

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF SEPTEMBER 4, 2012**

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

HAVING SEEN:

1. The Judgment on the merits, reparations and costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on September 26, 2006.
2. The Orders of the Inter-American Court dated October 30, 2008, and November 24, 2010. In the latter, the Court declared, among other things:

[...]

2. It shall keep the monitoring of compliance proceeding open for the following outstanding points:

- a) To undertake, in full compliance with judicial guarantees and within a reasonable time, all actions necessary to identify, prosecute and punish all those responsible for violations committed in this case (*ninth operative paragraph of the Judgment*);
- b) To provide medical, psychological and psychiatric treatment, as appropriate, to De Belén Areco Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all whom have the surname Vargas Areco, if they so require, and for the time needed (*eleventh operative paragraph of the Judgment*);
- c) To implement training programs and regular human rights courses for all members of the Paraguayan Armed Forces (*twelfth operative paragraph of the Judgment*), and
- d) To pay interest on arrears for the compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses (*fifteenth, sixteenth, and seventeenth operative paragraph of the Judgment*).

* Judge Margarette May Macaulay informed the Court that, for reasons of force majeure, she would not be present at the deliberation and signing of this Order.

3. The briefs of March 30, 2011, and March 30 and May 18, 2012, wherein the Republic of Paraguay (hereinafter "the State" or "Paraguay") reported on its compliance with the Judgment (*supra* having seen paragraph 1).

4. The briefs of May 19, 2011, and May 10, 2012, wherein the representatives of the victims (hereinafter "the representatives") submitted their comments on reports submitted by the State (*supra* having seen paragraph 3).

5. The briefs of June 23, 2011, and May 29, 2012, wherein the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted its comments to the reports provided by the State (*supra* having seen paragraph 3).

CONSIDERING THAT:

1. Monitoring compliance with its rulings is an inherent power of the Court's judicial functions.

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

3. By virtue of the final and unappealable nature of the judgments of the Court as established in Article 67 of the American Convention, the State must comply with them immediately and fully. Article 68(1) of the American Convention establishes that, "The States Party to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." To that end, States must ensure internal implementation of the Court's orders.¹

4. The obligation to comply with Court judgments is based on a basic principle of international law of States, upheld by international jurisprudence, according to which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as the Court has previously indicated and pursuant to Article 27 of the 1969 Vienna Convention on the Law of Treaties, they may not, for domestic reasons, fail to accept the international responsibility that has been established.² The obligations of State Parties under the Convention are binding upon all State authorities and agencies.³

¹ Cf. *Case of Baena Ricardo et al. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Radilla Pacheco v. Mexico. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of June 28, 2012, third considering paragraph.

² Cf. *International Responsibility for the promulgation and enforcement of laws in violation of the Convention (Arts. 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; and *Case of Baena Ricardo et al. v. Panama. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of June 28, 2012, fifth considering paragraph.

³ Cf. *Case of Castillo Petrucci et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of November 17, 1999, third considering paragraph, and *Case of Baena Ricardo et al. v. Panama*, fifth considering paragraph.

5. The State Parties to the Convention shall guarantee compliance with the provisions of the Conventions and their own effects (*effet utile*) within the scope of their respective domestic rights. This principle applies not only to the substantive rules in human rights treaties (that is, those containing provisions on protected rights), but also with regard to procedural norms, such as those regarding compliance with decisions of the Court. Taking into account the distinct nature of human rights treaties, these obligations shall be interpreted and applied in such a way that the protection guaranteed is truly practical and effective.⁴

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

6. The State reported that an initial investigation was launched into "the alleged commission of the crime of [t]orture as defined by [article] 309 of the Criminal Code, taking place in VILLARRICA - Second Infantry Division." The investigation was registered under the case title "Unnamed Persons s/ Torture," in which Gerardo Vargas Areco was a victim. The investigation was processed starting on May 4, 2011, before the Public Prosecutor of Unit No. 1 Specialized in Crimes against Human Rights.⁵ Likewise, the State submitted a report on the steps taken in the framework of that investigation, such as making a copy of the case "Aníbal López Insfrán and Eduardo Riveros s/ homicide in Villarrica; requesting copies of the files and list of general officers, secondary officers, non-commissioned officers, and troop personnel of the 2nd Infantry Division, Villarrica, serving during the years 1989 and 1990; the formation of a Public Prosecutors Office assigned to the Second Infantry Division of the Army in the city of Villarrica to collect information; the calling of witnesses; the requesting of information on individuals in the city of Bella Vista Norte who had confirmed that Gerardo Vargas Areco's body showed signs of torture; the collection of statements from relatives, and the initial testimony of a colonel. Likewise, the State indicated that it had ordered planimetric and other work to be carried out, and toward doing so had asked for the Forensic Laboratory Directorate to appoint an official. Finally, it indicated that it had planned for "a consultation with forensic professionals, [as it was analyzing the possibility] of carrying out an anthropological study through which it would be able to determine if the skeletal remains showed indications of acts of torture." In this way, the State submitted that it was "moving forward in the search for truth and justice for child soldier Gerardo Vargas Areco, having overcome a number of obstacles that were making the investigation difficult."

7. The representatives indicated that the information provided by Paraguay "is very incomplete and does not provide certainty regarding specific results." Likewise, they responded that the 2nd Infantry Division's entry into Villarrica "has still not been carried out." They also highlighted that the information with regard to the carrying out

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Radilla Pacheco v. Mexico*, fourth considering paragraph.

⁵ This investigation was first assigned on January 7, 2010, to the prosecutor of the Special Unit for Human Rights and was subsequently appointed as adjunct in the criminal case to prosecutor of the Criminal Unit No. 2 of Villarrica on May 6, 2010. As of May 4, 2011, the Prosecutor of Special Unit No. 1 on offenses against human rights was reassigned since on January 13, 2011, the "Special Unit for offenses against human rights" was created, with exclusive jurisdiction regarding the following types of crimes: enforced disappearance, bodily harm in the exercise of public functions, duress regarding statements, torture, persecution of innocent persons, criminal enforcement against innocent persons, violation of the secrecy of mail and telecommunication correspondence, genocide, and war crimes.

of planimetric work did not indicate any real progress in the investigation of the facts. In addition, they asserted that the State had not provided reasoning that was sound or sufficiently scientifically grounded to justify the need to exhume the body and carry out possible additional examinations of the victim's remains. Regarding this, they stated that considering that the murder of Gerardo Vargas Areco had taken place 23 years ago, the State must provide solid and scientifically valid reasoning to justify the need for those examinations. Additionally, they felt it important to call attention to the deep emotional impact that this measure could have on the Vargas Areco family. For this reason, they argued that should the exhumation take place, it must be ordered in the context of an efficient and effective investigation to identify those responsible, and that it is crucial for the State to adopt measures to mitigate the psychological impact that the exhumation would have on Gerardo Vargas Areco's family members. Finally, they recalled that the State has an obligation to "punish those responsible for all the violations committed in this case," including, "in addition to the torture[,] the extrajudicial execution," a violation that the State failed to mention.

8. The Commission appreciated that the State had opened a case file for investigating the alleged acts of torture in this case. However, it indicated that "the case was opened almost a year and a half ago, and the investigation does not appear to have made any substantial progress," noting specifically that "during the entire first year, activity in the case file is limited to requesting copies of court and military files and the assignation of Public Prosecutor personnel." Likewise, the Commission argued that the steps taken in the investigation "did not indicate that all efforts are being made to comply with this obligation," emphasizing a lack of follow-up regarding the "inspection that was thwarted because it was not possible to enter the military facility." In addition, the Commission expressed its concern over what an exhumation would mean for Gerardo Vargas Areco's family members and stated that the measure must be carried out "as part of a clear line of investigation oriented toward the search for specific evidentiary material, implemented with adequate technical and human resources, and guaranteeing the due participation and attendance of the victims." Finally, the Commission indicated that "the State did not address the investigation of the facts regarding the death of the victim," and in this sense, questioned "the reasons for which the State cannot proceed to investigate the responsibility of individuals different from the ones who have already been processed [with] regard to these facts."

9. The Court appreciates the efforts made by the State that have allowed for the opening of a criminal case into alleged facts of torture, as it is crucial for the State to adopt all measures in order to carry out, in a diligent and effective manner, investigations aimed at identifying, prosecuting, and, where appropriate, punishing those responsible for the alleged acts of torture to which the child Gerardo Vargas Areco was subjected.⁶ In this sense, the Court's attention is drawn to the fact that more than a year and a half after ordering establishment of the Public Prosecutor assigned to the 2nd Infantry Division of the Army in the city of Villarrica, the only information available indicates that this could not be carried out on January 28, 2011, "as it was not authorized by the Division Commander." After this fact, the Court does not have information that would allow it to conclude that this was effectively carried out.

⁶ *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 24, 2010, twenty-second considering paragraph.

10. Regarding the information and comments submitted by the parties with respect to the possible exhumation of Gerardo Vargas Areco's remains, the Court recalls, first of all, that the Judgment found that the investigation into the extrajudicial execution of Gerardo Vargas Areco and his alleged torture was not carried out in an effective and complete manner. In particular, it found that the State failed, as of March 26, 1993, to comply with its duty to carry out an exhumation of Vargas Areco's body and perform an autopsy in order, where possible, to resolve whether torture had effectively taken place.⁷

11. Nevertheless, given that 22 and a half years have passed since the extrajudicial execution of Gerardo Vargas Areco, before beginning any procedure it would be crucial to evaluate the pertinence of carrying out an exhumation, by way of obtaining the expert opinions of forensic professionals who are objective, independent and impartial, especially taking into account the amount of time that has passed as well as the feasibility of collecting specific evidentiary material that could indicate whether the remains of Vargas Areco present bone injuries that could be related to acts of torture. Likewise, the Court agrees with the Commission in the sense that the measure should only be taken as part of a clear line of investigation and must be implemented with adequate technical and human resources, and guaranteeing the due participation and presence of the victims.

12. The Court awaits updated, detailed and complete information on the new procedural steps being taken in the framework of the investigations in progress, investigations that must be oriented toward "exhausting lines of investigation connected with all persons who allegedly participated in the alleged acts of torture and subsequent execution of the Vargas Areco child,"⁸ as well as to identify, determine responsibility of, and punish all those responsible for the violations committed in this case, for the penal and any other consequences that may result from the investigation of the facts. On submitting that information, the State must also submit a copy of the corresponding documentation.

b) Obligation to provide medical, psychological and psychiatric treatment, as appropriate, to De Belén Areco Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all whom have the surname Vargas Areco, if they so require, and for the time needed (eleventh operative paragraph of the Judgment)

13. The State indicated that the Ministry of Public Health and Social Well-being provided identification cards to members of the Vargas Areco family that allows them access to preferential and personalized treatment. In this regard, it explained that the Ministry of Health sent a note to the director of the Amambay Department Health Region (responsible for the area where the victims have their domicile) to duly inform on the background of the case. In addition, it reported that previously, "a complete

⁷ Cf. *Case of Vargas Areco v. Paraguay. Merits, Reparations, and Costs*. Judgment of September 26, 2006. Serie C No. 155, para. 90.

⁸ *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2010, tenth considering paragraph.

and exhaustive medical check-up had been provided that was personalized and that took place in the home of Mrs. De Belén Areco. She was prescribed medication [...], that was supplied by the Ministry of Health, even though it was not among the medicines distributed [...] to the rest of the population." On this point, the State submitted that the treatment surpasses "by far, the health services normally provided in the country's public institutions." The State explained that according to the reports collected from the Health Center in the Bella Vista Norte neighborhood, via the Human Rights Unit of the Ministry of Public Health and Social Well-being, the family is currently in good physical and psychological health and is receiving regular care. With regard to Mrs. De Belén Areco, the State indicated that she receives treatment, as well as monthly medication provided by the Bella Vista Norte Health Center. Taken into account this regular aid to the family, as well as the absence of new health needs, the State requested that this point be declared to have been complied with.

14. The representatives confirmed that the family members have a special card, but indicated that contrary to the information provided by the State, Mrs. De Belén Areco de Vargas "is not regularly receiving the medication she needs from the Health Center indicated, nor is she receiving full and uninterrupted assistance," despite having been diagnosed with cardiovascular disease that requires regular medication. Likewise, they observe that although it is true that in the year 2010, the medication was sent by the Ministry of Health, this only happened once. Since then, Mrs. De Belén Areco de Vargas "has had to buy her medication on her own" and, with the exception of the aforementioned occasion, "it is very difficult to access care with the doctor indicated." They therefore requested that the procedure for providing access to specialized treatment and the reimbursement of expenses be made more simple and effective.

15. The Commission expressed appreciation for the progress made by the State in complying with this obligation by providing identification cards to the relatives that allow them to access preferential and personalized medical treatment. However, it observed that the parties disagree with regard to the continuity and regularity of the provision of medical treatment, in particular with regard to Mrs. De Belén Areco. For this reason, it argued that the Court should not consider this point of the judgment as being complied with until it has more specific, complete, and updated information indicating that the health measures are being provided to the family members in an effective and permanent manner.

16. The Court expresses appreciation for the progress made by the State as far as the provision of identification cards to the victims that allow them to access preferential medical treatment. However, the Court notes that the information submitted by the State and the representatives of the victims is not in agreement with regard to the continuity and regularity of the medical treatment and the provision of medication prescribed to Mrs. De Belén Areco de Vargas, who, according to the comments submitted by the representatives, has had to purchase the medication herself despite having been diagnosed with a cardiovascular disease that requires regular medication whose provision should be paid for by the Ministry of Health. Regarding this, the Court recalls that, pursuant to what was decided in the Judgment (*supra* having seen paragraph 1), the State has an obligation to provide any medical and psychological treatment needed by the victims "for the time needed" and "as determined by the professionals in charge of their treatment," "free of charge and including necessary exams and medications." This is not exhausted with the provision of identification cards to the victims or the one-time provision of medication that is needed regularly. Based on this, the Court asks the State to submit updated, detailed

and complete information corroborating that the necessary treatment and medication is being provided regularly, fully, and effectively to Mrs. De Belén Areco as prescribed by the professional who carried out her medical evaluation, as well as the implementation of this measure of reparations with regard to the other beneficiaries.

c) Obligation to implement training programs and regular human rights courses for all members of the Paraguayan Armed Forces (twelfth operative paragraph of the Judgment)

17. The State reported that on February 28, 2011, a meeting was held between the representatives of the victims and the State - including officials from the Ministry of Defense and Military Forces Command - in the city of Asunción. It explained that during that meeting, the representatives of the victims had the chance to corroborate existing documentation on actions taken to comply with this point. The representatives also heard explanations and descriptions of the courses given, including methodology and curriculum, "duly clarifying that five officers and five non-commissioned officers attend the course annually." For their part, the representatives suggested that gender perspectives and a review of actions and attitudes that can in practice violate human rights be gradually incorporated into the curriculum; that the video "Cuerpo a tierra" be included in the teaching materials; and in addition to having training in human rights, that some of the instructors be women. Finally, after the recommendations of the representatives of the victims were heard, the parties agreed to consider this operative paragraph of the Judgment as complied with, "in the sense that the Armed Forces of the Nation are implementing human rights training programs and courses."

18. The representatives confirmed that a meeting was held on February 28, 2011, and that they reached an agreement on this operative paragraph. For this reason, they requested the Court to consider that this measure of reparations has been met.

19. The Commission expressed satisfaction at the agreement reached by the parties. However, it submitted that the information presented does not permit verification of whether the programs in question have been effectively and permanently implemented. Therefore, it asked the State to be required to submit complete and detailed information that would allow for a ruling on this point.

20. Given the representatives' agreement with what the State has put forward, the Court finds that the State has fully complied with this measure of reparations as far as the implementation of regular human rights programs and training courses, with the understanding that these programs are permanent and directed toward all members of the Armed Forces, independent of rank within the institution. The Court recalls that human rights education within State security forces is crucial for guaranteeing the non-repetition of facts like the ones in this case.

d) Obligation to pay interest on arrears for the compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses (fifteenth, sixteenth and seventeenth operative paragraphs of the Judgment)

21. The State indicated that it has fully complied with the obligation to pay the compensation, costs, and expenses associated with this trial, and that with regard to accrued interest, the parties agreed to set the amount at US\$3,000.00 (three thousand dollars of the United States of America) in an agreement signed on June 7,

2011. Likewise, it reported that through an addendum, the deadline set in that agreement was extended slightly and the amount required was deposited on January 30, 2012. Therefore, it asked the Court to find that these aspects of the Judgment have been met.

22. For their part, the representatives confirmed the information provided by the State and asked the Court to consider that the fifteenth, sixteenth and seventeenth operative paragraphs of the Judgment to have been met.

23. Considering that both parties are in agreement, the Commission found that this measure of reparations had been met.

24. Paraguay has provided documentation indicating that payment of the amount corresponding to the interest on arrears as agreed upon in the document signed on June 7, 2011, has been made. For this reason, and considering the agreement expressed by the parties, this Court finds that the fifteenth, sixteenth and seventeenth operative paragraphs of the Judgment have been fully met.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions, in conformity with Articles 33, 62(1), 62(3), 67, and 68(1) of the American Convention on Human Rights, 24 and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. Pursuant to the content of considering paragraphs 17 to 24 of this Order, the State has fully complied with the following operative paragraphs of the Judgment:

- a) To implement training programs and regular human rights courses for all members of the Paraguayan Armed Forces (*twelfth operative paragraph of the Judgment*), and
- b) To pay interest on arrears for the compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses (*fifteenth, sixteenth, and seventeenth operative paragraphs of the Judgment*).

2. On monitoring full compliance with the Judgment issued in this case and after assessing the information provided by the State, the representatives, and the Commission, the Court shall keep the monitoring of compliance proceedings open until total compliance of the operative paragraphs pending fulfillment in this case, to wit:

- a) To undertake, in full compliance with judicial guarantees and within a reasonable time, all actions necessary to identify, prosecute, and

punish all those responsible for violations committed in this case (*ninth operative paragraph of the Judgment*), and

- b) To provide medical, psychological, and psychiatric treatment, as appropriate, to De Belén Areco, Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián and Jorge Ramón, all whom have the surname Vargas Areco, if they so require, and for the time needed (*eleventh operative paragraph of the Judgment*).

AND DECIDES THAT:

1. The State of Paraguay adopt all the measures necessary to effectively and promptly comply with all the points from the Judgment that are pending compliance, as set forth in the second declarative paragraph *supra*, in keeping with the stipulations of Article 68(1) of the American Convention on Human Rights.

2. The State of Paraguay must present the Inter-American Court of Human Rights with a report by no later than January 31, 2013, indicating all the measures taken to comply with the reparations ordered by this Court that are still pending compliance, pursuant to what was indicated in considering paragraphs 9 to 12 and 16, and in the second declarative paragraph of this Order.

3. The representatives of the victims and of the Inter-American Commission on Human Rights must submit any observations that they deem pertinent on the State's report mentioned in the previous operative paragraph within four and six weeks, respectively, as of legal notice of said report.

4. The Secretariat of the Inter-American Court of Human Rights provide legal notice of this Order to the State of Paraguay, the representative of the beneficiaries, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Leonardo A. Franco

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary