

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF OCTOBER 23, 2012**

**CASE OF KAWAS FERNÁNDEZ v. HONDURAS
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on merits, reparations and costs in this case (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or the "Court") on April 3, 2009.

2. The Order on monitoring compliance with judgment issued by the Court on February 27, 2012, in which it declared, *inter alia*, that the following obligation was pending compliance:

[...]

(c) [...] To provide free of charge, immediately, and for as long as necessary, [...] psychological and/or psychiatric treatment to Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, should they request this [...]

[...]

3. The brief of April 26, 2012, and its annexes, in which the Republic of Honduras (hereinafter the "State" or "Honduras") presented information on compliance with the Judgment delivered by the Court in the instant case (*supra* having seen paragraph 1).

4. The brief of June 1, 2012, in which the representatives presented observations on the State's report (*supra* having seen paragraph 3).

5. The communication of July 13, 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 report and on the brief forwarded by the representatives (*supra* having seen paragraphs 3 and 4).

CONSIDERING THAT:

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

2. Pursuant to Article 67 of the American Convention, States Parties must comply fully and promptly with the judgments delivered by the Court. Furthermore, 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." Therefore, the States must ensure implementation at the domestic level of the Court's decisions in its judgments.¹

3. The States Parties to the American Convention that have accepted the Court's contentious jurisdiction must comply with the obligations established by the Court. This includes the State's obligation to inform the Court of the measures adopted to comply with the rulings of the Court in its judgments. Prompt compliance with the State's obligation to inform the Court of the way in which it is complying with each aspect ordered by the latter is essential in order to evaluate the status of compliance with the Judgment as a whole.²

Obligation to provide psychological and/or psychiatric treatment to Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández (thirteenth operative paragraph of the Judgment)

A. Information provided by the State

4. The State indicated that "the family of Mrs. Kawas Fernández [...] notified the Attorney General's Office [...] that they did not wish to receive psychological and/or psychiatric treatment," and this would be "respected by the State, [...] because measures of reparation cannot be understood as an obligation of the victims." Based on the foregoing, the State forwarded the Court a certification dated April 24, 2012, signed by Jorge Jesus Kawas Fernández, "acting on behalf of Blanca Fernández, Carmen Marilena Kawas Fernández, Jacobo Roberto Kawas Fernandez, Jaime Alejandro Watt Kawas, Selsa Damaris Watt Kawas and [himself]," indicating that "they [have] not considered that any member of the family required psychological and/or psychiatric treatment," as the State was ordered to provide in the Judgment (*supra* having seen paragraph 1).

B. Observations of the representatives

5. The representatives confirmed that the victims "indeed [...] wish to waive" this measure of reparation and requested the Court "to consider [it] fulfilled."

C. Observations of the Inter-American Commission on Human Rights

6. The Commission took note of the information provided by the representatives and the State and, based on it, indicated that "it [was] not necessary for the Court to continue monitoring this aspect."

D. Considerations of the Court

¹ Cf. *Case of Baena Ricardo et al.* Competence. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Barrios Altos v. Peru*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 7, 2012, third considering paragraph.

² 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 Mejía Idrovo v. Ecuador*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 4, 2012, third considering paragraph.

7. In the Judgment (*supra* having seen paragraph 1, para. 209), the State was ordered to “provide immediately and free of charge, adequate and effective psychological and/or psychiatric care, through its specialized health institutions, to those next of kin [...] declared victims who may request this” and that “[t]he said treatment should begin when requested by the beneficiaries, who shall have two years to make this request as of notification of th[e] Judgment.” In addition, in the Order of February 27, 2012 (*supra* having seen paragraph 2, considering paragraph 27), the Court considered that “it did not have adequate information that would allow it to determine whether any of the victims [...] ha[d] requested this treatment [...] prior to May 6, 2011, the date on which the two-year period mentioned by the representatives expired”; it therefore asked the State and the representatives to present detailed information regarding each of the beneficiaries.

8. From the observations presented by the representatives (*supra* considering paragraph 5), the Court has noted that, as the State indicated (*supra* considering paragraph 4), the victims do not wish to receive the psychological and/or psychiatric treatment ordered in the Judgment. Consequently, bearing in mind the indication of the beneficiaries’ decision concerning this measure of reparation, and since this is a measure in their favor, this Court proceeds to conclude the monitoring of compliance with the thirteenth operative paragraph of the Judgment (*supra* having seen paragraph 1).

9. In keeping with the Order of February 27, 2012, issued in this case (*supra* having seen paragraph 2), there are still obligations under the Judgment that remain pending.

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), 65, 67 and 68(1) of the American Convention on Human Rights, and Articles 24(1) and 30 of its Statute and 31(2) and 69 of its Rules of Procedure,

DECLARES THAT:

1. In accordance with considering paragraphs 7 and 8 of this Order, it proceeds to conclude the monitoring of compliance with the thirteenth operative paragraph of the Judgment:

[...] To provide free of charge, immediately, and for as long as necessary, [...] psychological and/or psychiatric treatment to Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández and Carmen Marilena Kawas Fernández, should they request this. [...]

AND DECIDES:

1. To conclude the monitoring of compliance with the thirteenth operative paragraph of the Judgment.

2. To keep open the procedure of monitoring compliance with regard to the measures of reparation ordered in the Judgment that remain pending, in keeping with the Order of February 27, 2012, issued in this case.

3. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the Republic of Honduras, the Inter-American Commission on Human Rights and the representatives of the victims.

Diego García-Sayán
President

Manuel 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