

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS\***  
**OF NOVEMBER 30, 2011**  
**CASE OF "FIVE PENSIONERS" v. PERU**  
**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 Court" or "the Inter-American Court") on February 28, 2003.
2. The orders on monitoring compliance with the judgment issued by the Inter-American Court on November 17, 2004, September 12, 2005, July 4, 2006, and December 3, 2008.
3. The order issued by the Court on November 24, 2009, in which it declared that it would continue to monitor compliance with the following aspects that remained pending:
  - a) "Conduct the corresponding investigations and apply the pertinent punishments to those responsible for failing to abide by the judgments delivered by the Peruvian courts in the applications for protective measures filed by the victims" (*sixth operative paragraph of the judgment of February 28, 2003*), and
  - b) Establish "the patrimonial consequences of the violation of the right to property, [...] in the terms of domestic law, by the competent domestic bodies" (*fifth operative paragraph of the judgment of February 28, 2003*).
4. The reports of the Republic of Peru (hereinafter "the State" or "Peru") on progress in complying with the judgment, presented on March 18 and September 1, 2010.
5. The observations on the State's reports of the representative of the victims (hereinafter, the "representative"), and their briefs on compliance with judgment, presented on April 27, July 2 and October 10, 2010, and January 18 and February 11, 2011.
6. The observations on the State's reports of the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), presented on June 2, 2010, and April 13, 2011.

**CONSIDERING THAT:**

1. An inherent attribute of the judicial functions of the Court is to monitor compliance with its decisions.

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\* Judge Diego García-Sayán, a Peruvian national recused himself from taking part in monitoring compliance with the judgment delivered in this case; consequently, he did not participate in the deliberation of this order.

2. Peru has been a State Party to the American Convention (hereinafter, the “American Convention” or the “Convention”) since July 28, 1978, and accepted the binding jurisdiction of the Court on January 21, 1981.

3. In accordance with Article 67 of the American Convention, States must comply promptly with all aspects of the judgments of the Court. In addition, Article 68(1) of the American Conventions 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 States must ensure that the decisions in the Court’s judgments are implemented at the domestic level.<sup>1</sup>

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, a State must comply with its 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.<sup>2</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.<sup>3</sup>

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.<sup>4</sup>

**a) Regarding the obligation “to conduct the corresponding investigations and apply the pertinent punishments to those responsible for failing to abide by the judgments delivered by the Peruvian courts in the applications for protective measures filed by the victims (sixth operative paragraph of the judgment)”**

6. The State indicated that “[w]ith regard to the criminal proceedings [...], the Court itself recognize[d] that they had been exhausted” in its order on monitoring compliance of November 24, 2009. In this regard, the State added that the fact that “the result of these actions has not been favorable to the complainants – because it was not determined that an offense had been committed – does not detract from the fact that the investigations were conducted by competent bodies and that the remedies provided by Peruvian law have been exhausted.” Regarding the administrative or disciplinary actions, the State indicated that, the said order of November 24, 2009, was “the first time the Court has alluded to that type of action; thus, [in the State’s opinion,] it is interpreting

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<sup>1</sup> Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 10, 2011, fourth considering paragraph.

<sup>2</sup> Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, fifth considering paragraph.

<sup>3</sup> 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 and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, sixth considering paragraph.

<sup>4</sup> Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of the Yean and Bosico Girls v. Dominican Republic*, *supra* note 1, fifth considering paragraph.

the scope of the judgment broadly." According to Peru, the judgment and the previous orders on monitoring compliance refer to "investigations aimed at punishing those allegedly responsible for contempt of court, which has implicitly been understood by the parties and the Court itself as performing criminal acts."

7. Despite this, the State indicated that "[i]n this regard, two distinct spheres must be distinguished: the strictly administrative one, in the bilateral relationship between the State and the entity administered, and the disciplinary one, which derives from, and corresponds to, the relationship between the State and its public officials or servants." Regarding the former, according to the State "nothing can be done, since no third parties are involved in this case that could be considered administered entities." Thus, it is necessary to refer to the disciplinary sphere, specifically to paragraph 7 of article 239 of the Law No. 27444 on General Administrative Procedure with regard to "Administrative Offenses," according to which, any official who "delays compliance with superior or administrative orders or contradicts their decisions" shall be sanctioned. However, Peru indicated that, "regarding administrative actions, it is no longer possible to conduct them because they have prescribed." According to Peru, under article 173 of the Regulations of the Basic Law on the Civil Service and Public Sector Remuneration,<sup>5</sup> "the action to file administrative [disciplinary, in this case,] proceedings had prescribed a long time before the [judgment] was delivered on February 28, 2003, because "almost 20 years" had passed since the alleged omissions of the officials concerned. Therefore, the State indicated that "pursuant to the law, it is not possible to file [an] action in this sphere of the law," and insisted that, when the Court delivered the judgment, "only criminal proceedings were admissible."

8. The representative indicated that "[t]he State has not taken any steps to investigate the facts of this case on its own initiative, rather than that of the victims. In fact, to the contrary, [...] over a period of nine years (between 1995 and 2004), it systematically rejected the victims' requests for investigations and sanctions, thus, ensuring impunity for those responsible for the arbitrary acts committed against them, as well as for those who failed to abide by the judgments of the courts ordering the restitution of their rights." He added that "[n]ot only did it reject the complaints filed by the victims in the criminal sphere seeking the investigation of the said events, but, for the same reasons, it also failed to conduct any inquiry in the administrative disciplinary sphere." In the representative's opinion, the State, "shielded by its own actions, such as failing to investigate these facts promptly, [...] now proposes total impunity for those responsible for them based on the norms in force regarding the prescription of administrative action." According to the representative, "[t]he State is attempting to claim that the passage of time and, in its opinion, the absence of a clear and definitive ruling by the Court, should function in favor of the impunity of the acts that led to the violation of the victims' rights."

9. For its part, the Commission observed "that the State has not taken any measure to initiate, *ex officio*, a criminal or other type of investigation regarding the failure to comply with the judgments of the domestic courts." In the Commission's opinion, "the State's actions have been limited to processing the complaints filed by the victims themselves." Additionally, it indicated that, "to date, the State has not provided any specific information that would allow the Court to rule on whether the processing of the said complaints and the final decisions on them have complied with the provisions of the judgment" in this case. In addition, the Commission "observe[d] that the State referred to the mechanism of the prescription of administrative actions, without explaining the

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<sup>5</sup> According to Article 173 of Supreme Decree No. 005-90-PCM, Regulations of the Basic Law of the Civil Service and Public Sector Remuneration, "[t]he administrative disciplinary proceedings must be commenced no later than one year from the time the competent authority is aware of the commission of the disciplinary offense under the responsibility of the said authority. To the contrary, the action shall be declared to have prescribed, without prejudice to any civil or criminal proceedings that may be admissible" (file of monitoring compliance with judgment, tome V, folios 1272 and 1273).

laws that support it and the reasons for its application in this case, taking into account that, at least until 2002, various authorities failed to comply with the judgments of the domestic courts." In any case, the Commission "regret[ed] that the State had merely indicated that such actions are prescribed, when the said prescription is a result of Peru's prolonged failure to comply with this measure of reparation."

10. This Court has indicated that the obligation to investigate human rights violations is one of the positive measures that States Parties must adopt to ensure the rights recognized by the Convention.<sup>6</sup> Although the obligation to investigate is an obligation of means and not of results, the State must assume it as an inherent legal obligation and not as a mere formality preordained to be ineffective or as a step taken by private interests that depends upon the procedural initiative of the victims or their next of kin, or upon their offer of proof.<sup>7</sup>

11. In response to the State's argument that the order of November 24, 2009, was "the first time the Court has alluded" to investigative measures, other than criminal ones, the Court underlines that this measure was ordered in a broad sense, indicating that the State must conduct "the corresponding investigations" and apply the "pertinent sanctions" to those responsible for failing to abide by the judgments delivered by the Peruvian courts during the hearings on the applications for protective measures filed by the victims. Thus, the Court did not limit these investigations to those of a criminal nature and, in the said order, required the State to submit information on both the criminal investigations, and "the steps it has taken to conduct a thorough investigation other than the one corresponding to the criminal jurisdiction."<sup>8</sup>

12. In addition, the Court recalls that, unless there is an explicit indication restricting the said the obligation to criminal investigations, the Court has determined that the States "must undertake, seriously, all necessary measures to identify, prosecute and, as appropriate, punish all the perpetrators and participants in the facts" that violate the Convention, "for the criminal and any other effects that may result from investigating [them]."<sup>9</sup> In that regard, "as a means of combating impunity," the States must "investigate the officials accused of irregularities through the competent public institutions and, following due process of law, apply the corresponding administrative, disciplinary or criminal sanctions to those found responsible."<sup>10</sup>

*a. 1. Regarding the criminal investigations*

13. The Court considers it necessary to recall that, in the order on monitoring compliance with judgment of November 24, 2009 (*supra* having seen paragraph 3), it verified that several criminal proceedings against those presumably responsible for the violations declared in the judgment originated from complaints filed by the victims themselves, prior to the delivery of the judgment.<sup>11</sup> In addition, in this order, the Court

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<sup>6</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 166 and 167, and *Case of Contreras et al v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, para. 127.

<sup>7</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 6, para. 177, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of May 19, 2011. Series C No. 224, para. 87.

<sup>8</sup> *Case of Five Pensioners v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 24, 2009, sixteenth considering paragraph.

<sup>9</sup> *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010 Series C No. 218, para. 270.

<sup>10</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 460.

<sup>11</sup> Cf. *Case of Five Pensioners v. Peru. Monitoring compliance with judgment*, *supra* note 8, twelfth considering paragraph.

observed that, on April 7, 2003, after the judgment had been delivered, the victims, through their representative, filed another criminal complaint against two individuals for allegedly committing the offenses of “omission, refusal and delay of acts that fell within their functions, undue delay in payments, abuse of authority, misappropriation and violence, and resisting authority” to their detriment. In response, on April 6, 2004, the Prosecutor General’s Office decided not to open an investigation into the reported facts and, on October 18, 2004, the First Transitory Criminal Chamber of the Supreme Court of Justice declared the inadmissibility of the subsequent appeal filed by the victim Javier Mujica Ruiz Huidobro against this decision.<sup>12</sup> Hence, in the said order of November 24, 2009, the Court concluded that the victims had exhausted the legal actions and remedies available in the criminal investigations they had initiated in this matter, having reached the highest competent judicial body.<sup>13</sup>

14. In this regard, the Court underlines that, although it has verified that the victims exercised the domestic criminal remedies, this does not mean that the Court is declaring that the State has complied with the judgment as regards this reparation. On the contrary, having verified that, apart from processing the complaints filed by the victims themselves, the State did not adopt all the measures required to ensure a thorough investigation into the facts in order to determine, as appropriate, the respective responsibilities, in its order of November 24, 2009, the Court required the State to provide information on all the measures it had taken to comply with this obligation. Specifically, the Court asked the State to provide information on how the decisions taken to date by its authorities had responded to the Court’s rulings in this regard.<sup>14</sup>

15. Despite this, the State has not submitted the information requested or offered the corresponding explanations to clarify whether the rulings of the criminal courts rejecting the complaints filed by the victims took into consideration the provisions of the Court’s judgment. Consequently, the Court reiterates to the State the said request for information in relation to the criminal proceedings filed by the victims, so that it can assess compliance with this measure.

16. Moreover, bearing in mind that, to date, the State’s actions have been limited to processing the criminal complaints filed by the victims themselves, the Court finds it necessary to recall that, in the context of monitoring compliance with this measure, it must assess the State’s implementation, through all its powers and organs, of the provisions of the judgment. Thus, the actions brought by the victims in this regard are relevant to the overall analysis of the status of implementation of this measure of reparation, but in no way substitute the measures the State must take to comply with the obligation to conduct the corresponding criminal investigations.

#### *a.2. Regarding other investigations*

17. Although the State argued that the “investigations aimed at punishing those presumed to be responsible for contempt of court [are only] of a criminal nature,” it also recognized that its domestic law provides for the possibility of disciplinary sanctions against an official who “[d]elays compliance with higher or administrative orders, or disputes their decisions” (*supra* sixth and seventh considering paragraphs). In addition, the Court recalls that the State itself, in the decisions of the Superintendence of Banks and Insurance (hereinafter “SBS”) of March 2002, established that “the courts had issued admonitions requiring compliance with the [1995] SBS decisions which, if not complied

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<sup>12</sup> Cf. *Case of Five Pensioners v. Peru. Monitoring compliance with judgment*, *supra* note 8, thirteenth considering paragraph.

<sup>13</sup> Cf. *Case of Five Pensioners v. Peru. Monitoring compliance with judgment*, *supra* note 8, fourteenth considering paragraph.

<sup>14</sup> Cf. *Case of Five Pensioners v. Peru. Monitoring compliance with judgment*, *supra* note 8, fourteenth considering paragraph.

with, would give rise to the administrative, civil and criminal responsibilities established by law.”<sup>15</sup> This shows clearly that, even prior to the delivery of the judgment, the State was aware of its obligation to determine possible administrative and civil responsibilities.

18. Consequently, the Court reiterates the provisions of its order on monitoring compliance of November 24, 2009, that the thorough investigation of the facts of the case in order to determine the eventual responsibilities involves the investigation and determination of responsibility in jurisdictions other than the criminal justice system, as provided for by domestic law.

19. Regarding the State’s argument concerning the prescription of disciplinary actions, the Court stresses that Peru appears to be invoking this principle owing to its own lack of action. In light of the above, it is essential that the State inform the Court about the measures it took, once it had been notified of the judgment in this case or even before this, in order to advance, on its own initiative, the disciplinary actions established in paragraph 7 of article 239 of Law No. 27444 on General Administrative Procedure, or other actions and responsibilities that are applicable to this case.

***b) Regarding the obligation to establish the possible patrimonial consequences of the violation of the right to property, in the terms of domestic law, by the competent domestic bodies (fifth operative paragraph of the judgment)***

20. The State indicated that “the Court has not explained clearly how the obligation contained in [the said] operative paragraph should be understood.” In this regard, the State reiterated its arguments in the form of the following three questions: (i) “What patrimonial consequences does [the obligation ordered by the Court] refer to?” (ii) “What are the terms of domestic law in the matter?” and (iii) “What competent bodies should decide such patrimonial consequences?” These arguments are summarized below:

i) Peru affirmed that “the patrimonial consequences could only relate to [...] two elements: (1) to the amount of the pension itself, which has been the object of permanent controversy [...], or (2) to the loss of earnings owing to the possible failure to pay the pensions promptly or completely, whatever the amount.” Regarding the amount of the pensions, the State indicated that, although the five pensioners had tried to include, as part of the dispute, the definition of whether their pensions should be aligned with the salaries of the public or the private sector, in the State’s opinion, the Court “prudently refrained from ruling on the matter, aware of the complexity of interpreting the law [...] and of the major repercussions that this could have, not only [...] in relation to the five specific pensioners, but for all Peruvian pensioners.” The State added that the judgments of the Supreme Court of Justice and of the Constitutional Court in connection with this case “result from applications for protective measures in which the issue in dispute was the capping of pension benefits, and that these judgments ordered the reinstatement of the pensions they had been receiving, but never ruled on how to proceed as regards the alignment of the pensions.” In addition, Peru indicated that “if the patrimonial consequences of non-compliance were to be understood as damages [...],” the compensation for the said concept “formed an integral part of the petition [in the case] before the Commission”; yet, this “claim was not admitted by the Court.” In addition, the State indicated that the Court had declared that the judgment constituted *per se* a form of reparation and that, in the seventh operative paragraph of the judgment it had ordered the payment of an amount for compensation of non-pecuniary damage. Furthermore, the State indicated that “analyzing the norms on extra-contractual responsibility and valid

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<sup>15</sup> Decisions of the Superintendence of Banks and Insurance of March 12, 2002 (file of attachments to the pleadings and motions brief, attachments 1 to 5, folios 3 to 18).

claims in Peruvian law," articles VI and 1969 of the Civil Code<sup>16</sup> and article 2 of the Code of Civil Procedure<sup>17</sup> reveal that in cases of "responsibility for fraud or negligence, the corresponding remedy is to claim damages," and "that the only person entitled to bring an action is the victim or his/her heirs," a situation that had not been verified in this case with regard to the five pensioners and, as a result, the State "cannot [act] *ex officio*";

ii) With regard to domestic law, the State referred to the applicable norms on the alignment of pensions, and recognition, declaration, qualification and payment of pension benefits;

iii) With regard to the competent bodies, the State specified that, in the present case, the entity that should "align the pensions is, *prima facie*, the one obligated to pay the pensions. However, when doubts arise, or worse still, conflicts or litigations, the competent bodies are the Judiciary and, when the matter involves constitutional rights, the Constitutional Court." "In the case of the SBS, it proceeded erroneously and illegally, because it ordered the alignment based on the salaries of its employees subject to the private sector regime." According to the State, "[t]hat alignment procedure was contrary to the provisions of Law 23495."<sup>18</sup> Hence, the State indicated that, "[c]onsequently, the SBS filed actions under administrative law to obtain the judicial annulment of the said decisions." In that regard, it underscored that "24 cases have received a final decision [...] and have been archived; in all of them, the SBS decisions ordering alignment with the salaries of the private sector regime were declared null and void." Moreover, "20 cases have been substantially decided, although procedural issues remain pending that do not allow them to be archived, [...] in which [...] the final decision determined the nullity of the decisions of alignment based on the salary of active personnel from the private sector regime." The cases of Reymert Bartra Vásquez and Sara Castro Remy, widow of Gamarra, are among these 20 cases. According to the State, given the line of jurisprudence of the Supreme Court of Justice, which follows "the consistent jurisprudence of the Constitutional Court,<sup>19</sup>" it is likely that the pending cases will be decided similarly."

21. The representative maintained that "the five victims [...] were sued by the SBS before the Special Administrative Law Chamber of the Lima Superior Court of Justice in order to annul the reinstatement of rights that it had decided previously." According to the representative, three of the five actions, corresponding to the cases of Reymert Bartra Vásquez (deceased), Guillermo Alvarez Hernandez and Sara Castro, widow of Gamarra, "have received a final decision from the Peruvian courts, declaring founded the actions filed by the SBS." According to the representative, "in the judgments granting the annulments requested by the SBS, the Peruvian courts have stated that these

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<sup>16</sup> Article 1969 of the Civil Code establishes that "anyone who willfully or negligently causes damage to another is required to compensate this. The defense of absence of intention or negligence corresponds to its author." Article VI of the Civil Code (Legitimacy to Act) establishes that "[t]o file or to answer an action, a legitimate financial or moral interest is necessary. The moral interest authorizes the action only when referring directly to the agent or his family, unless otherwise expressly provided by law" (file of monitoring compliance with judgment, tome V, folio 1277).

<sup>17</sup> Article 2 of the Code of Civil Procedure (Exercise and Scope) states that "[f]or the right to act, every person, in exercise of their right to effective judicial protection, directly or through a legal representative or agent, may appeal to the courts requesting the settlement of a conflict of interpersonal interests or absence of legal certainty. As holder of the right to effective judicial protection, any person summoned to appear in a civil proceeding has the right to adversarial proceedings" (file of monitoring compliance with judgment, tome V, folio 1277).

<sup>18</sup> Law No. 23495 of November 20, 1982, which converted the progressive alignment process mandated by the 1979 Constitution into automatic and permanent alignment: "After the alignment, any increase granted to active public servants in the same or similar posts to the last post of those discharged or retired, will result in an increase in the pension equal to the amount corresponding to the active public servant" (file of attachments to the application, attachment 21, folios 133 and 134).

<sup>19</sup> Cf. Judgment of the Constitutional Court of Peru of June 18, 2003 (File No. 189-2002-AA/TC), Maldonado Duarte v. the SBS (file of monitoring compliance with judgment, tome V, folio 1281).

proceedings do not involve a discussion of the right of the victims to receive an aligned pension, but rather – as the SBS requested – the way in which this alignment should be calculated.” On this basis, “the SBS has demanded reimbursement of the pension amounts deducted each month, and requested that, as a precautionary measure, they be deposited under the protection of the court that initiated the judicial proceedings against them, over the last five years.” Thus, the pensions “have been drastically reduced to even less than that in 1992, when they began the proceedings to claim [their] rights.” According to the representative, “the judges in charge of these proceedings have applied retroactively the criteria established in a 2002 judgment of the Constitutional Court [...], which could not be applied to a situation defined previously by judgments delivered a decade ago (1994, 1998, 2000), which [...] were *res judicata*.”

22. The Commission indicated that “in this process of monitoring compliance with judgment, it has been established that actions for declaration of nullity are not the appropriate means for determining the patrimonial consequences of the violation declared by the Court.” The Commission concluded that “the State has not complied with this aspect of the judgment, nor has it responded to the Court’s request in its order of November 24, 2009, to provide information on the measures taken to fulfill this provision of the judgment.” In addition, the Commission affirmed that “by means of the annulment proceedings, the State seeks to alter the factual grounds of the Inter-American Court’s judgment in which it concluded that the payments should be made as determined in the domestic sphere (in other words, the private sector regime), because this was what the court decisions in favor of the victims established (para. 115 of the judgment).”

23. Based on the information submitted by the parties during the stage of monitoring compliance, and taking into account the provisions of the judgment in this case, the Court underlines the following facts:

a) In 1994, the Constitutional and Social Law Chamber of the Supreme Court of Justice handed down final judgments declaring admissible the applications for *amparo* filed by the victims against the arbitrary reduction of their pensions by the SBS.<sup>20</sup> The purpose of an application for *amparo* is to “restore the situation prior to the violation or threatened violation of a constitutional right, and it is appropriate in cases in which constitutional rights are violated, or there is a threat that they may be violated, by act or omission.”<sup>21</sup> In this regard, the judgments ordered the reimbursement [by the SBS] of the amounts that the victims had not received, as well as the alignment of their respective pensions as in the past; that is, aligning the pensions to the salary received by active SBS officials who belong to the private sector regime.<sup>22</sup> In three of the judgments on appeal delivered by the First Civil Chamber of the Lima Superior Court of Justice, in order to declare the application for *amparo* admissible, the said court based itself on the fact that the SBS had reduced the pensions without respecting due process.<sup>23</sup> In 1995, the

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<sup>20</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, paras. 88.h, 89.c, 89.j, 89.q, 89.x, and 89.ee.

<sup>21</sup> Articles 1 and 2 of Law No. 23506 on *Hábeas Corpus* and *Amparo*, cited in the decisions of the First Instance Civil Court of Lima, with regard to the applications for *amparo* filed by Reymert Bartra Vásquez, Carlos Torres Benvenuto and Guillermo Álvarez Hernández (file of attachments to the application, attachment 44, folio 179; merits file, attachment 9, folios 389 to 391, and file of attachments to the application, attachment 39, folios 166 to 168, respectively). In addition, in the judgment of the First Civil Chamber of the Lima Superior Court of Justice in relation to the application for *amparo* filed by Maximiliano Gamarra Ferreyra (file of attachments to the application, attachment 47, folios 185 and 186).

<sup>22</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*, *supra* note 20, paras. 88(h), 89(c), 89(j), 89(q), 89(x), and 89(ee).

<sup>23</sup> Cf. Decision of the First Civil Chamber of the Lima Superior Court of Justice of September 22, 1993, in the case of Carlos Torres Benvenuto (merits file, attachment 9 to the brief answering the application, folios 378 to 388); decision of the First Civil Chamber of the Lima Superior Court of Justice of November 12, 1993, in the case of Guillermo Álvarez Hernández (file of attachments to the application, attachment 40, folios 169 to 170);



SBS adopted decisions in order to comply with the provisions of these judgments of the Social and Constitutional Law Chamber of the Supreme Court of Justice;<sup>24</sup>

b) In 1998 and in 2000, Peru's Constitutional Court delivered judgments regarding the compliance actions filed by the victims demanding the execution of the 1995 decisions of the SBS ordering the reimbursement and alignment of their pensions as previously ordered by the Chamber of Constitutional and Social Law of the Supreme Court of Justice.<sup>25</sup> A compliance action "seeks to give effect to the provisions of a law or an administrative act with which an officer or authority is unwilling to comply."<sup>26</sup> Thus, the Constitutional Court merely ordered compliance with the 1995 administrative decisions of the SBS in favor of the pensioners, to the extent that "their nullity had not been decided judicially." The SBS adopted the provisions of those judgments, as well as other judicial admonitions, in 2002 decisions;<sup>27</sup>

c) In June 2005, two years and four months after the Inter-American Court had delivered its judgment in this case, the SBS filed actions for declaration of nullity before the Special Administrative Law Chamber of the Superior Court of Justice against its own 1995 and 2002 decisions, issued in implementation of the above-mentioned judgments of the Constitutional and Social Law Chamber of the Supreme Court of Justice and the Constitutional Court, respectively.<sup>28</sup> In the context of these administrative proceedings, the courts handed down rulings with regard to four of the victims, granting the precautionary measure requested by the SBS, ordering that, each month, the said entity deposit in the *Banco de la Nación*, the increase for alignment ordered in the contested decisions. In the case of the victim Carlos Torres Benvenuto, the precautionary measure requested by the SBS was denied because a judgment of the Transitory Civil Chamber of the Supreme Court of Justice declared it inadmissible;<sup>29</sup>

d) Regarding the said actions for declaration of nullity filed by the SBS, the victims filed the objection of *res judicata*. The Special Administrative Law Chamber and, subsequently, the Permanent Civil Chamber of the Supreme Court, considered that this objection could not be invoked against the 1994 judgments of the Supreme Court of Justice, the 1998 and 2000 judgments of the Constitutional

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decision of the First Civil Chamber of the Lima Superior Court of Justice of December 30, 1993, in the case of Maximiliano Gamarra Ferreyra (file of attachments to the application, attachment 47, folios 185 a 186).

<sup>24</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*, supra note 20, para. 88(k).

<sup>25</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*, supra note 20, para. 88(l).

<sup>26</sup> Cf. Laws Nos. 23506 and 25398 and article 200(6) of the Constitution, cited in the judgments of the Constitutional Court of Peru of August 3, 2000, in relation to the compliance actions filed by Carlos Torres Benvenuto, Javier Mujica Ruiz Huidobro and Guillermo Álvarez Hernández (file of attachments to the application, attachments 54, 55 and 58, folios 202 to 208 and 214 to 215).

<sup>27</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*, supra note 20, para. 88(n).

<sup>28</sup> The main objective of the SBS was to quash the administrative acts of 1995 and 2002. The former aligned the retirement pension of the victims based on the salary paid to employees of the Superintendence of Banking and Insurance who were subject to the private sector regime. The latter ordered compliance with the 1995 decisions. An additional objective was for each pensioner to return the sums of money paid in excess, owing to the "undue increase." Cf. File of attachments to the representative's brief of July 15, 2005 (Reymert Bartra, folios 75 to 104; Carlos Torres Benvenuto, folios 105 to 134; Guillermo Álvarez Hernández folios 135 to 163, and Javier Mujica Ruiz Huidobro, folios 164 to 194). Also, with regard to Sara Elena Castro Remy, widow of Gamarra, file of monitoring compliance with judgment, folios 1005 and 1006.

<sup>29</sup> The Transitory Civil Chamber of the Supreme Court of Justice of the Republic decided this the basis that "it appears, *prima facie*, that the administrative decisions, whose suspension is requested, as a precautionary measure, are not the result of actions that correspond to the Superintendence of Banking and Insurance, but administrative decisions to comply with a court order that has become *res judicata* and, based on a constitutional principle, is immutable [...]" (file of monitoring compliance with judgment, tome IV, folio 836).

Court, and the 2003 judgment of this Court.<sup>30</sup> It was only in response to the objections formulated by two of the victims,<sup>31</sup> that the said courts merely indicated that two claims had been presented with different objects and purposes;

e) Between April 2008 and November 2009 the Peruvian courts delivered judgments with final rulings on the actions for declaration of nullity filed by the SBS in 2005 (*supra* considering paragraph 23(c)), with regard to three of the victims in this case (Sara Elena Castro Remy, widow of Gamarra, Reymert Bartra Vásquez and Guillermo Álvarez Hernández).<sup>32</sup> These judgments declared the actions for declaration of nullity admissible and ordered the SBS “to proceed to make a new and accurate alignment of the pensions [...] based on the official or employee of the Ministry of Economy and Finance, subject to the public sector regime [...].” As a result of these final judgments, the way in which the pensions of the victims are aligned has changed; they can no longer be aligned based on the salary of an SBS official, subject to the private sector regime. The Peruvian courts founded their decisions, *inter alia*, on the criteria adopted by the Constitutional Court in a June 18, 2003, judgment in an action brought by another SBS pensioner, who is not a victim in this case. According to these criteria, “the alignment to which a pensioner with a pension subject to alignment has a right must be calculated based on the public administration official or employee of the same level and category occupied by the pensioner at the time of retirement.” In this way, the said Chamber concluded that “the alignment ordered by the [1995] SBS decisions was contrary to the law; consequently, the administrative authorities should issue new decisions”;<sup>33</sup> and

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<sup>30</sup> Cf. Decision of the Fourth Special Administrative Law Chamber of June 25, 2007, with regard to Javier Mujica (file of monitoring compliance, tome IV, folios 811 to 819); decision of the First Administrative Law Chamber of April 9, 2008, with regard to Sara Elena Castro Remy, widow of Gamarra (file of monitoring compliance, tome IV, folios 1005 to 1016); decision of the First Administrative Law Chamber of December 18 2007, with regard to Guillermo Álvarez Hernández (file of monitoring compliance, tome IV, folios 1017 to 1027); decision of the Transitory Special Administrative Law Chamber of December 30, 2009, with regard to Carlos Torres Benvenuto (file of monitoring compliance, tome V, folio 1480 to 1490), and judgment of the Permanent Civil Chamber of the Supreme Court of Justice of August 14 2008, with regard to Reymert Bartra (file of monitoring compliance, tome IV, folios. 997 to 1003). Sara Elena Castro Remy, widow of Gamarra, did not appeal the first instance decision and, in second instance, the cases with regard to Javier Mujica and Carlos Torres Benvenuto have not been decided.

<sup>31</sup> Cf. First instance decision of the First Special Transitory Administrative Law Chamber of April 27, 2007, regarding Reymert Bartra. This Chamber decided that “[...] regarding the objection of *res judicata*, the difference between the two judicial proceedings has been established, because the instant case questions the undue alignment of the pension and the failure to protect a constitutionally protected right such as the “pension” pursuant to the provisions of Decree Law 20530, which is substantially different from the ruling of the Supreme Court of Justice. Also, regarding the Inter-American Court, the said judgment does not contain any ruling concerning the alignment of pensions with salaries of a labor regime other than the public regime [...]” (file of monitoring compliance with judgment, tome IV, folios 807, 994 and 995). See also, the second instance decision of the Permanent Civil Chamber of the Supreme Court of Justice of the Republic of November 17, 2009, with regard to Guillermo Álvarez Hernández. This Chamber decided that “regarding the identical nature of the case and purpose, it can be seen that this identical nature is absent, because, in the previous judicial proceedings [...] the now defendant filed an application for *amparo* requesting the reinstatement of the retirement pension that he had ceased to receive and that had been granted by Administrative Decision No. 228-84 [...], while in the actual proceedings, the annulment of SBS Decision No. 331-95 is requested [...]; in other words, we are faced with two distinct claims, because the first claim involved an application for *amparo*, while the second proceedings involved the annulment of two different administrative decisions: namely, SBS Decisions 331-95 and 252-2002. Hence, the difference between the petitions is evident and, consequently, the interest in question” (file of monitoring compliance with judgment, tome V, folios 1342 and 1343).

<sup>32</sup> Cf. Decision of the First Special Transitory Administrative Law Chamber of April 9, 2008, in the case of Sara Elena Castro Remy, widow of Gamarra, which became final as she did not file an appeal (file of monitoring compliance with judgment, tome IV, folios 1005 to 1016); judgment of the Permanent Civil Chamber of the Supreme Court of Justice of August 14, 2008, in the case of Reymert Bartra (file of monitoring compliance with judgment, tome IV, folios 997 to 1003), and judgment of the Permanent Civil Chamber of the Supreme Court of Justice of November 17, 2009 (file of monitoring compliance with judgment, tome V, folios 1336 to 1343).

<sup>33</sup> Cf. Decision of the First Special Transitory Administrative Law Chamber of the Lima Superior Court of Justice of April 9, 2008, in the case of Sara Elena Castro Remy, widow of Gamarra (file of monitoring compliance with judgment, tome IV, folios 1005 to 1016). Also, Cf. Judgment of the Permanent Civil Chamber

f) Two of the victims filed applications for *amparo* against the courts to try and reverse the judicial rulings. According to an attachment provided by the State concerning an SBS report, "it is to be expect that these applications will be dismissed," because this is what occurred in similar cases of other SBS pensioners.

24. As established in the judgment, one of the disputes between the parties related to whether the pensions of the five pensioners should be aligned with the salary of an official subject to the public sector regime, as the State argued, or with that of an active SBS official (subject to the private sector regime), as the representatives and the Commission maintained.<sup>34</sup> To declare that Articles 21 and 25 of the American Convention had been violated, the Inter-American Court based itself on Peru's non-compliance with the final judgments at the domestic level of the Supreme Court of Justice and the Constitutional Court of Peru ordering that the victims should be paid their pensions as they had been paid prior to the arbitrary reduction in 1992; in other words, aligning them with the salary received by active SBS officials, subject to the private sector regime.<sup>35</sup> In its judgment, the Inter-American Court did not deliver an opinion concerning which interpretation was appropriate for the alignment of the pensions; instead, it declared that Peru was responsible for violating the right to property to the detriment of the five victims in this case, based on the fact that, for years, the State had failed to comply with the said domestic judgments that decided the applications for protective measures filed by the five victims. The Inter-American concluded that, "a right protected by the [said] judgments was constituted to the benefit of the pensioners, and when this was disregarded by the State, it affected their patrimony, violating Article 21 of the Convention."<sup>36</sup>

25. Peru argued that, if the measure of reparation ordered in the fifth operative paragraph of the judgment related to determination of damage, this claim was not admitted opportunely by the Court and that, in any case, the only entity legally entitled to file an action is the victim (*supra* twentieth considering paragraph). For his part, at the private hearing on monitoring compliance with judgment,<sup>37</sup> the representative affirmed that this measure ordered the State to ensure that the domestic courts decide "the possible patrimonial consequences of the violation of the right to property, the damage, the consequential damage, and the loss of earning, among other aspects." In this regard, the Court considers it necessary to recall that, in his pleadings and motions brief, the representative of the victims requested, in addition to "reinstatement of the enjoyment of [their] violated pension rights," that "reparation be made for the damage suffered by the victims," requesting the Court to determine "the exact amount of the damage."<sup>38</sup>

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of the Supreme Court of Justice of November 17, 2009, in the case of Guillermo Álvarez Hernández (file of monitoring compliance with judgment, tome V, folios 1336 a 1343), and judgment of the Permanent Civil Chamber of the Supreme Court of Justice of August 14, 2008, in the case of Reymert Bartra (file of monitoring compliance with judgment, tome IV, folios 997 a 1003).

<sup>34</sup> Cf. *Case of Five Pensioners v. Peru. Merits, reparations and costs*, *supra* note 20, paras. 104 and 106.

<sup>35</sup> In addition, the Court recognized that the regulation under which the five pensioners would receive a pension equal to that of active personnel was ambiguous. Nevertheless, at the same time, it observed that "although the adjustable pension could have been established aligned with the salary received by an official subject to the public regime of a similar level or category to that of the alleged victims, when the SBS employees were transferred to the private sector regime (1981) this was not interpreted in this way by the State authorities. Moreover, it was the State itself that, when the alleged victims opted for the pension regime under Decree Law No. 20530, recognized to them, by way of administrative decisions, a pension amount that could be aligned based on the salary of an active SBS official." *Case of Five Pensioners v. Peru. Merits, reparations and costs*, *supra* note 20, para. 115.

<sup>36</sup> *Case of Five Pensioners v. Peru. Merits, reparations and costs*, *supra* note 20, para. 115.

<sup>37</sup> Cf. *Case of Five Pensioners v. Peru. Monitoring compliance with judgment*, *supra* note 8, twenty-seventh considering paragraph.

<sup>38</sup> Pleadings and motions brief of the victims' representative of March 5, 2002 (merits file, tome I, folios 205 and 208).

26. Although the Court did not order the State to make a specific payment of an amount to compensate pecuniary damage in its judgment, it did take this claim into account to establish, in the fifth operative paragraph of the judgment, the State's obligation to "determine the possible patrimonial consequences of the violation of the right to property, in the terms of domestic law, by the competent domestic bodies."

27. In previous cases, when ruling on reparations, the Court has also established that certain decisions be made in the domestic sphere, taking into account that "[t]hey [...] entail the analysis of complex issues of [domestic] law, so that it is more appropriate that [...] they be decided in [that] sphere."<sup>39</sup> Therefore, owing to the matter and the specificity involved in determining the said patrimonial consequences, in this case, the Court established the general guidelines that the State should follow when taking these decisions; that is, "in the terms of domestic law" and "by the competent domestic bodies."

28. During the stage of monitoring compliance with judgment, the State has provided information on domestic law concerning the determination of patrimonial consequences according to the Civil Code and the Code of Civil Procedure (*supra* considering paragraph 20(i)), which have not been contested by the victims' representatives. Based on this information, the Court considers that compliance with the reparation ordered in the fifth operative paragraph of the judgment signifies that the competent domestic bodies must rule on eventual claims filed by the victims concerning the possible patrimonial consequences resulting from the violation of the right to property declared by the Court in its judgment. These consequences may include compensation to the victims for damage, or other consequences under Peruvian law. When determining the possible patrimonial consequences, the said bodies must give particular relevance to the scope of the declaration of the violation of the right to property of the victims, in the terms of the judgment.

29. Consequently, the Court requests the representative to indicate whether the victims have filed any claim before the competent bodies under Peruvian law. If so, the Court recalls that the State must take the pertinent steps to respond to the said measures taken by the victims effectively and as soon as possible,<sup>40</sup> based on the violation of the right to property declared in the judgment, and must inform the Court accordingly.

***C) Alleged failure to comply with the Court's judgment owing to further reductions in the amounts of the victims' pensions***

30. The Court underlines that, since 2005, the victims' representative has been reporting measures that supposedly were contrary to the provisions of the judgment. Specifically, the representative referred to the actions for declaration of nullity filed by the SBS in 2005 against its own 1995 and 2002 decisions (*supra* considering paragraph 23(c)), regarding which the Permanent Civil Chamber of the Supreme Court of Justice had ordered that the pension of the victims be aligned with that of a public administration official or employee, rather than to the pension corresponding to the private sector, as had been the practice up until that time. According to the representative, the 2005 actions for declaration of nullity filed by the SBS were contrary to the decisions of the Supreme Court in 1994 and the Constitutional Court in 1998 and 2000 (*supra* considering paragraph 21).

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<sup>39</sup> *Case of Baena Ricardo et al v. Panama. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of November 22, 2002, eighth considering paragraph. Also, *cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 74, para. 181, and *Case of Cesti Hurtado v. Peru. Reparations and costs.* Judgment of May 31, 2001. Series C No. 78, para. 46.

<sup>40</sup> *Cf. Case of Five Pensioners v. Peru. Monitoring compliance with judgment, supra* note 8, thirty-third considering paragraph.

31. For its part, the State has indicated that, in its 1995 and 2002 decisions, the SBS had “proceed[ed] erroneously and illegally” (*supra* considering paragraph 20(iii)), thus justifying the 2005 actions for declaration of nullity. Initially, the State failed to explain the reason for the actions for declaration of nullity filed by the SBS against its decisions of 1995 and 2002. In its report of March 18, 2010, the State merely referred to an SBS communication that appeared to indicate that the judgments deciding the 2005 applications for declarations of nullity were based on “the consistent case law of the Constitutional Court,” deriving from a judgment of June 18, 2003, in an appeal filed by another SBS pensioner (*supra* considering paragraph 20(iii)), which established “inflexible criteria with which the matter must be considered, because it has conferred binding nature on such criteria as case law that must be complied with.” The Court notes that, in addition, during the 2009 private hearing on monitoring compliance with judgment held before the Court, the State referred briefly to the creation of a new pension regime in Peru starting in 2004. According to the State, “approximately 15% [of people with a pension] were subject to the regime of [Law] 20530 and received 85% of the amount the State paid out for pensions”; and it specified that “the constitutional reform [underway] sought to rectify the situation” and “bring order to the pension regime.”<sup>41</sup>

32. The Court observes that three of the five applications for declaration of nullity filed by the SBS in 2005 have received a final judgment (*supra* considering paragraph 21), and that, in its reports, the State itself has indicated that the case law of the Supreme Court of Justice, which follows the case law of the Constitutional Court, makes it predictable that the cases of two of the victims that remain pending judgment will be decided similarly (*supra* considering paragraph 20(iii)).

33. The three final judgments delivered in the proceedings under administrative law filed by the SBS in 2005 declared the nullity of the decisions that the SBS issued in 1995 and 2002 with regard to three of the victims. The Court underscores that the purpose of these SBS decisions was to execute the orders of the Supreme Court of Justice and the Constitutional Court of Peru when admitting the applications for protective measures (*supra* considering paragraph 23(a) and (b)).

34. Although the Court acknowledged in the judgment, in general terms, that States Parties to the Convention may reduce pensions respecting the parameters of the Convention, the Court reiterates that, in its judgment, “it did not [...] order, as the State argue[d], a new determination of the pension regime corresponding to the victims.”<sup>42</sup> When referring to the said parameters of the Convention, the Court indicated, *inter alia*, that “the States may place limitations on the enjoyment of the right to property for reasons of public utility or social interest,” according to Article 21 of the Convention and its Additional Protocol in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), provided that such limitations are established “by means of laws promulgated in order to preserve the general well-being in a democratic society, [and] to the extent that they are not incompatible with the purpose and object underlying those rights.”<sup>43</sup>

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<sup>41</sup> Intervention of the State during the private hearing on monitoring compliance with judgment held in San José, Costa Rica, on January 19, 2009. Although, Peru did not provide further information on the pension reform during the private hearing, when examining the case of *Acevedo Buendía et al.* (“Dismissed and Retired Employees of the Comptroller’s Office) v. Peru, the Court expressly examined Law 28449 of 2004, which, in the context of the constitutional reform initiated by the State, established the new rules for the pension regime of Decree Law 20530. Cf. *Case of Acevedo Buendía et al.* (“Dismissed and Retired Employees of the Comptroller’s Office) v. Peru. Preliminary objection, merits, reparations and costs. Judgment of July 1, 2009. Series C No. 198, para. 49.

<sup>42</sup> *Case of the Five Pensioners v. Peru. Monitoring compliance with judgment*, *supra* note 8, thirty-second considering paragraph.

<sup>43</sup> *Case of the Five Pensioners v. Peru. Merits, reparations and costs*, *supra* note 20, para. 116.

35. The Court takes note that, according to the evidence submitted by the victims' representative and not contested by the State, their pensions "had been drastically reduced to even less than the amount they received in 1992, when they began the proceedings to claim [their] rights" (*supra* considering paragraph 21). From the payment vouchers forwarded by the representative in the context of monitoring compliance with judgment, the Court observes that the pension amounts were reduced by approximately 92%,<sup>44</sup> a situation that appears to deviate from the parameter introduced by the State's 2004 reform of the pension regime.<sup>45</sup>

36. Based on the above, for the Court to be able to determine whether the said facts relating to a further reduction in the pensions of the victims in this case are related to the monitoring of compliance with this measure, Peru must indicate whether the proceedings filed by the SBS in 2005 requesting a declaration of nullity of its own decisions executing the judgments of the applications for protective measures comply with the requirements of the right to property and judicial protection of the victims. Likewise, the Court requires the State to explain how the said proceedings conform to the provisions of the Court's judgment that it must respect the parameters of the Convention when reducing pension amounts (*supra* considering paragraph 34) and, if appropriate, to explain whether the said 2004 reform of the pension regime is being applied to the victims. On this last aspect, the State should provide information on why the amounts of the victims' pensions have been reduced by approximately 90% (*supra* considering paragraph 35). All this information is particularly relevant in a case such as this one in which this Court has ruled in a judgment that "the right of the five pensioners to receive an adjusted retirement pension in accordance with Decree Law No. 20530, [is] an acquired right [...]; that is, [...] a right that has been incorporated into their patrimony."<sup>46</sup>

**THEREFORE:**

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

in exercise of its powers 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. As indicated in the pertinent considering paragraphs of this order, the following operative paragraphs of the judgment are pending compliance:

- a) "Conduct the corresponding investigations and apply the pertinent punishments to those responsible for failing to abide by the judicial decisions delivered by the Peruvian courts during the applications for protective measures

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<sup>44</sup> For example: Reymert Bartra went from receiving S/.12,065.63 in March 2002 to S/.1,330.64 in March 2008; Sara Elena, widow of Gamarra, from S/.21,145.74 in February 2005 to S/.1,601.54 in February 2007; Javier Mujica, from S/.19,180.78 in January 2005 to S/1,430.85; Carlos Torres Benvenuto, from S/.18,513.80 in March 2005 to S/.1,395.45 in March 2006, and Guillermo Álvarez Hernández, from S/.22,547.34 in March 2002 to S/.1,431.57 in September 2008.

<sup>45</sup> According to article 3 of the said law, "[t]he maximum monthly amount of the pensions for retirement, inability to work and survivors of the pension regime regulated by Decree Law 20530 is two (2) Tax Units [UIT], in force at the date corresponding to the payment of the pension." The third transitory provision of the law establishes that "[t]he maximum referred to in article 3 of the [...] law shall apply progressively as soon as the said [transitory] provision enters into force," and that "[t]he pensions that exceed the value of two (2) UIT in force at the date of promulgation of the [...] law, will be reduced each year by eighteen per cent (18%) until the year in which the said pension reaches the corresponding maximum in force." Law 28449 of December 23, 2004, law establishing the new rules of the Pension Regime of Decree Law 20530.

<sup>46</sup> *Case of Five Pensioners v. Peru. Merits, reparations and costs, supra* note 20, para. 102.

filed by the victims" (*sixth operative paragraph of the judgment of February 28, 2003*), and

b) Establish "the possible patrimonial consequences of the violation of the right to property, [...], in the terms of domestic legislation, by the competent national bodies" (*fifth operative paragraph of the judgment of February 28, 2003*).

2. Any measure that the State takes with regard to the pensions of the five victims in this case must respect the provisions of the Court's judgment, in particular paragraphs 102, 103, 115 and 116; in the sense that, according to Articles 21 and 25 of the American Convention, the victims in this case have the acquired right to receive a retirement pension aligned in accordance with Decree Law No. 20530, as well as the right that the judgments handed down in their favor in the applications for *amparo* are complied with, and that the eventual reductions in the amounts of their pensions must be made in accordance with the applicable parameters of the Convention.

**AND DECIDES:**

1. To require the State of Peru to adopt all necessary measures to comply promptly and effectively with the aspects that remain pending, as established in Article 68(1) of the American Convention on Human Rights.

2. To request the representative of the victims to present the information requested in considering paragraph 29 concerning compliance with the fifth operative paragraph of the judgment, by February 1, 2012, at the latest.

3. To request the State to present to the Inter-American Court of Human Rights, by March 15, 2012, at the latest, a detailed and updated report indicating all the measures taken to comply with the reparations ordered by the Court that remain pending, as well as to present the requested information on the facts concerning a further reduction in the pensions of the victims of the instant case, as established in considering paragraphs 33 to 36 and in the declarative paragraphs of this order.

4. To request the representative of the victims and the Inter-American Commission on Human Rights to present any observations they deem pertinent on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

5. To continue monitoring the aspects pending compliance of the judgment on merits, reparations and costs of February 28, 2003.

7. To require the Secretariat of the Court to notify this order to the State, the representative of the victims, and the Inter-American Commission on Human Rights.

Leonardo A. Franco  
Acting President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Leonardo A. Franco  
Acting President

Pablo Saavedra Alessandri  
Secretary