the Sixth Civil Chamber that allegedly definitively established the amount owed to the victims, nor has it referred to the subsequent measures taken in this regard, despite it having been specifically requested,

¹² *Case of Acevedo Buendía et al. (“Dismissed and Retired Workers of the Comptroller’s Office”) v. Peru*, *supra* note 9, para. 64.

¹³ *Case of Acevedo Buendía et al. (“Dismissed and Retired Workers of the Comptroller’s Office”) v. Peru*, *supra* note 9, para. 76.

¹⁴ *Cf.* Order of the Sixth Civil Chamber of the Superior Court of Justice of Lima of March 3, 2010, provided by the representative together with the brief of July 2010, Considering Clause 14 and 22.

¹⁵ *Case of Acevedo Buendía et al. (“Dismissed and Retired Workers of the Comptroller’s Office”) v. Peru*, *supra* note 9, para. 77.

¹⁶ Order of the Sixth Civil Chamber, *supra* note 14, Considering Clause 6.

as per the instructions of the President of the Tribunal in the present case, by way of six notes of the Secretariat of the Court (*supra* Having Seen 6).

23. On the other hand, the Court notes the State's claim regarding the alleged lack of sufficient funds of the Office of the Comptroller General to execute the Judgment, and regarding other issues related to internal budgetary rules, as well as the comments of the representative on the matter (*supra* Considering Clause 14 and 16). It also notes that, since the issuance of the Judgment, the Office of the Comptroller General of the Republic has sent numerous requests to the Ministry of Economy and Finance who has repeatedly stated, *inter alia*, that it must take the funds from its own budget, prioritizing its expenses (*supra* Considering Clause 16). In this regard, the Court reiterates the following terms of its Judgment:

[...] Even though the State affirmed that it had adopted a series of administrative, legislative and judicial measures aimed at overcoming said economic constraint in order to comply with its treaty obligations [...], these measures have still not been implemented. Hence, the Tribunal has held that budget regulations may not be used as an excuse for many years of delay in complying with the judgments.¹⁷

24. In addition, the Court deems it appropriate to recall that the obligation in Operative Paragraph 6 of the Judgment is an obligation of the State, and for reasons of domestic order, it cannot abandon its pre-established international responsibility.¹⁸ Furthermore, it recalls that the treaty obligations of State Parties are binding on all branches and bodies of the State.¹⁹

25. The Court appreciates the measures taken by the State to separate and obtain the funds available to fulfill this obligation. However, it notes that this reparation measure should have been fulfilled within a reasonable time, given that, almost two years after the issuance of the Judgment, the process of implementing the rulings of the Constitutional Court appears to be awaiting adjudication due to the latest appeal lodged by the Office of the Comptroller General (*supra* Considering Clause 15). However, given the lack of information from the State, the Court does not have sufficient information to enable it to determine the efficacy or effectiveness of other efforts made by the State to fulfill this reparation measure.

26. 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 the said Judgment. The obligation to inform the Court about the compliance of 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.²⁰ Timely fulfillment of the State's

¹⁷ *Case of Acevedo Buendia et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru*, *supra* note 9, para. 75.

¹⁸ *Cf. International responsibility for the issuance and application 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 Tiu Tojin v. Guatemala*, *supra* note 1, Considering Clause 5, and *Case of Radilla Pacheco v. Mexico*, *supra* note 1, Considering Clause 5.

¹⁹ *Cf. Case Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment. Order of November 17, 1999. Series C No. 59, Considering Clause 13; Case of Caso Castillo Páez v. Peru. Monitoring Compliance with Judgment. Order of the Court of May 19, 2011, Considering Clause 4, and Case of Radilla Pacheco v. Mexico, supra* note 1, Considering Clause 5.

²⁰ *Cf. Case of Lilliana Ortega et al. Provisional Measures regarding Venezuela. Order of the Court of December 2, 2003. Considering Clause 12; Case of El Amparo v. Venezuela. Monitoring Compliance with Judgment.*

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.²¹

27. Due to the foregoing, the Court finds that the State has not satisfied its obligation to fully comply with the judgments of the Constitutional Tribunal of Peru of October 21, 1997 and January 26, 2001, regarding the reimbursement of accruals not received by the victims between April 1993 and October 2002. Therefore, the Court considers it necessary that, within the period set in the operative paragraphs of this Order, the State of Peru present updated, detailed, and complete information on: i) the implementation of the aforementioned Constitutional Court judgments, with regards to which the State must refer, specifically, to the appeals filled before the Fourth Specialized Court on Civil Matters of Lima by the Office of the Comptroller General against the ruling of the Sixth Civil Chamber of March 3, 2010, its possible decision and its current status (*supra* Considering Clause 15); and, (ii) the efforts made, and their results, in regard to the availability and effective payment of the amounts owed to the victims, with regards to which it must so report in a specific manner, providing the relevant supporting documents, whether it has made payment to the victims, be it partial or not, in compliance with the judgments of the Constitutional Court, as well as on how it plans to pay all amounts due in a definitive manner (*infra* Operative Paragraph 2).

B.2 In regard to the obligation that the payment of accruals not received by the victims from April 1993 to October 2002, and the interests on those amounts, may not be affected by any tax

28. In May 2010, the representative noted that the Office of the Comptroller "refuses to return to the victims the amounts retained by this entity as a 'Contribución Solidaria para la Asistencia Previsional' [Solidary Contribution for Pension] regarding the pension payments owed to them for the period of 1993 to 2002." In this regard, the representative explained that the Association for Discharged and Retired Employees filed an application for amparo against the judges of the Sixth Civil Chamber in light of the resolution ordered by this Chamber, wherein the Office of the Comptroller was allowed to deduce the amounts corresponding to the Solidary Contribution for Pension under Law No. 28046 of the accrued pensions of the victims between 1993 and 2002. In this regard, the representative informed that the appeal was resolved by resolution of the Sixth Civil Chamber of September 28, 2009, in which "it deemed that the processing of the proceeding had concluded without issuing a decision on the merits of the matter at issue due to the subtraction of the matter," given that the complaint "had been resolved by the Judgment of the Inter-American Court [which] ordered that the State must comply with the Judgment[s] of the Constitutional Court [...] regarding the payment of accruals not received [...] without being affected by any tax burden such as the Solidary Contribution for Pension created by Law No. 28046." However, the representative explained that the Office of the Comptroller General, "protected by said resolution without ruling on the merits," denied the request of the victims to reintegrate the deductions made for said solidary contribution regarding the "payments on account of 'accrued' pensions owed to them for the period of 1993 to 2002,"

Order of the Court of February 4, 2010, Considering Clause 21, and *Case of Almonacid Arellano et al. vs. Chile*. Monitoring Compliance with Judgment. Order of the Court of November 18, 2010, Considering Clause 32.

²¹ Cf. *Case of Barrios Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Court of September 22, 2005, Considering Clause 7; *Case of Cantos v. Argentina*. Monitoring Compliance with Judgment. Order of the Court of August 26, 2010, Considering Clause 5, and *Case of Almonacid Arellano et al. vs. Chile*. Monitoring Compliance with Judgment. Order of the Court of November 18, 2010, Considering Clause 32.

interpreting that said ruling did not alter the ruling passed down previously by the same Chamber, because it did not rule on the merits nor did it order payment of the deductions made.²²

29. The State did not refer to the arguments of the representative.

30. The Commission noted that indicated by the representative, and indicated that "it does not understand how a tax established in 2003 [was] applicable to [the] payment of [pensions for the period between 1993 and 2002]. Therefore, it requested the Court to request the State to provide information on why it would be applying a law established subsequently to amounts generated between 1993 and 2002, and on the nature of the tax in light of the prohibition provided for in the Judgment of the Court to not impose any taxes on such payments.

31. The Court recalls that in its Judgment it set forth that "[a]s to the application of Law No. 28046 of July 31, 2003, [...] the amounts to be assigned as a consequence of the enforcement of this Judgment, including the interest, may not be affected by any tax burdens."²³

32. In this regard, the Court takes note of the information submitted by the representative in regard to the State's refusal to pay victims for certain deductions taken off the amounts owed to them, based on Law No. 28046, in disregard of that expressly provided for in the Judgment. However, the Court noted that the representative informed about the alleged deductions in May 2010 and has not again referred to this in the subsequent communications to the Tribunal. Moreover, the Court notes that it has no information or comments from the State regarding this matter. Consequently, the Tribunal considers it necessary that, in the period established in the operative paragraphs of this Order, the State present complete and detailed information on the allegations made by the representative regarding the tax deductions applied to the victim's accrued pension amounts that correspond to the period of April 1993 to October 2002 (*infra* Operative Paragraph 2). Furthermore, the Court also asked the representative to submit specific information about the amounts allegedly deducted, the way in which they were deducted, and, if the case may be, the reimbursement of them (*infra* Operative Paragraph).

C. Obligation to publish the Judgment in the Official Gazette and another newspaper that is widely circulated nationally (Operative Paragraph 8 of the Judgment)

33. The State reported that on February 5, 2010, the pertinent parts of the Judgment were published in the Official Gazette and in the Diario Perú 21. Moreover, it provided copies of the aforementioned publications.

²² In this regard, along with the brief of May 2010, the representative provided a copy of an official letter issued by the Office of the Comptroller General on April 8, 2010, in relation to the victim Zoila Acevedo Isabel Leon, who is President of the Association of Discharged and Retired Employees, where, in fact, the Office of the Comptroller General denies an application for a refund of deductions made on account of the solidarity contribution for pension, indicating that in the aforementioned decision of September 28, 2009, the Sixth Civil Chamber did not order the return of those deductions made by that body. Furthermore, the Office of the Comptroller states, in the aforementioned official letter, that the Sixth Civil Chamber did not make a pronouncement on merits in its ruling of September 28, 2009; therefore, the dispute which was previously resolved by said Chamber had been the subject of a judicial pronouncement that said organ could not modify.

²³ *Case of Acevedo Buendía et al. ("Dismissed and Retired Workers of the Comptroller's Office") v. Peru*, *supra* note 9, para. 139.

34. The representative confirmed that "it [was] true" that the State had fulfilled its obligation to publish the pertinent parts of the Judgment in the Official Gazette and in a newspaper of wide national circulation.

35. The Inter-American Commission took note of that reported by the State and the representative, and it indicated that this reparation measure should be deemed to have been fulfilled.

36. The Court found that the State has indeed published, in the Official Gazette and in a newspaper of national circulation, once, the pertinent parts of the Judgment ordered by the Court in Operative Paragraph 7 thereof. Moreover, it notes the satisfaction expressed by the representatives and the Commission in this regard. Therefore, the Court finds that the State has fully complied with Operative Paragraph 7 of the Judgment.

D. Request of the victims' representative for a hearing

37. In the briefs of February 10 and June 3, 2011, the representative requested that the Court summon the parties to a hearing on monitoring of compliance with the Judgment in order for the Court to "instruct the State" on the need to provide the appropriate resources to achieve compliance, given that the State does not seem "to have any intention of doing so."

38. In this regard, the Court finds that, for the moment, it is not necessary to hold a hearing to monitor compliance with the Judgment, given that through this Order, the Court is evaluating the operative paragraphs of the Judgment that have been totally or partially complied with, as well as the operative paragraph pending compliance, with regard to which it has urged compliance and requested the necessary information from Peru.

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(2) and 69 of its Rules of Procedure,

DECLARES:

1. In accordance with Considering Clauses 13 and 36 of the present Order, the State has fully complied with the following operative paragraphs of the Judgment:

- a) To reimburse costs and expenses (*Operative Paragraph 5 of the Judgment*), and
- b) To publish the relevant parts of the Judgment once in the Official Gazette and once in another newspaper that is widely circulated nationally (*Operative Paragraph 7 of the Judgment*).

2. According to Considering Clauses 12 and 13 of this Order, the State has partially complied with its obligation to make the payments of the amounts established in the Judgment as compensation for non-pecuniary damages (*Operative Paragraph 5 of the Judgment*).

3. In accordance with Considering Clauses 12, and 13, 27 and 32 of the present Order, the procedure to monitor compliance with the following operative paragraphs of the Judgment will remain open:

a) To pay the amounts set in the Judgment as compensation for non-pecuniary damages (*Operative Paragraph 5 of the Judgment*), and

b) To fully comply, within a reasonable period, with the judgments of the Constitutional Court of Peru of October 21, 1997, and January 26, 2001, with regard to the accruals not received by the victims between April 1993 and October 2002 (*Operative Paragraph 6 of the Judgment*).

AND RULES:

1. To request that the Peruvian State adopt all measures necessary to effectively and promptly comply with those points that are outstanding, as stated in Declarative Paragraph 3 of this Order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the Peruvian State to submit to the Court, by no later than October 1, 2011, a detailed and complete report on measures taken in order to comply with reparations ordered that are still pending fulfillment, as set forth in Considering Clauses 12, 13, 27 and 32 of this Order.

3. To request that the representative of the victims and the Inter-American Commission on Human Rights submit their relevant 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 July 1, 2009, that are pending.

5. To order the Secretariat of the Court to serve notice of this Order on the Republic of Peru, the Inter-American Commission on Human Rights, and the representative of the victims.

Leonardo A. Franco
President-in-Office

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary