ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*

OF JULY 1, 2011

CASE OF PALAMARA IRIBARNE *v.* CHILE

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits, reparations and costs (hereinafter "the judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on November 22, 2005.

2. The orders on monitoring compliance with the judgment issued by the Inter-American Court on November 30, 2007, and September 21, 2009. In the latter, the Court decided to maintain the procedure of monitoring compliance open until the pending obligations in the present case have been complied with, namely:

> a) To adopt, within a reasonable time, all the measures necessary to amend domestic laws concerning freedom of thought and freedom of expression, in the terms of paragraphs 254 and 255 of the judgment (*thirteenth operative paragraph of the judgment*);
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> b) To amend domestic laws so that, in cases where the military criminal jurisdiction is considered necessary, it is limited to hearing offenses committed during the course of duty by military personnel on active service. Thus, the State must enact legislation to place limits on the jurisdiction over persons and subject matter of the military courts so that, under no circumstances, may civilians be subject to the jurisdiction of military criminal courts, in the terms of paragraphs 256 and 257 of the judgment (*fourteenth operative paragraph of the judgment*); and,
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> c) To guarantee due process in the military criminal jurisdiction and judicial protection regarding the actions of the military authorities, in the terms of paragraph 257 of the judgment (*fifteenth operative paragraph of the judgment*).

3. The briefs of October 8, 2009, February 10, September 16 and November 25, 2010, and January 13, 2011, and their respective attachments, in which the Republic of Chile (hereinafter "the State" or "Chile") presented information on the aspects of the judgment pending compliance.

4. The briefs of February 22 and October 5, 2010, and February 4, 2011, in which the representatives of the victims (hereinafter "the representatives") submitted their

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* Judge Eduardo Vio Grossi, a Chilean national, excused himself from hearing this matter in accordance with Articles 19 of the Statute and 21 of the Court's Rules of Procedure, and this was accepted by the Court. Also, Judge Alberto Pérez Pérez informed the Court that, for reasons beyond his control, he was unable to take part in the deliberation and signature of this order.

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observations on the information presented by Chile regarding the aspects of the judgment pending compliance.

5. The briefs of June 3, 2010, and May 11, 2011, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its observations on the information presented by the State and the observations of the representatives.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. Chile has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 21, 1990, and accepted the compulsory jurisdiction of the Court the same day.

3. In accordance with the provisions of Article 67 of the American Convention, the State must comply fully and promptly 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 Court's decisions in any case to which they are parties." To this end, States must ensure the domestic implementation of the provisions of the Court's decisions.[1]

4. The obligation to comply with the Court's rulings conforms to a basic principle of international law, supported by international jurisprudence, in accordance with which States must abide by their international treaty obligations in good faith (*pacta sunt servanda)* and, as this Court has 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.[2] The treaty obligations of State Parties are binding on all the powers and organs of the State.[3]

5. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective laws. This principle applies not only with regard to the substantive provisions of human rights treaties (that is, those that include provisions on the protected rights), but also with regard to procedural norms, such as those concerning compliance with the Court's decisions. These obligations must be

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1 *Cf. Case of Baena Ricardo et al. v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Tiu Tojín v. Guatemala. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of May 16, 2011, third considering paragraph, and *Case of Castillo Páez v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of May 19, 2011, third considering paragraph.

2 *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Art. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Castillo Páez v. Peru, supra* note 1, fourth considering paragraph, and *Case of Radilla Pacheco v. Mexico. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 19, 2011, fifth considering paragraph.

3 *Cf. Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, third considering paragraph*; Case of Castillo Páez v. Peru, supra* note 1, fourth considering paragraph, and *Case of Radilla Pacheco v. Mexico, supra* note 2, fifth considering paragraph.

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interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.[4]

a) Regarding the obligation to adopt all necessary measures to repeal or amend the domestic laws that are incompatible with the international standards on freedom of thought and expression (*thirteenth operative paragraph of the judgment*)

6. In its order of September 21, 2009,[5] the Court asked Chile to "submit detailed and updated information on the harmonization of its domestic law with international standards on freedom of expression in relation to the offenses of threats and disrespect towards public authorities (*desacato*)" described in articles 264 of the Criminal Code and 284 of the Code of Military Justice, respectively. Regarding the offense of disrespect for public authorities, in February 2010, the State advised that there was full agreement to repeal this legal concept, because "the offense is not of a military nature, and it severely restricts public debate as well as the role that an informed public opinion plays in a democratic society." As for the way it would be repealed, the State indicated that "the Executive ha[d] opted for direct repeal, and not a mere amendment or modification," by means of the bill on the jurisdiction and competence of military courts and proceedings before them, which was introduced into the Chamber of Representatives on October 27, 2009. Subsequently, Chile indicated that on September 9, 2010, the President of the Republic withdrew this bill from the National Congress and presented a new bill on the reform of military justice to the Chamber of Representatives, as bill No. 7203-02,[6] which, "like its predecessor, includes repealing the offense of disrespect for authority, because it did not comply with the relevant international standards."

7. Regarding the offense of threats, the State indicated that the purpose of retaining the said offense is to "protect the civil service" and prevent the "obstruction of democracy" resulting from authorities being coerced. In addition, it emphasized that, when deciding to retain this offense in its domestic law, "it was considered that this offense is not related to freedom of expression, because threats cannot be considered a legitimate exercise of [that right]." It also indicated that the definition of the offense in article 264 of the Criminal Code includes threats against the authorities in its first paragraph, and disturbing the public order in its second paragraph. However, Chile indicated that "there are some technical problems with regard to this concept," and that "it is not very clear which right is protected," although "it is almost never" applied. In addition, in its report of September 2010, the State indicated that the new bill on military justice reform "retains the aggravated offense of threats against members of the Armed Forces and the Police Force [...] owing to the respect that their role and their rank merit." In addition, in the proposed reform of article 284 of the Code of Military Justice, "[t]he description of the offense is restricted and the circumstances in which it is committed are very precise, in order to avoid a possible interpretation [...] that could result in 'conducts considered as disrespect for public authorities being punished unduly under the offense of threats.'" Lastly, the State indicated that the definition of the offense of threats in article 264 of the Criminal Code "does not differ from that [...]

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[4] *Cf. Case of Ivcher Bronstein v. Peru. Competence.* Judgment of September 24, 1999, Series C. No. 54, para. 37; *Case of Castillo Páez v. Peru, supra* note 1, fifth considering paragraph, and *Case of Radilla Pacheco v. Mexico, supra* note 2, sixth considering paragraph.

[5] *Cf. Case of Palamara Iribarne v. Chile. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of September 21, 2009, thirteenth considering paragraph.

[6] The State did not forward the Court a copy of bill No. 7203-02, supposedly submitted to the National Congress on September 9, 2010, by the Executive Branch. Subsequently, on January 13, 2011, it forwarded a copy of Law No. 20,477.

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established in articles 296 and 297 thereof, except when the said acts are carried out, fulfilling the requirements of seriousness and credibility established in the said articles, against an individual entrusted with special official functions"; in other words, a member of the Armed Forces or the Police Force in the exercise of his duties.

8. Regarding the offense of disrespect for authority, the representatives observed that the bill proposed in order to repeal this offense in the Code of Military Justice was withdrawn from the legislative process in September 2010; thus, the offense continues in force. Consequently, the representatives indicated the need to place this issue among the Administration's priorities, because "the possibility of disproportionate punishments for criticizing the functioning of the State institutions and their members remains, together with greater protection for military institutions and their members […], which is incompatible with Article 13 of the American Convention on Human Rights."

9. Regarding the reform of article 264 of the Criminal Code concerning the offense of threats, the representatives indicated that this article retains the definition of the offense with an "ambiguous description that does not delimit clearly the scope of the unlawful conduct." They also recalled that the Court had urged the State to clarify the sort of threats that were at issue, so as not to stifle freedom of thought and the expression of valid and legitimate opinions, or protests or disagreements regarding the actions of public bodies or their members." In addition, they indicated that, "based on the information provided by the State, it would appear that no specific steps have been taken to amend the definition of this offense in the Chilean Criminal Code." Thus, the State has not complied with this aspect.

10. The Inter-American Commission "note[d] the importance of the prompt processing, discussion, and approval of the bills" regarding the repeal or amendment of the domestic laws that were incompatible with international standards on freedom of thought and expression. Regarding the definition of the offense of disrespect for authority, it indicated that "in the document forwarded by the State on the recently promulgated laws, the reform of article 284 of the Code of Military Justice was not included." In addition, it stated that "it d[id] not have precise information on the procedure being used to reform [it]." Thus, the Commission asked that the State submit updated information on this point. It also noted that "the State has still not presented information on the measures taken to adapt [article] 264 of the Chilean Criminal Code to international standards."

11. Lastly, the Commission concluded that, "despite the time that has passed since the judgment was handed down […], the State has not reported any substantial progress with regard to compliance with this measure of reparation," and indicated the lack of "detailed, updated, and complete information on […] the measures taken and to be taken" by the State to adapt Chilean domestic law to international standards on freedom of expression as regards the offenses of threats and disrespect for authority.

12. Based on the information provided by the parties, the Court observes that, even though legislative proposals have been made to repeal the offense of disrespect for authority established in article 284 of the Code of Military Justice, and the reform of the offense of threats, established in article 264 of the Criminal Code, has been discussed, almost six years after the judgment was delivered, both offenses continue in force under domestic law. Regarding the offense of disrespect for authority, the Court observes that several different bills to repeal it have been submitted to the legislature; however, the elimination of this offense has yet to be approved. The Court also notes that the State has indicated that the offense of threats continues in force in its law, and that it has analyzed article 264 of the Criminal Code, regarding which it recognized the ambiguity of the description of the unlawful conduct and the lack of clarity regarding the protected right.

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Consequently, it mentioned the possible reform of this offense, which, nevertheless, remains in force. In this regard, the Court recalls that the judgment in this case established that the ambiguity and inadequate delimitation of the unlawful conduct established in article 264 of the Criminal Code, "could lead to expansive interpretations that would permit conduct previously considered as disrespect for authority to be punished unduly under the offense of threats."[7] Thus, on that occasion, the Court found that, if Chile wished to retain this law, it should "specify the type of threat in question."[8]

13. In addition, the Court finds it pertinent to recall that in its orders of November 30, 2007, and September 21, 2009, it asked the State to provide information on the stages, time frames, and content of the reform proposals aimed at complying with this operative paragraph of the judgment. Although the Court assesses positively the State's initiatives designed to repeal article 284 of the Code of Military Justice and to amend or, if appropriate, repeal article 264 of the Criminal Code, it must also emphasize the fact that, almost six years after the judgment in this case was delivered, the State has not reported any substantial progress in complying with this measure of reparation. Based on the foregoing, in its next report, Chile must submit clear, detailed, and updated information on the steps taken to adapt its domestic law to international standards on freedom of expression, in relation to the said offenses of disrespect for authority and threats.

b) Regarding the obligation to adapt domestic law to international standards with regard to the military criminal jurisdiction and to establish, by law, limits on the jurisdiction over persons and subject matter of military courts, and the obligation to guarantee due process in the military criminal jurisdiction and judicial protection with regard to the actions of the military authorities (*operative paragraphs 14 and 15 of the judgment*)

14. In its brief of October 2009, the State indicated that the legislative strategy to reform its military justice system was based on the separation of subject matters and the definition of stages. Therefore, it had been decided to send three bills to the National Congress that would "amend and repeal several norms of the [Code of Military Justice]" relating to: (a) the jurisdiction and competence of military tribunals, and their proceedings; (b) military offenses and their punishments, and (c) the creation and regulation of the powers of military courts and military prosecutors, which would only enter into force when the last of the said bills was implemented. Regarding these bills and other measures taken, Chile advised, *inter alia*, that:

a) On October 13, 2009, a bill on military offenses and their punishments was introduced into the Chamber of Representatives, as bill No. 6734-02; it established, *inter alia*, the definition of the unlawful acts that correspond to the military courts. The bill proposed, among other matters, "a definition of a military offense that is a very different from the present regulations in the [Code of Military Justice]." The bill also "restricts […] the jurisdictional scope of military courts to conducts that violate rights that must be protected for the effective functioning of the Chilean Armed Forces and Police Force." In addition, it establishes other restrictions, such as "the definition of military offenses, where the perpetrator must always be a member of the military […]," a necessary condition when a military offense is committed;

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[7] *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of the Inter-American Court of Human Rights of November 22, 2005. Series C No. 135, para. 92.

[8] *Case of Palamara Iribarne v. Chile, supra* note 7, para. 92.

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b) On October 27, 2009, the bill on the jurisdiction and competence of military courts, and proceedings before them was introduced in the Chamber of Representatives, as bill No. 6739-02, establishing the limits to the jurisdiction and competence of military courts. Subsequently, on September 9, 2010, the President of the Republic withdrew the bill from consideration, and that same day presented a new bill to the Chamber of Representatives of the National Congress as bill No. 7203-02 with "utmost presidential urgency." The purpose of this bill was to reform the military justice system, because it "delimited its jurisdiction and competence precisely so as to totally exclude civilians from its sphere of action and coverage." This bill subsequently became Law No. 20,477 on December 30, 2010.[9] In addition to making some reforms and repealing some aspects of the existing military justice system, the law modifies the competence of the military courts and establishes, *inter alia*, that: (a) neither civilians nor minors shall be subject to the jurisdiction of military courts, but rather to jurisdiction of the ordinary courts; (b) in cases involving the co-perpetration or co-participation of members of the military and civilians in offenses subject to the military justice system, the ordinary courts shall have competence for the civilians, while the military courts shall have competence for the members of the military; (c) jurisdictional disputes between ordinary courts and military courts shall be resolved by the Supreme Court, and (d) "officials belonging to the Chilean Armed Forces or Police Force, including permanent staff, draftees, and reserve personnel on active duty," among others, shall be considered military personnel. In addition, transitory provisions were established, such as one relating to the cases in progress which involved civilians, and which were pending before military tribunals when the law was enacted, which provided that "they would continue to be processed before the ordinary justice system."

c) A third bill on the creation and regulation of the powers of military courts and prosecutors, which will form part of the reform of the military justice system is currently being drafted. In this regard, in July 2010, the President of the Republic ordered the creation of a joint working group of the Ministry of Defense and the Ministry of Justice in order "to draft promptly the bills that this reform requires."

15. The representatives observed that:

a) The bill on military offenses and their punishments "retains the formal concept of military offense and does not include the perpetrator – a soldier – or the definition of military juridical interests." They also pointed out that certain articles do not specify the perpetrator; therefore, they considered that "the State needed to revise this point so as to unify the criterion."

b) Regarding the bill on the jurisdiction and competence of the military courts introduced under bill No. 6739-2, they expressed concern about the "set back that [its] withdrawal from parliamentary consideration could represent." Nevertheless, the representatives recognized that the approval of Law No. 20,477 represented progress. However, they pointed out that this reform does not satisfy international standards, or the measure ordered the Court, because "although it restricts the military jurisdiction by excluding civilians and minors, it does not limit the military jurisdiction in the way required by international law and the judgment in this case." This is because the law has not "provided that members of the military be subject to

[9] Law No. 20,477 *amending the jurisdiction of military courts"* (attachment to the State's brief of January 13, 2011).

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the ordinary justice system when they commit offenses that are not in the course of 'duty,'" and

c) They also expressed concern about the third bill on the creation and regulation of the military courts and prosecutors, because its drafting and forwarding to the legislature are still pending, and the reform process will not be complete without it.

16. Furthermore, the representatives repeatedly expressed their regret that more than five years since the judgment in this case was handed down, Chile "still retains in force a system of military justice that violates international standards for the protection of human rights, in clear breach of the guarantees enshrined in the American Convention." Additionally, they stressed the importance of the State "addressing the reform of the [military criminal justice system] integrally and urgently, by taking all necessary steps to advance the parliamentary procedure."

17. The Inter-American Commission assessed positively the progress that the State has made in complying with the measures of reparation. However, it placed particular emphasis on ensuring that the amendments and reforms "be truly relevant and that they are feasible, by using a consensual, integrated, appropriate and extremely specific approach, so that the temporal differences in the development and approval of the different reforms do not render them futile." It also underlined that, given the complementary nature of the bills introduced by the State, the National Congress should deal with them in an integrated manner.

18. In addition, in relation to the information provided by the State, the Inter-American Commission:

a) Took note of the promulgation of Law No. 20,477, and assessed positively the legislative initiative, because it considered that "it is an advance in the present compliance procedure." Nonetheless, it observed that, pursuant to article 8 of the transitory provisions, "despite introducing the possibility of transferring cases to the ordinary courts, the proceedings before the military courts against anyone who does not meet the requirements to be tried before this jurisdiction would be valid in the ordinary jurisdiction, and this would affect the right of civilians to be tried in accordance with the rules of due process under the ordinary system of justice."

b) It observed that Chile has not forwarded any information concerning to the adaptation of its military justice system as regards "the secretive nature of [its] actions." In this regard, the Commission found that, if military proceedings do not guarantee an oral phase in which the right to a public trial is ensured, "the guarantees of due process would be affected" even though the possibility of referring the case to the ordinary jurisdiction exists, because the ordinary judge "would be constrained because the evidence was provided to the military courts in proceedings that did not offer the appropriate guarantees" for equality between the parties and for the adequate defense of their interests and rights.

19. The Court assesses favorably the information submitted by the State regarding the fourteenth and fifteenth operative paragraphs of the judgment, as well as the efforts made by drafting bills, and other initiatives to reform the military criminal justice system. Similarly, the Court notes and assesses positively the progress made in the reform of military justice due to the approval of Law No. 20,477.

20. Nonetheless, the Court observes that, although the judgment in the present case indicated that the process of harmonizing domestic law to the international standards for

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criminal jurisdiction must take place within a "reasonable time,"[10] almost six years after the judgment was delivered, the process of complying with these measures of reparation are still at the initial stage.

21. Additionally, the Court considers it appropriate to recall that the judgment in the instant case concluded that "should [Chile] consider it necessary to retain a military criminal jurisdiction, this should be restricted to hearing offenses committed during the course of duty by members of the military on active service. Thus, the State must establish, by law, [clear] limits to the material and personal competence of the military courts so that, under no circumstances, may a civilian be subject to the jurisdiction of the military criminal courts, in the terms of paragraphs 256 and 257 of the […] judgment."[11] In this regard, the Court recalls its reiterated case law that "the military criminal jurisdiction must be of a limited scope and exceptional nature, and its intention must be the protection of the special juridical interests related to the functions that the law assigns to the Armed Forces. Consequently, only members of the military should be tried for committing offenses or misdemeanors that, by their very nature, affect the juridical interests of the military."[12] Therefore, for domestic law to be in keeping with international standards for the military criminal jurisdiction, the reform of the law must comply with these aspects in order to be compatible with the measure of reparation ordered in the judgment.

22. Based on these considerations, the Inter-American Court finds that Chile must continue to submit detailed and updated information on the measures taken to comply with the fourteen and fifteenth operative paragraphs of the judgment, including submission of all the relevant documentation. In its next brief, the State should refer specifically to: (a) the content and present legislative status of all the bills to reform the military justice system, and how they conform to the standards described in the judgment delivered in this case, and (b) the actions required and the estimated time frames to achieve a complete reform of the military justice system in Chile, in order to comply with the measures ordered by the Court. Furthermore, the Court asks the State to clarify: (c) whether, within the current legal framework, including Law No. 20,477, a retired member of the military is considered to be a civilian for the effects of the application of the military criminal jurisdiction and, as appropriate, to submit information on whether the military criminal jurisdiction has been applied to retired military personnel after the judgment in this case was delivered, and (d)

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10 *Cf. Case of Palamara Iribarne*, *supra* note 7, para. 254.

11 *Cf. Case of Palamara Iribarne, supra* note 7, para. 256.

12 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 128; *Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 117; *Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 13; *Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90, para. 51; *Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 165; *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs*. Judgment of November 25, 2004. Series C No. 119, para. 142; *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 202; *Case of Palamara Iribarne, supra* note 7, para. 124 and 132; *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 189; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 131; *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November 29, 2006. Series C No. 162, para. 142; *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, para. 200; *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 105; *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 118*; Case of Radilla Pacheco v. Mexico*. *Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, and *Case Fernández Ortega et al. v. Mexico*. *Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 176.

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whether, within the current legal framework, legislation exists that permits the application of the military criminal jurisdiction to civilians.

c) Other aspects of the judgment

23. Concerning the payments ordered for Anne Ellen Steward Orlandini, pursuant to the provisions of paragraphs 242 and 243 of the judgment delivered in this case, in February 2010, the representatives advised that "Mr. Palamara Iribarne had confirmed [to them] his willingness to deliver this amount to Mrs. Steward Orlandini." The representatives have not forwarded any further information on this point.

24. The Court considers it important to indicate that, since February 2010, the representatives have not forwarded any further information on their client's compliance with the payments to Mrs. Steward Orlandini. In this regard, the Court finds it pertinent to reiterate the provisions of the judgment and of the orders on monitoring compliance in this case,[13] that Mr. Palamara Iribarne must pay "Anne Ellen Steward Orlandini the necessary amount to compensate her for her expenses."[14] Consequently, the Court requires the representatives to submit recent information on this point in order to verify whether Mr. Palamara Iribarne has in fact complied with the payment of the amount owed to Mrs. Steward Orlandini.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions 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,[15]

DECLARES THAT:

1. It will keep open the procedure of monitoring compliance with the following aspects of this case that are pending:

a) To adopt, within a reasonable period, all the measures necessary to repeal and amend domestic laws that are incompatible with international standards on

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[13] *Cf. Case of Palamara Iribarne v. Chile*, *supra* note 7, para. 242; *Case of Palamara Iribarne v. Chile*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of November 30, 2007, thirty-eighth considering paragraph, and *Case of Palamara Iribarne v. Chile*, *supra* note 5, twenty-fourth considering paragraph.

[14] *Cf. Case of Palamara Iribarne*, *supra* note 7, para. 242.

[15] Rules of Procedure of the Court approved at its eight-fifth regular session held from November 16 to 28, 2009.

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freedom of thought and freedom of expression, in the terms of paragraphs 254 and 255 of the judgment (*thirteenth operative paragraph of the judgment*);

b) To harmonize, within a reasonable time, domestic laws to international standards on the military jurisdiction so that, if the existence of a military criminal jurisdiction is considered necessary, it must be limited solely to hearing offenses committed in the course of duty by members of the military in active service. Thus, the State must enact legislation to place limits on the personal and material competence of the military courts so that, under no circumstance, may civilians be subject to the jurisdiction of the military criminal courts, in the terms of paragraphs 256 and 257 of the judgment (*fourteenth operative paragraph of the judgment*); and,

c) To guarantee due process in the military criminal jurisdiction and judicial protection regarding the actions of the military authorities, in the terms of paragraph 257 of the judgment (*fifteenth operative paragraph of the judgment*).

AND DECIDES:

1. To reiterate to the State that it must adopt all necessary measures to comply effectively and promptly with the pending aspects ordered by the Court in the judgment on merits, reparations and costs of November 22, 2005, and in the present order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights by October 15, 2011, at the latest, a report indicating the measures taken to comply with the measures of reparation ordered by this Court that remain pending, in accordance with the first declarative paragraph of this order.

3. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph, within two and four weeks, respectively, of receiving it.

4. To request the representatives of the victim to forward recent information on the payments ordered in favor of Anne Ellen Steward Orlandini, in accordance with the provisions of the twenty-fourth considering paragraph of this order, within the time frame indicated in the preceding operative paragraph.

5. To continue monitoring compliance with the judgment on merits, reparations, and costs of November 22, 2005.

6. To require the Secretariat of the Court to notify this order to the Republic of Chile, the Inter-American Commission on Human Rights, and the representatives of the victim.

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Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

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