

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 22, 2013**

CASE OF ABRILL ALOSILLA *ET AL.* v. PERU*

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on merits, reparations and costs delivered on March 4, 2011 (hereinafter "the Judgment") by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), in which it accepted the partial acknowledgement of international responsibility made by the State and declared that the rights to judicial protection and property had been violated because implementation of the annulment of the salary ratios system had the following effects: (i) reduction in the salaries of the victims as of December 1992; (ii) retroactive recovery from the victims of the payments made between January and November 1992 under the increase based on salary ratios, and (iii) absence of increase in the salaries of the victims as of July 1992 as a result of the last admissible salary ratio. This meant that no judicial protection existed with regard to the retroactive application of norms, in disregard of domestic law, and that acquired rights in relation to remunerations that already formed part of the personal wealth of the victims were affected.

2. Thus, in the Judgment the Court ordered that:

5. The State must pay, within one year, the amounts established in the annex to the Judgment and in paragraph 132 of th[e] Judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, as applicable, in the terms of paragraphs 115, 132, 139 and 140 to 145 [t]hereof.

6. The State must, within six months, make the publication of th[e] Judgment in the Official Gazette, in accordance with paragraph 92 of th[e] Judgment.

3. The briefs of July 26, 2011, February 2, May 21 and June 21, 2012, and February 5, 2013, in which the State of Peru (hereinafter "the State" or "Peru") presented the State reports on compliance with the Judgment delivered by the Court in this case.

* The President of the Court, Judge Diego García-Sayán, a Peruvian national, did not take part in this case pursuant to Article 19(1) of the Court's Rules of Procedure, according to which "[i]n the cases referred to in Article 44 of the Convention, a judge who is a national of the respondent State shall not be able to participate in the hearing and deliberation of the case."

4. The briefs of December 1, 2011, December 19, 2012, and February 4, 2013, in which the representative of the victims (hereinafter “the representative”) presented his observations on the State’s reports.

5. The briefs of February 2, 2012, and October 17, 2012, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) presented its observations on the State’s reports.

CONSIDERING THAT:

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

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

3. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly. Moreover, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the State must ensure implementation at the domestic level of the Court’s decisions in its judgments.¹

4. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.³

5. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective 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

¹ Cf. *Case of Baena Ricardo et al. v. Panamá. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Gelman v. Uruguay. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of March 20, 2013, third considering paragraph.

² Cf. *International Responsibility of 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 Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, third considering paragraph.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, third considering paragraph, and *Case of Gómez Palomino*, Order of the Inter-American Court of Human Rights of February 13, 2013, third considering paragraph.

the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

6. The States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. These obligations include the State's duty to inform the Court of the measures adopted to comply with the rulings of the Court in its judgments. The prompt implementation of the State's obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.⁵

A. Obligation to pay, within one year, the amounts established in the annex to the Judgment and in paragraph 132 of the Judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses.

7. The State advised, first, that it had coordinated a timetable for the payments. Subsequently, it indicated that the Lima Potable Water and Sewerage Services Company (hereinafter "SEDAPAL") had "advised that it ha[d] made the payment to all the beneficiaries of the judgment, including the six persons who had not collected the amounts that corresponded to them at the date of the report of June 19, 2012." In this regard, it indicated that "[r]egarding the group of six persons [who had not collected their payment]," SEDAPAL had advised "that they had been paid directly on September 21, 2012," and that "[w]ith regard to the other four persons whose payment was pending, this has been made by a judicial deposit in the *Banco de la Nación*." Therefore, the State asked the Court to "consider that this aspect of the Judgment had been fulfilled."

8. The representative of the victims confirmed that the State, through SEDAPAL, had made available to 233 victims the payment in three installments of the reparations for pecuniary and non-pecuniary damage, as well as the payment for the costs and expenses, in the amounts ordered in the Judgment. In this regard, the representative advised that 229 victims had collected the amounts for pecuniary and non-pecuniary damage, while "four [...v]ictims, corresponding to former employees, had not yet come forward to collect the payment, [because] two [...] of them had died [... and] the two remaining victims had not been located [...] on Peruvian territory." The representative indicated that "neither the Union of SEDAPAL Professional and Technical Employees – SIFUSE, nor [...] the representative of the victims, [have] received from any of the 233 victims or their heirs any complaints with regard to the payment of the reparations ordered in the Judgment [...], which the State had made available to the victims." Lastly, the representative affirmed that "it corresponded to the Peruvian State to present information [...] confirming that the State had made the judicial deposit of the compensation ordered for each of the [...] four [...] victims [...], which will permit concluding definitively that the Peruvian State has complied fully with the Judgment."

⁴ Cf. *Case of Ivcher Bronstein vs. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, para. 37, and *Case of Gómez Palomino*, Order of the Inter-American Court of Human Rights of February 13, 2013, fourth considering paragraph.

⁵ Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, seventh considering paragraph, and *Case of Kimel v. Argentina. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 5, 2013, second considering paragraph.

The representative added that “the Peruvian State, through SEDAPAL, had made the payment for costs and expenses available [...] to SIFUSE.”

9. The Commission observed that the State had “referred [in its first report] to a payment timetable in order to comply with the Judgment,” and indicated that “the payment of costs remained pending [...], and it was expected that this would be made when the stage of paying the pecuniary and non-pecuniary damages had concluded.” The Commission noted that the State had “provided documentary proof to substantiate this information.” Subsequently, and after the State had advised that it had made the payments to most of the victims, the Commission considered that, in the case of the persons who had not been located “within the time frame established in the Judgment, paragraph 143 of the Judgment should be applied.” Consequently, the Commission considered that “the remaining aspect of the payments ha[d] been complied with partially.”

10. First, the Court underscores the efforts made by the Peruvian State to comply with the fifth operative paragraph of the Judgment. In particular, it underlines the measures taken to this end, such as the elaboration of a payment timetable to comply with the provisions of the Judgment and the discount of the special quota of 10% and of 1% on the amounts ordered by the Court applicable to the 233 employees and former employees.⁶ The preparation of a payment timetable and the determination of specific forms of payment to the victims constitute good practices for compliance in cases with a significant number of victims, such as in this case.

11. Second, the Court observes that the representative and the Inter-American Commission have not contested the information presented by the State concerning the payments of the compensation made to 229 victims; in fact, the representative indicated in his most recent communication that “229 victims ha[d] already collected the reparations ordered.” In addition, the State provided the Court with the vouchers corresponding to the payment of pecuniary and non-pecuniary damage to the 229 victims.⁷

12. Regarding the four victims who have not collected the compensation ordered directly, the Court observes that the State provided copies of the cash vouchers and of the judicial deposits that it had made in their names.⁸ In this regard, paragraph 143 of the Judgment established that “[i]f, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts determined within the indicated time frame, the State shall deposit the said amounts in their favor in a deposit account or a certificate of deposit in a solvent Peruvian financial institution, in United States dollars, and in the most favorable terms permitted by law and by banking practice.”⁹ Consequently, the Court considers that, with the judicial deposit made in favor of the four remaining victims, the State has

⁶ Cf. Discount authorizations in favor of the Union of SEDAPAL Professional and Technical Employees (SIFUSE) (file on monitoring compliance, tome II, folios 674 to 733).

⁷ Cf. Copies of the payment of salary ratios for pecuniary and non-pecuniary damage of the former employees (file on monitoring compliance, tome I, folios 382 to 501, tome II, folios 502 to 672 and 859 to 1060, and tome III, folios 1096 to 1283).

⁸ Cf. Copies of the judicial deposits in the *Banco de la Nación* in the names of Eduardo Barrera Fernández, Fernanda Soledad Bernabé de Noriega, Víctor Motta Torres and Carlos Alberto Saldivar Mansilla (file on monitoring compliance, tome III, folios 1397 to 1403).

⁹ *Case of Abrill Alosilla et al. v. Peru. Merits, reparations and costs.* Judgment of March 4, 2011. Series C No. 223, para. 143.

complied fully with the payment to the 233 individuals declared victims in the Judgment to whom compensation was granted for pecuniary and non-pecuniary damage. Notwithstanding the foregoing, and pursuant to paragraph 141 of the Judgment, the Court recalls that, once the inheritance procedures under the relevant Peruvian law have finalized for the two victims who are deceased, the amounts that were consigned to judicial deposits in their name must be delivered to their heirs.

13. According to the information provided by the representative and the State, the Court notes that the reimbursement of costs and expenses has been made.¹⁰

B. Obligation to publish the Judgment in the Official Gazette

14. The State advised that "SEDAPAL [had] forwarded notarized copies of the publication of the Judgment of the Case of Abrill Alosilla *et al.* in the Official Gazette *El Peruano* on March 29, 2012." The State asked the Court to find that this operative paragraph of the Judgment had been complied with.

15. The representative of the victims did not present information on progress in compliance with this reparation.

16. The Commission took note of the publication of the Judgment in the Official Gazette and considered that this indicated full compliance with one aspect of the Judgment.

17. The information provided by the State, including the copy of the publication of the Judgment in the Official Gazette *El Peruano*,¹¹ reveals that the State has complied with its obligation to make the required publication. Based on the foregoing, the Court considers that the State has complied fully with the measure ordered in the sixth operative paragraph of the Judgment.

18. Lastly, the Inter-American Court assesses positively that the State has complied fully with the measures of reparation ordered in the Judgment in this case. Furthermore, the Court underlines the promptness with which the State has complied with the Judgment delivered by the Court on March 4, 2011.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES THAT:

1. As indicated in the pertinent considering paragraphs of this Order, the State has

¹⁰ Cf. Letter No. 025-2011-SIFUSE of April 11, 2011 (file on monitoring compliance, tome I, folio 104) and Memorandum No. 434-2012-GRM of May 17, 2012 (file on monitoring compliance, tome I, folio 1334).

¹¹ Cf. Copy of the publication of the Judgment in the Official Gazette *El Peruano* on March 29, 2012 (file on monitoring compliance, tome III, folio 1327 to 1333).

complied fully with its obligations:

- a) To pay the amounts established in the annex to the Judgment and in paragraph 132 of the Judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses.
 - b) To make the publication of the Judgment in the Official Gazette, in accordance with paragraph 92 of the Judgment.
2. To close the case of *Abrill Alosilla et al.*, in view of the fact that the State of Peru has complied fully with the provisions of the Judgment delivered by the Inter-American Court of Human Rights on March 4, 2011.
 3. To archive the file of this case.
 4. To communicate this Order to the General Assembly of the Organization of American States through the 2013 Annual Report of the Inter-American Court of Human Rights.
 5. To require the Secretariat of the Court to notify this Order to the Republic of Peru, the Inter-American Commission, and the representative of the victims.

Manuel E. Ventura Robles
Acting President

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary