

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 26, 2013**

CASE OF GARCÍA ASTO AND RAMÍREZ ROJAS v. PERU

MONITORING OF COMPLIANCE WITH THE JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") of November 25, 2005, ordered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "this Court"), wherein violations were established to the right to humane treatment [personal integrity], personal liberty, fair trial [judicial guarantees], freedom from ex-post facto laws, and judicial protection established in Articles 5(1), 5(2), 7(1), 7(2), 7(3), 7(5), 7(6), 8(1), 8(2)(c), 8(2)(f), 8(5), 9 and 25, in regard to Article 1(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), to the detriment of Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas, who were criminally prosecuted, accused of committing the crime of terrorism and arbitrarily imprisoned by the State of Peru (hereinafter "Peru" or "the State.")

2. The Orders of the Inter-American Court on Monitoring of Compliance with the Judgment of July 12, 2007, and July 1, 2011. In the latter Order, the Court declared that:

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

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

* The President of the Court, Judge Diego García Sayán, of Peruvian nationality, did not participate in the hearing and deliberation of this Order, pursuant to that provided in Articles 19(2) of the Statute and 19(1) of the Court Rules of Procedure.

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

a) Provision of free medical and psychological care to Wilson García Asto through its health care services, including the provision of medicines free of charge (*eleventh operative paragraph of the judgment*) [...];

b) Providing Wilson García Asto and Urcesino Ramírez Rojas with the opportunity for training and professional development through study grants (*twelfth operative paragraph of the judgment*), [...];

c) Payment of the compensation for non-pecuniary damage corresponding to Marcos Ramírez Álvarez (*fourteenth operative paragraph of the judgment*) [...], and

d) Publication in a national newspaper, once, of the chapter of the judgment on the proven facts, without the corresponding footnotes, and the operative paragraphs of the judgment (*sixteenth operative paragraph of the judgment*) [...];

3. The communications of the State of Peru of February 1, 2012, and September 11, 2013, wherein it made reference to its compliance with the Judgment.

4. The briefs of the representatives of the victims (hereinafter “the representatives”) of April 3, 2012, and October 6, 2013, wherein they provided their observations in regard to the status of the compliance with the Judgment.

5. The communications of the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) of June 18, 2012, and November 12, 2013, wherein it provided its observations in regard to the status of compliance with the Judgment.

CONSIDERING THAT:

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

2. Peru became a State Party to the American Convention on Human Rights since July 28, 1978 and acknowledged the jurisdiction of the Court on January 21, 1981.

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

4. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law 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

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 Castañeda Gutman V. México. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause three.

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 treaty². 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 must be interpreted and applied so that 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 compulsory jurisdiction of the Court have the duty to fulfill the obligations laid down by this Court. These obligations include the duty of the State to inform the Court of the measures adopted to comply with the orders of the Court in those decisions. Timely fulfillment of the State's obligation to inform the Court how it is complying with each of the measures ordered by the latter is essential to assess the status of compliance with the judgment as a whole.⁵

7. Pursuant to the Order of the Court of July 1, 2011, (*supra* Having Seen clause 2), in this Order, the Court will assess compliance with Operative Paragraphs 11, 12, 14 and 16 of the Judgment.

A. Obligation to provide free medical and psychological care to Wilson García Asto through its health care services, including the provision of medicines free of charge (eleventh operative paragraph of the judgment)

Arguments of the parties and the Commission

8. The State, in its report of February 1, 2012, indicated that on January 6, 2012, it had requested the Ministry of Health to provide information on the measures adopted or underway, in order to comply with the reparations that were ordered, "and a response is pending" from the Ministry. The State reported, among other things, that "in the case of Mr. Wilson García Asto, the State provided the Court with a document

² 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 Castañeda Gutman V. México. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause four.

³ Cf. *Case of Castillo Petrucci et al. V. Peru. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering clause three, and *Case of Castañeda Gutman V. México. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause four.

⁴ Cf. *Case of Ivcher Bronstein V. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of Castañeda Gutman V. México. Monitoring of Compliance with Judgment*. Order of the Inter-American Court of Human Rights of August 28, 2013, Considering clause five.

⁵ Cf. *Case of Barrios Altos V. Peru. Monitoring of Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause 7, and *Case of Abrill Alosilla et al. V. Peru. Monitoring of Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 6.

showing his registration in the ESSALUD INSURANCE [...], being that registration in the [Integral Health System] (SIS for its acronym in Spanish) was not necessary because he had that insurance."

9. With regard to the aforementioned, the representatives considered that "the obligation to comply with the Judgment is a results based obligation, not one based on actions or procedures, as the State pretends, reason for which [...] the State has not complied with the matters pending compliance with the [J]udgment in the monitoring of compliance." On the other hand, it reported on the visit that Mr. Garcia Asto received on January 21, 2012, by a member of the Ombudsman for Health, who informed him that he was in charge of his health care needs because his case was a "special case," and he made notes on Mr. Garcia Asto's medical needs. After that, Mr. Garcia Asto was treated by a psychologist in the Hospital Cayetano Heredia of the Ombudsman of Health on February 11, 2011, and he was exonerated from payment, was given his I.D. and a second appointment was scheduled for the end of the month. Nevertheless, the representatives considered that "Mr. Garcia Asto's health required specialized and timely care. Because the State did not provide such care in a timely manner, his physical and psychological health has deteriorated to a greater degree." They also added that Mr. Garcia Asto had not yet received preferential treatment because of his status as a victim who suffered violations of his human rights, and that his health insurance ESSALUD that he has had as of six years ago stems from his employment relationship with a company and not with the State. Moreover, they reported that the provision of medications free of charge is still pending.

10. The Inter-American Commission stated that the information provided by the State was insufficient, although it considered the information provided by the representatives was a positive step regarding the meeting with the Health Ombudsman. Therefore, the Commission considered it "necessary that the Peruvian State report on the expectations had regarding continuity and permanence of this measure, on the measures adopted to ensure that care is not limited to psychological care and includes other areas in which Mr. Garcia Asto requires care, and on the measures taken to ensure the provision of free medications." In its observations of November 12, 2013, the Commission noted with concern that after 7 years it had not yet taken steps to comply with this obligation. It also found that the implementation of health care services should be "differentiated, individualized, preferential, comprehensive, and provided through specialized institutions and personnel."

Considerations of the Court

11. The Court values the information on how Mr. García Asto is affiliated with the health system and thus can receive care in a health center, however the information about the ESSALUD insurance was not presented in a way that allows this Court to assess whether there is compliance with the State's obligation. The Court reiterates that, in addition to the measures taken under the general health system, it is necessary that the State grant preferential treatment to the victim⁶ as well as differential treatment in relation to the processing and procedures needed to receive care for the health-related damages as ordered in the Judgment. As for the provision

⁶ Cf. *Case of 19 Tradesmen v. Colombia*. Monitoring of Compliance with the Judgment and Provisional Measures. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering clause 30; *Case of De la Cruz Flores V. Peru*. Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of September 01, 2010, Considering clause 57, and *Case of Gómez Palomino V. Peru*. Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of July 05, 2011, Considering clause 25.

of medications free of charge, the information provided by the State does not explain whether there is specific compliance with this point. For these reasons, and in order to evaluate implementation of this measure of reparation ordered by the Court, this measure will continue to be monitored by the Court. In this regard, it is necessary that in its next report, the State refer to the specific actions that are being carried out so that Mr. García Asto can effectively access free medical and psychological care as well as the provision of medications free of charge.

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

Arguments of the parties and of the Commission

12. The State noted that on January 6, 2012, it had requested the Ministry of Education to provide information "about all measures adopted or underway, in order to comply with the reparations that were ordered and a response is pending" by the Ministry. In its latest report, the State declared that "it has been handling the specific requests of [Mr.] Wilson García Asto in the Education Sector[, and will thus] inform the Court once it has obtained documentation in this regard." Regarding Mr. Ramírez Rojas, the State did not provide information.

13. The representatives noted with respect to Mr. García Asto that, although he has almost completed his professional studies in Systems Engineering, "in order to obtain his professional title as Systems Engineer, he must submit a certificate or proof of having passed a foreign language course in the general curriculum issued by the Language Center of the University of Callao – CIUNAC," but this center refused to accept the request for exemption made by Mr. García Asto. They added that "in the last four years, the State did not carry out any procedures regarding the scholarship grant for Mr. Wilson García Asto that would allow him to finish his studies in Systems Engineering and obtain the title of Systems Engineer." Moreover, the representatives reported that agents of the Office of Scholarships and Student Loans (OBEC for its acronym in Spanish) contacted Mr. García Asto to solve "issues in the education sector." In this regard, the victim told them of his interest in taking a master's course in information technology and taking the foreign language course he needed. In response, he was informed that his request would be made to the competent authorities and that he would be contacted as soon as possible, which as reported by representatives, had not yet occurred at the time of the State's last brief.

14. In its last brief, the representatives indicated that on January 24, 2013, Mr. García Asto provided a copy of his High school degree diploma with the Program Scholarships 18 and Projoven Program, so that he could be provided a list of scholarships for the English course needed to get his degree but, as reported, he has not been provided with this information. The representatives concluded that "the State has failed to grant Mr. García Asto the scholarship to improve upon his professional undergraduate training." In regard to Mr. Urcesino Ramírez Rojas, the representatives reported that he has not received a response from the State regarding his requests through the Ministry of Education and that the State's brief does not include information on that measure.

15. The Commission expressed concern at the lack of updated information from the State and said that "the recent approach regarding Mr. García Asto [...] has not been

translated into concrete progress.” In its latest report, the Commission reiterated its concern over the lack of concrete progress on this matter pending compliance and believed that the State should provide detailed information on the measures it has taken for granting scholarships to victims as soon as possible.

Considerations of the Court

16. The Court takes note of that which was noted by the representatives regarding Mr. Garcia Asto’s graduate studies, nevertheless this matter was resolved by the Court in the Order of July 1, 2011, stating that “the Court concludes that the State has complied partially with the terms of the judgment by awarding a study grant that allowed Mr. García Asto to complete his studies; however, monitoring will continue in relation to the award of a grant that allows him to obtain further training. In this regard, the Court awaits further information on the response to the last request presented by Mr. García Asto concerning the exoneration of the costs of the Pre-masters course in order to obtain the title of Systems Engineer, and other measures related to this reparation.”⁷ Notwithstanding the foregoing, the Court notes that Mr. García Asto has not received his degree due to an additional requirement that is not related to the grant for his undergraduate studies, that is, passing a foreign language course. In this regard, the Court considers that the State must take the necessary steps so that Mr. García Asto is admitted to a general studies foreign language, so that he can then receive his degree.

17. Moreover, a grant is still pending for Mr. García Asto and Mr. Ramírez Rojas that would allow them to continue their professional training for two years after they complete their university studies.⁸ The State has not provided information in this regard, and thus the Court will continue to monitor compliance with this operative paragraph. In light of the foregoing, the Court requested the State to submit updated, organized, and complete information on the steps taken to enforce compliance with this measure both in relation to Mr. Garcia Asto’s foreign language requirement as well as the grants to Mr. García Asto and Mr. Ramírez Rojas in order for them to continue their professional training.

c. Payment of the compensation for non-pecuniary damage (fourteenth operative paragraph of the judgment)

Arguments of the parties and the Commission

18. The State indicated that it had approved the transfer of funds to Mr. Marco Ramirez Alvarez. Subsequently, the State informed and provided proof of payment on June 17, 2009, issued by the General Administration Office of the Ministry of Justice in favor of Mr. Ramirez Alvarez, son of Mr. Urcesino Ramirez Rojas, for the total amount of S/. 77,000 (seventy-seven thousand nuevos soles), equivalent to U.S. \$25,000 (twenty-five thousand dollars of the United States of America) pursuant to the exchange rate at the time.

⁷ Cf. *Case of García Asto and Ramírez Rojas V. Peru*. Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of July 1, 2011, Considering clause 14.

⁸ Cf. *Case of García Asto and Ramírez Rojas V. Peru*. Monitoring of Compliance with the Judgment, *supra*, Considering clauses 14 and 15.

19. The representatives stated that the State has complied in full with payment both to Mr. Ramírez Rojas and his son Marco Ramírez Alvarez. However, in their recent observations regarding the state of compliance with the Judgment, they argued that “even though the payment was made on June 17, 2009, that is, after the period established by the Court had lapsed, [...] the State did not comply with the payment of corresponding interests” with regard to Marco Ramírez Alvarez.

20. The Commission interpreted, that in light of the information provided by the parties, “this aspect of the Judgment must be considered fulfilled.”

Considerations of the Court

21. In this regard, the Court considers that, according to information provided by the State and the representatives, it has complied with the outstanding payment pending compliance to Mr. Ramírez Alvarez on June 17, 2009.

22. Notwithstanding the foregoing, the Court notes that the obligation to provide compensation for non-pecuniary damage to the son of Mr. Urcesino Ramírez Rojas, Marcos Ramírez Alvarez, was made after the period established in the Court’s Judgment, which was one year after notification thereof.⁹ With regard to the abovementioned, the Court has stated that “upon issuing the Judgment the Court assumes that the State will, in good faith, carry out the processes and make the necessary efforts to comply with it within the mentioned terms. Consequently, with regard to the payments ordered, if the State does not comply with that stated within the mentioned term, it incurs in default and shall pay the corresponding interests on delayed payments.”¹⁰ Consequently and in accordance with the provisions of the Judgment, the State must pay interests on the amount that is owed according to bank interest on arrears in Peru.¹¹

23. Thus, only in relation to the arguments made by the representatives regarding payment to Mr. Ramírez Alvarez, the Court considers that the State must pay interest on arrears at the bank rate in Peru and for the period of time between December 15 2006- date the period that was established in the Judgment lapsed-, and the date the State actually made the payment to Mr. Ramírez Alvarez, that is, June 17, 2009.

D. Obligation to publish the Judgment (*sixth operative paragraph of the Judgment*)

Arguments of the parties and of the Commission

24. The State indicated that “to date, it has been collecting estimates from different national daily newspapers [and] once the domestic selection processes are made,

⁹ Cf. *Case of García Asto and Ramírez Rojas V. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 25, 2005. Series C No. 137, para. 288.

¹⁰ Cf. *Case of the Pueblo Bello Massacre V. Colombia*, Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights, July 9, 2009, para.65; and *Case of Zambrano Vélez et al. V. Ecuador*, Monitoring of Compliance with the Judgment. Order of the Inter-American Court of Human Rights, September 21, 2009, para.69.

¹¹ Cf. *Case of García Asto and Ramírez Rojas V. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 25, 2005. Series C No. 137, para. 295.

subject to domestic and institutional regulations after publication they will inform the Court.”

25. The representatives regretted that the State is still in violation regarding this part of the Judgment given the meaning it has for both Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas. They also indicated that “the obligations provided by the Court [...] are not based on procedures or behaviors, but rather on results.”

26. The Commission noted that it remains concerned that this point of the Judgment has not been fulfilled, “seeing no progress in the information that has been provided.” On this measure of compliance, in its last report, the Commission said it expected the State to provide detailed information regarding the actions it will take to publish the relevant parts of the Judgment.

Considerations of the Court

27. The Court finds that the State has not provided the information that would demonstrate progress in relation to the publication of the Judgment in a national newspaper, nor has it stated the period in which it publish pursuant to that ordered in the judgment. In this regard, the Court requests that the State, in its next brief, provide a detailed and complete schedule on this measure of reparation, which indicates the date and national newspaper in which the relevant chapters on proven facts and operative paragraphs of the Judgment will be published (sixteenth paragraph of the Judgment)

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its judgments under Articles 33, 62(1), 62(3), 65, 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,

DECIDES THAT:

1. The State has partially complied its obligation to provide the corresponding compensation to Mr. Marco Ramírez Álvarez for pecuniary damages (*fourteenth operative paragraph of the Judgment*), pursuant to that noted in Considering clause 24 of this Order.

2. Keep open the proceedings on monitoring compliance in relation to the matters pending fulfillment:

a) Provision of free medical and psychological care to Wilson García Asto through its health care services, including the provision of medicines free of charge (*eleventh operative paragraph of the judgment*);

- b) Providing Wilson García Asto and Urcesino Ramírez Rojas with the opportunity for training and professional development through study grants (*twelfth operative paragraph of the judgment*);
 - c) Payment of the compensation for non-pecuniary damage corresponding to Marcos Ramírez Álvarez (*fourteenth operative paragraph of the judgment*), and
 - d) Publication in a national newspaper, once, of the chapter of the judgment on the proven facts, without the corresponding footnotes, and the operative paragraphs of the judgment (*sixteenth operative paragraph of the judgment*)
3. Continue monitoring compliance the operative paragraphs that are still pending compliance from the Judgment of November 25, 2005.
4. Require the State to provide the Inter-American Court of Human Rights, by no later than March 31, 2014, a report that indicates all the measures that have been taken to comply with the reparations ordered by the Court and that are pending compliance, in accordance with Considering Clauses 12, 19, 25 and 29 of this Order.
5. Require the representatives of the victims and their next-of-kin, and the Inter-American Commission on Human Rights to provide any observations they deem relevant to the State's report mentioned in the previous paragraph, in the period of four and six weeks, respectively, counted from receipt thereof.
6. The Secretariat of the Inter-American Court of Human Rights shall notify this Order to the Republic of Peru, the Inter-American Commission on Human Rights, and the representatives of the victims and their next-of-kin.

Manuel E. Ventura Robles
Acting President

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. 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