

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

CASE OF GARCÍA ASTO AND RAMÍREZ ROJAS v. PERU*

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits, reparations and costs delivered on November 25, 2005 (hereinafter "the judgment"), by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), in which the Court established that the State must:

11. [...] provide free medical and psychological care to Wilson García Asto through its health care services, including the provision of medicines free of charge, as set forth in paragraph 280 of th[e] judgment.

12. [...] provide Wilson García Asto and Urcesino Ramírez-Rojas with the opportunity for training and professional development through study grants, as set forth in paragraph 281 of th[e] judgment.

13. [...] pay Wilson García Asto and Urcesino Ramírez-Rojas, within one year, the compensation for pecuniary damage specified in paragraphs 261, 262 and 263 of th[e] judgment, as set forth in paragraphs 288, 291, 292, 294 and 295 [t]hereof.

14. [...] pay Wilson García Asto and Urcesino Ramírez-Rojas, Napoleón García Tuesta, Celia Asto-Urbano, Elisa García Asto, Gustavo García, María Alejandra Rojas, Marcos Ramírez Álvarez and Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez Rojas, within one year, the compensation for non-pecuniary damage specified in paragraphs 270, 271, 273 and 275 of th[e] judgment, as set forth in paragraphs 255, 288, 290, 291, 292, 293, 294 and 295 [t]hereof.

15. [...] pay, within one year, the amount awarded for costs and expenses incurred in the domestic proceedings and in the international proceedings before the inter-American system for the protection of human rights, pursuant to paragraph 287 of th[e] judgment, which shall be delivered to Wilson García Asto and Urcesino Ramírez Rojas, as set forth in paragraphs 289, 291, 292, 294 and 295 [t]hereof.

16. [...] publish in the Official Gazette and in another national newspaper, once, within six months, the chapter entitled Proven Facts, without the footnotes, and the operative paragraphs of th[e] judgment, as set forth in paragraph 282 [t]hereof.

* Judge Alberto Pérez Pérez was unable to attend the ninety-first regular session for reasons beyond his control and, consequently, did not take part in the deliberation and signature of this order. Judge Diego García-Sayán, a Peruvian national, recused himself from hearing this case in keeping with Articles 19(2) of the Court's Statute and 19 of its Rules of Procedure.

2. The Order of the Inter-American Court on monitoring compliance with judgment of July 12, 2007, in which the Court found it essential that the State present additional updated information on the said rulings (*supra* having seen paragraph 1).
3. The communications of the State of Peru (hereinafter “the State,” “the Peruvian State” or “Peru”) of October 5, 2007, and April 17, 2009, in which it referred to compliance with the judgment.
4. The briefs of the representatives of the victims (hereinafter “the representatives”) of November 8, 2007, March 5, 2008, and February 26, June 8 and October 30, 2009, in which they presented their observations on the status of compliance with the judgment.
5. The communications of the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) of January 9, 2008, and June 18 and 23, 2009, in which it presented its observations on the status of compliance with the judgment.
6. The note of the Court’s Secretariat of October 14, 2009, in which, on the instructions of the Court in plenary, it requested the State to present information on specific aspects relating to compliance with the judgment, within a non-extendible time frame that expired on November 9, 2009.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Peru has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since July 28, 1978, and accepted the compulsory jurisdiction of the Court on January 21, 1981.
3. As established in Article 67 of the American Convention, the States must comply with the judgments of the Court promptly and fully. In addition, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the State must ensure implementation at the national level of the Court’s decisions in its judgments.¹
4. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law on the international responsibility of the State, supported by international case law, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. The treaty obligations of the States Parties are binding for all the powers and organs of the State.²

1 Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of the Dos Erres Massacre v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 6, 2011, third considering paragraph, and *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of August 30, 2011, third considering paragraph.

2 Cf. *Case of Baena Ricardo et al. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2002, second and third considering paragraphs; *Case of the Dos Erres Massacre*,

5. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

A) Regarding the obligation to provide free medical and psychological care to Wilson García Asto through the State's health services, including the provision of medicines free of charge (*eleventh operative paragraph of the judgment*)

6. The State indicated that the Head of the Comprehensive Health Insurance System (SIS) had outlined "the procedures to follow in order to implement the Government's commitment to the Inter-American Court." In addition, it indicated that "the Supranational Special Public Attorney's Office had asked the representative of the Ministry of Health to the National Human Rights Council for his collaboration in order to comply with the aspects of the judgment that corresponded to his sector." It added that "the Ministry of Health has reported that it has been providing health care, through the [SIS]," because Mr. García Asto "is a member of [the said system] as part of a beneficiary focal group of the IACHR/Court in the Flor de Carabayllo Health Center [...], and can therefore receive the medical care he requires covered by the SIS."

7. The representatives indicated that "[t]he Ombudsman has raised the issue of the shortcomings of the SIS," and that this system "has [a series of] constraints [that could] jeopardize the services that the State offers through it to the poorest sectors." In addition, they expressed their disagreement with the inclusion of Mr. García Asto in the E-2 Plan of the SIS, instead of the E-1 Plan. In addition, they repeated that "beyond the communications sent by the Ministry of Justice – National Human Rights Council to the Ministry of Health and the response received from the latter, the State has not adopted any measure that results in Mr. García Asto being able to receive the medical and psychological care that he requires." The representatives specified that doctors attached to the Ministry of Health had contacted Mr. García Asto towards the end of 2008 and the beginning of 2009, in order to obtain updated information on the state of his physical and mental health. Mr. García Asto provided this information, but this did not lead to specific measures. In addition, they advised that Mr. García Asto had registered "with the Comprehensive Health Insurance System – La Flor Health Center." However, "[t]his Center [...] does not possess the medical specialties that the state of [his] health requires." Also, the representatives indicated that "the mere registration" of Mr. García Asto "in the [SIS] and his referral to a health care center that does not offer medical care in all areas, including psychology, that his state of health requires does not comply with the ruling" of the Court. They added that "the State has never provided Mr. García Asto with medicines."

supra note 1, fourth considering paragraph, and *Case of Montero Aranguren et al.*, *supra* note 1, fourth considering paragraph.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of the Dos Erres Massacre*, *supra* note 1, fifth considering paragraph, and *Case of Montero Aranguren et al. (Retén de Catia)*, *supra* note 1, fifth considering paragraph.

8. Regarding the foregoing, the Commission observed that the information presented by the State “does not show that it has overcome the obstacles to free access to medicines that it had reported in the past.” In addition, it considered that “the information provided by the State is very general and does not answer the concerns raised by the representatives.” It added that it hoped that the State would refer “to the new difficulties mentioned by Mr. García Asto as regards the constraints of the health center with which he was affiliated.”

9. The Court appreciates the information that Mr. García Asto is affiliated with the health system and that he receives attention in a health care center. Nevertheless, the Court reiterates that, in addition to the measures adopted under the general health care system, the State must grant preferential care to the victim,⁴ and a differentiated treatment as regards the process and procedures to treat his health problems related to the harm declared in the judgment. Regarding the provision of medicines free of charge, the information provided by the State does not refer to specific compliance with this aspect. Consequently, and in order to assess the relevance of these steps in relation to the measure of reparation ordered by the Court, the State must refer specifically to the possibility of Mr. García Asto having effective access to free medical and psychological care, as well as the provision of medicines, free of charge.

B) Regarding the obligation to provide Wilson García Asto and Urcesino Ramírez Rojas with the opportunity for training and professional development, through study grants (*twelfth operative paragraph of the judgment*)

10. The State advised that, on February 4, 2009, “the Supranational Special Public Attorney’s Office asked the representative of the Ministry of Education to the National Human Rights Council for his collaboration in order to comply with the aspects of the judgment corresponding to his sector, and also the report on compliance with this obligation.”

11. Regarding Mr. García Asto, the representatives indicated that “he had completed his professional studies [in the *Universidad Nacional del Callao*] through his own efforts and with financial support from his family, [...] obtaining his first level degree in Systems Engineering.” They indicated that “[f]aced with the impossibility of continuing to assume the expenses of [his] studies, on June 23, 2008, [Mr. García Asto] approached the Rector of the *Universidad Nacional del Callao* and asked him [...] to arrange for compliance with the twelfth operative paragraph of the judgment”; in this way, he was awarded a grant that allowed him to complete his professional studies and that exempted him from “any payment that, as a student, he had to make to complete his studies.” By Decision of the Rector of October 10, 2008, “the exoneration of payments in order to obtain a professional degree was approved.” In addition, in December 2008, “the payment of the fees to obtain the first level degree and other charges were reimbursed.” Furthermore, Mr. García Asto asked the Dean of his faculty to facilitate his enrolment in the course on Propaedeutics in order to obtain the title of Systems Engineer without being required “to pay fees for the degree, the examination, the certified copy of first level degree, certification of being free of debt, and any other aspect for that purpose that involves the payment of fees.” The representatives also “placed on record that the elements that are being complied with have responded to initiatives of [...] the interested party, and not of the [State] organs.”

⁴ Cf. *Case of the 19 Tradesmen v. Colombia*. Monitoring compliance with judgment and provisional measures. Order of the Inter-American Court of Human Rights of July 8, 2009, thirtieth considering paragraph; *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, fifty-seventh considering paragraph, and *Case of Gómez Palomino v. Peru*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of July 5, 2011, twenty-fifth considering paragraph.

12. In the case of Mr. Ramírez Rojas, the representatives indicated that, on October 25, 2006, they informed the National Human Rights Council “of the interest of Mr. Ramírez Rojas to obtain a master’s degree in Economics, with a major in Economic Science and Economic Policy, offered by the *Universidad Nacional Mayor de San Marcos*, in 2007.” They indicated that “since no response was received from the State, the intervention of the Ombudsman was requested,” without “any response from the Ministry of Education.” In addition, “[o]n April 17, 2007, in a letter to the National Human Rights Council, Mr. Ramírez Rojas confirmed his interest in obtaining a Master’s degree in Economics.” Subsequently, “[i]n a letter of June 13, 2007, the National Human Rights Council and the Minister of Education were advised that Mr. Ramírez Rojas had decided to present his candidature for a master’s degree in the [*Pontificia*] *Universidad Católica de Perú*.” The representatives stressed that “to date none of the measures that the National Human Rights Council (today office of the Supranational Attorney), was able to take has concluded in [...] the award of a study grant to follow a master’s degree program in the *Universidad Nacional Mayor de San Marcos* or any other higher education establishment.”

13. The Commission observed “that the only recent information on compliance with this aspect of the judgment is that provided by the representatives. Although the Commission asse[ss]e[d] positively the progress that this information reveals, as regards the exoneration of Mr. García Asto from payment to obtain his professional degree and the reimbursement of expenses he had incurred, it observes that the reimbursement of every payment made is still pending, as well as the study grant for professional upgrading for two years following the completion of his studies.” In addition, the Commission observed that “neither the State nor the representatives have referred to compliance with this obligation in relation to Urcesino Ramírez Rojas.”

14. The Court takes note of the correspondence between the Supranational Attorney’s Office and the Ministry of Education in relation to compliance with this aspect; however, it finds that insufficient progress has been made to implement the Court’s ruling. The study grants in this case should have been awarded with particular respect for the time frame established in the judgment. In the specific case of Mr. García Asto, since this did not occur, the victim himself carried out all the admission procedures in order to obtain training and professional upgrading. Although Mr. García Asto completed his studies through his own efforts and with financial help from his family, he finally obtained the exoneration and the reimbursement of all the payments made to complete his studies in the *Universidad Nacional del Callao*. The Court observes that, although this exoneration and reimbursement were not obtained as a result of the steps taken by the Supranational Attorney’s Office. The *Universidad Nacional del Callao* is a public university – in other words, a State institution – and it granted him assistance that resembled a study grant in response to a ruling made by the Court in its judgment. Consequently, given the reparatory intention of the decision of the said State university, the Court finds that this ruling on reparation for Mr. García Asto has been fulfilled as regards “a grant that allows him to complete his studies.”⁵ Nevertheless, the Court will continue monitoring compliance in relation to the “award of a study grant that allows him [...] to undertake further studies and continue his professional training for two years after he has completed his first level degree.” Therefore, the Court concludes that the State has complied partially with the terms of the judgment by awarding a study grant that allowed Mr. García Asto to complete his studies; however, monitoring will continue in relation to the award of a grant that allows him to obtain further training. In this

⁵ *Case of García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 25, 2005. Series C No. 137, para. 281.

regard, the Court awaits further information on the response to the last request presented by Mr. García Asto concerning the exoneration of the costs of the Propaedeutics course in order to obtain the title of Systems Engineer, and other measures related to this reparation.

15. With regard to Mr. Ramírez Rojas, the Court takes note that, on more than one occasion, he advised of his interest in obtaining a master's degree in Economics with a major in Economic Science and Economic Policy, without obtaining a satisfactory answer. Consequently, the Court requests the State to present recent, precise and complete information on the steps taken to comply with this obligation.

C) Regarding the obligation to pay compensation, costs and expenses (*thirteenth, fourteenth and fifteenth operative paragraph of the judgment*)

16. The State advised that it had approved "the transfer to the Ministry of Justice of US\$32,400.00 for the payment of the pending reparations" for Mr. Ramírez Rojas and his son, Marco Antonio Ramírez. It added that "internal measures remained to be taken in order to conclude the said payments."

17. Subsequently, the representatives reported that the State "had complied with paying Wilson García Asto and his next of kin the compensation" ordered by the Court. They added that "the State [...] had complied with the payment of [the costs and expenses] to the beneficiaries." In addition, they indicated that, in May 2009, the State had "complied with the final payment of compensation to Urcesino Ramírez Rojas, and only the payment of compensation in favor of his son Marco Antonio Ramírez Rojas remained pending." Regarding this pending compensation, they indicated that "although [Marco Ramírez] was a minor when the Court handed down its judgment, he has now attained his majority, and the National Human Rights Council has advised the State of this."

18. The Commission indicated that, with regard to Mr. García Asto and his next of kin "this obligation has been complied with totally." As regards Mr. Ramírez Rojas, it underscored that "a sum equal to US\$102,600.00 was paid. Since the amount established in his favor in the judgment was US\$110,000.00, [...] the payment of US\$7,400.00 (United States dollars) remains pending." In addition, the Commission "observe[d] that [...] the amount corresponding to him from the inheritance of his mother, María Alejandra Rojas, also remains pending." With regard to Marcos Ramírez Álvarez, it emphasized that "the beneficiary has attained his majority so that it is not necessary to establish the trust fund ordered, but rather to make the payment directly," an aspect that is pending. Regarding the next of kin of Mr. Ramírez Rojas, at first the Commission asked the State to explain "the surplus of US\$714.28 paid to [his] seven siblings," and "whether this amount corresponds to the compensation established by the Court for María Alejandra Rojas (deceased), their mother." The Commission observed that Urcesino Ramírez Rojas and Pompeya Ramírez Rojas "should also be included in this payment, because [they are] the son [and daughter] of María Alejandra Rojas." Subsequently, the Commission did not refer to this allegation again and indicated that it was only the payment to Marcos Ramírez Álvarez that was pending.

19. In this regard, the Court considers that the information provided by the parties allows it to conclude that the State has complied with all the payments corresponding to Mr. García Asto and his next of kin. Regarding Mr. Ramírez Rojas, according to the information provided by the representatives in May 2009, the Court concludes that the State complied with the payment of all the compensation in his favor. In addition, the Court observes that the State has complied fully with the total payment to the beneficiaries for costs and expenses.

20. Lastly, the Court underlines that, in its last order on monitoring compliance, it requested further information on the payment of compensation, including information on “the obligation to pay Marcos Ramírez Álvarez the amount established for non-pecuniary damage, because he had attained his majority, so that it would not be necessary to create a trust fund in his favor.” The Court observes that it is essential that it receive more information on the payment of the corresponding compensation,⁶ and will continue to monitor the payment of this sum.

D) Regarding the obligation to publish the judgment (*sixteenth operative paragraph of the judgment*)

21. The State indicated that it “had complied partially with the publication in the Official Gazette of Supreme Resolution No. 032-2006-JUS of February 24, 2006, and it remained to make the publication in another national newspaper.”

22. The representatives indicated that “[t]he State has not explained the reasons or the motives why it has not complied with the publication of the judgment in a national newspaper, and it has not indicated when it will comply with this.”

23. The Commission indicated that “the information forwarded by the State [...] does not show that it has made progress in complying with this obligation.” It added that it “hopes that the State will adopt measures to comply fully with this aspect of the judgment and that it will report this in its next brief.”

24. The Court observes that, in the order on monitoring compliance with judgment of July 12, 2007, the Court determined that this aspect had been complied with partially, because it had verified the publication “in the Official Gazette, while publication in another national newspaper remained pending.”⁷ In this regard, the State has not provided documentation to support any progress in relation to the publication of the judgment in a national newspaper, and it has not indicated when it will comply with this publication. In this regard, the Court requests the State to provide specific information on the situation regarding compliance with this measure of reparation and on any possible obstacles that have led to its non-compliance to date.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

⁶ In a communication of May 13, 2009, the State consulted the Court about the identification of “Marcos Ramírez Álvarez.” In this document, the State indicated that, according to the respective National Identity Document (DNI), the said beneficiary is registered as “Marco Antonio Ramírez Álvarez” and, in this regard, it requested the Court to advise “whether this is the same person, in order to proceed immediately to make the [corresponding] payment” for reparations (file of monitoring compliance, tome IV, folio 1206). In this regard, in a note of the Court’s Secretariat of May 19, 2009, on the instructions of the President of the Inter-American Court, the State was reminded that, in paragraph 97(131) of the judgment delivered by the Court in this case, it was established as a proven fact that “Urcesino Ramírez Rojas has a son, Marco Antonio Ramírez Álvarez.” In addition, a copy of the birth certificate of the latter was forwarded, which appears as attachment 60 to the application. Hence, despite the interchangeable use of the said names in the text of the judgment, it was recorded that it was the same person (file of monitoring compliance, tome IV, folio 1208).

⁷ *Case of García Asto and Ramírez Rojas v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of July 12, 2007, thirteenth considering paragraph.

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. The State has complied partially with its obligation to provide Wilson García Asto with the opportunity of receiving professional training by awarding him a scholarship (*twelfth operative paragraph of the judgment*), as indicated in the fourteenth considering paragraph of this order.

2. In accordance with the nineteenth considering paragraph, the State has complied totally with its obligation to make the payments owed for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses to Wilson García Asto and Urcesino Ramírez Rojas, and also to Napoleón García Tuesta, Celia Asto Urbano, Elisa García Asto, Gustavo García, María Alejandra Rojas, Santa Ramírez Rojas, Pedro Ramírez Rojas, Filomena Ramírez Rojas, Julio Ramírez Rojas, Obdulia Ramírez Rojas, Marcelino Ramírez Rojas and Adela Ramírez Rojas (*thirteenth, fourteenth and fifteenth operative paragraph of the judgment*).

3. That it will keep the proceedings of monitoring compliance open with regard to the following aspects pending fulfillment:

- a) Provision of free medical and psychological care to Wilson García Asto through its health care services, including the provision of medicines free of charge (*eleventh operative paragraph of the judgment*), in keeping with the terms of the ninth considering paragraph of this order;
- b) Providing Wilson García Asto and Urcesino Ramírez Rojas with the opportunity for training and professional development through study grants (*twelfth operative paragraph of the judgment*), in keeping with the terms of the fourteenth and fifteenth considering paragraphs of this order;
- c) Payment of the compensation for non-pecuniary damage corresponding to Marcos Ramírez Álvarez (*fourteenth operative paragraph of the judgment*), in keeping with the terms of the twentieth considering paragraph of this order;
- d) Publication in a national newspaper, once, of the chapter of the judgment on the proven facts, without the corresponding footnotes, and the operative paragraphs of the judgment (*sixteenth operative paragraph of the judgment*), in keeping with the terms of the twenty-fourth considering paragraph of this order;

AND DECIDES

1. To require the State to adopt all necessary measures to comply promptly, effectively and fully with the measures of reparation ordered by the Court in the judgment on merits, reparations and costs of November 25, 2005, as stipulated in Article 68(1) of the American Convention on Human Rights.

2. To request the State to present to the Inter-American Court of Human Rights, by December 5, 2011, at the latest, a report indicating all the measures taken to comply fully

with the reparations ordered by this Court, in keeping with the terms of considering paragraphs 9, 14, 15, 20 and 24 of this order.

3. To request the representatives of the victims and their next of kin, and the Inter-American Commission on Human Rights to present observations on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

4. To continue monitoring the aspects pending compliance of the judgment on merits, reparations and costs of November 25, 2005.

5. To require the Secretariat of the Court to notify this order to the State, the Inter-American Commission on Human Rights, and the representatives of the victims and their next of kin.

Leonardo A. Franco
Acting President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary