

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

OF JULY 4, 2006

THE "FIVE PENSIONERS" V. PERU

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits, reparations and costs delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on February 28, 2003, in which the Court decided, *inter alia*,

[...]

5. [...] that the possible patrimonial consequences of the violation of the right to property should be established under domestic legislation, by the competent national organs.

6. [...] that the State must 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 filed by the victims.

7. [...] that, as indicated in paragraph 180 of [the] judgment, in fairness, the State must pay the four victims and Maximiliano Gamarra Ferreyra's widow the amount of US\$3,000.00 (three thousand United States dollars) for non-pecuniary damage. The State must comply with the provisions of this operative paragraph within one year at the latest of notification of [the] judgment.

8. [...] that the State must pay the amount of US\$13,000.00 (thirteen thousand United States dollars) for expenses and a total of US\$3,500.00 (three thousand five hundred United States dollars) for costs, as stated in paragraph 182 of this judgment.

9. [...] that the payments of compensation for non-pecuniary damage and for costs and expenses established in [the] judgment may not be subject to any current or future tax or charge.

10. [...] that the State must comply with [the] judgment within one year of receiving notification thereof.

11. [...] that, should the State fall in arrears with the payments, it must pay interest on the amount owed corresponding to bank interest on payments in arrear in Peru.

12. [...] that it will monitor compliance with [the] judgment and will consider the

* Judge Oliver Jackman did not take part in the deliberation and signature of this Order, because he informed the Court that, for reasons beyond his control, he would be unable to attend the seventy-first regular session of the Court.

case closed when the State has complied fully with its provisions. Within one year from notification of the judgment, the State must provide the Court with a report on the measures taken to comply with [the] judgment, as stated in paragraph 186 above.

2. The Order of the Court of November 17, 2004, in which, considering that on March 12, 2004, the one year period established in the judgment for the State of Peru (hereinafter "the State" or "Peru") to submit a report on compliance with the obligations established in the said judgment had expired and, on three occasions, the Secretariat of the Court (hereinafter "the Secretariat"), on the instructions of the President and all the members of the Court, had requested the State to submit the report on compliance with the judgment, and the State had not forwarded any information in this regard, it decided:

1. To request the State to submit a report on compliance with the judgment on merits, reparations and costs of February 28, 2003, by January 31, 2005, at the latest.

2. To request the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit their observations on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

3. To continue monitoring compliance with the judgment on merits, reparations and costs of February 28, 2003.

[...]

3. The Order of the Court of September 12, 2005, in which it requested the State to submit, by November 30, 2005, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court that were pending, pursuant to the terms of the eighth and thirteenth considering paragraphs and the declarative paragraph of the Order. The Court declared that the State had not complied with any of the reparations ordered in the judgment of February 28, 2003, and therefore decided to continue monitoring compliance with the aspects pending fulfillment in this case. In addition, in the ninth and thirteenth considering paragraphs, the Court decided as follows:

9. That, regarding the obligation to "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 filed by the victims," the Court considers that the State should forward information that allows it to determine whether any investigation has been initiated and, if so, the status of this investigation, as well as referring to the matter mentioned by the representatives, that the victims had requested the Public Prosecutor's Office (*Fiscalía de la Nación*) to open an investigation, but this had been rejected [...].

[...]

13. That the Court considers that the State should present detailed information on the alleged reductions in the pensions of the four victims and of the widow of Mr. Gamarra Ferreyra that occurred as of June 2005, and on the administrative-law proceedings alluded to [...]; its report should also refer to compliance with the terms of the judgment of February 28, 2003, and to the victims' enjoyment of their rights, in accordance with its terms.

4. The brief of January 17, 2006, in which the representatives of the victims and their next of kin asked the Court whether the State "had complied with the [...] Court's order" to submit its report on compliance with judgment. In this regard, on January 25, 2006, the Secretariat informed the representatives and the Inter-American Commission that the State had not submitted the said report.

5. The notes of January 9 and February 22, 2006, in which the Secretariat, on the instructions of the President of the Court, requested the State to forward, as soon as possible, the report on compliance with the judgment, because the time granted to present it had expired on November 30, 2005, and the State had been asked to submit this report in the Order of September 12, 2005.

6. The brief of June 8, 2006, in which the representatives of the victims and their next of kin referred to compliance with the judgment delivered by the Court. They stated, *inter alia*, that:

- a) More than a year ago, the State had instituted legal proceedings against the pensioners, Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Álvarez Hernández, Reymert Barta Vásquez and the widow of Maximiliano Gamarra Ferreira to deprive them of the rights recognized in the judgment of the Inter-American Court. In April 2005, the "Constitutional and Social Chamber of the Supreme Court of Justice declared admissible *in final instance*" the proceedings filed against the said pensioners, "thus confirming the reported acts of dispossession." The pensions of these men and the said widow "were reduced by about 1,000%." This drastic reduction returned the five pensioners to "the situation that violated their rights before the judgment" of the Inter-American Court, which "not only represents a violation of the rights that had been protected by prior rulings of the Supreme Court of Justice of Peru and its Constitutional Court, but an open and unacceptable disregard of the recommendations and decisions of the organs of the inter-American system in this case." This "directly affects their financial situation and jeopardizes their health and survival [and that] of their next of kin";
- b) "They have been paid the same amounts that they received before the decisions of the Supreme Court (1994), the Constitutional Court (1998), the Inter-American Commission on Human Rights (2001) and the Inter-American Court itself (2003) ordered the restitution of their pension rights, which had been violated by the regime of former President Alberto Fujimori, in October 1992";
- c) The "considerations alleged by the Peruvian State in the administrative-law actions filed on February 11, 2005, against the five pensioners are based on the particular interpretation that the State has made of its own domestic law[, which] disregards the Court's decisions";
- d) The representatives requested the Court "to rule on this situation and order the State to adopt the corresponding measures to ensure compliance with the judgment of February 28, 2003".

7. The note of the Secretariat of the Court of June 30, 2006, addressed to the State, on the instructions of the President, in which it indicated that, since the Court would monitor the status of compliance with the judgment in this case during its current regular session, it reiterated that the State should transmit the report on compliance. It also informed Peru that the Secretariat had noticed that in the file on monitoring compliance with the judgment in the Lori Berenson Mejía case, the State had transmitted as an attachment to the brief of January 18, 2006, Official Communication No. 2330, signed by the Director of the General Administration Office of the Peruvian Ministry of Justice, which contained, *inter alia*, references to the "Five Pensioners" case. This document mentioned that "the list of the beneficiaries of the

payments ordered in the Court's judgments [...] is transmitted, and their cheques are at the Treasury Office, awaiting collection by": *inter alia*, Carlos Alberto Torres Benvenuto, Javier Mujica Ruiz Huidobro, Guillermo Alvarez Hernández, Reymert Bartra Vásquez and Sara Elena Castro Remy, widow of Maximiliano Domingo Gamarra Ferreira. In this regard, on the instructions of the President, Peru was requested to clarify, by July 3, 2006, at the latest, whether the said official communication formed part of the documentation to be included in the files on monitoring compliance of all the judgments it mentioned and should therefore be included in this case and transmitted to the parties so that they could submit any observations they deemed pertinent. The State has not replied to this request.

CONSIDERING:

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

2. That Peru has been a State Party to the American Convention since July 28, 1978, and, pursuant to Article 62 thereof, accepted the compulsory jurisdiction of the Court on January 21, 1981. On February 28, 2003, the Court delivered the judgment on merits, reparations and costs in this case (*supra* Having seen paragraph 1).

3. That 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 States must ensure the implementation of the decisions in the Court's judgments at the domestic level.¹

4. That, in view of the final and unappealable character of the judgments of the Court, as established in Article 67 of the American Convention, the State should comply with them fully and promptly.

5. The provisions of Article 65 of the American Convention with regard to "the cases in which a State has not complied with its judgments."

6. That the OAS General Assembly reiterated in its Resolution AG/RES. 2223 (XXXVI-O/06):²

4. [...] the need for states parties to provide, in a timely fashion, the information requested by the Court in order to enable it to fully meet its obligation to report to the General Assembly on compliance with its judgments.

7. That 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

¹ Cf. *Case of the Constitutional Court*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 7, 2006, third considering paragraph; *Case of Ricardo Canese*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph; and *Case of the 19 Tradesmen*. Compliance with judgment. Order of the Inter-American Court of Human Rights of February 2, 2006, third considering paragraph.

² Resolution adopted in the fourth plenary session held on June 6, 2006, entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights", fourth operative paragraph.

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.³ The treaty obligations of the States Parties are binding for all the powers and organs of the State.

8. That 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.⁴

9. That the States Parties to the American Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. In this regard, Peru must adopt all necessary measures to comply effectively with the rulings of the Court in the judgment of February 28, 2003, and in the Order of the Court of September 12, 2005 (*supra* Having seen paragraphs 1 and 3). This obligation to comply with the Court's decisions includes the State's duty to report to the Court on the measures adopted to comply with the decisions of the Court in the said judgment, and in this Order. The prompt implementation of the State's obligation to report to the Court on how each of the aspects ordered by the Court is being fulfilled is essential to assess the status of compliance in the case.

10. That, in the Order of September 12, 2005, the Court, *inter alia*, required the State to submit, by November 30, 2005, at the latest, a report indicating all the measures adopted to comply with the reparations pending compliance (*supra* Having seen paragraph 3); specifically, it considered that:

- a) The State must forward information with regard to the obligation to '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 filed by the victims,' that would allow the Court to determine whether any investigation had been initiated and, if so, the status of this investigation, as well as referring to the matter mentioned by the representatives, that the victims had requested the Public Prosecutor's Office to open an investigation, but this had been rejected [...]; and,
- b) The State must submit detailed information on the alleged reductions in the pensions of the four victims and the widow of Mr. Gamarra Ferreyra that occurred as of June 2005, and of the administrative-law proceedings alluded

³ Cf. *Case of the Constitutional Court*. Compliance with judgment, *supra* note 1, fifth considering paragraph; *Case of Ricardo Canese*. Compliance with judgment, *supra* note 1, fifth considering paragraph; and *Case of the 19 Tradesmen*. Compliance with judgment, *supra* note 1, fifth considering paragraph.

⁴ Cf. *Case of the Constitutional Court*. Compliance with judgment, *supra* note 1, sixth considering paragraph; *Case of Ricardo Canese*. Compliance with judgment, *supra* note 1, sixth considering paragraph; *Case of the 19 Tradesmen*. Compliance with judgment, *supra* note 1, sixth considering paragraph.

to [...] as well as referring to the connection of the latter to compliance with the terms of the judgment of February 28, 2003, and to the victims' enjoyment of their rights, in accordance with the terms of the judgment.

11. That, on three occasions, the Secretariat, on the instructions of the President (*supra* Having seen paragraphs 5 and 7), had reminded the State that, on November 30, 2005, the time granted for submitting the said report on compliance with the judgment had expired, and required it to submit this report as soon as possible; despite this, the State has not submitted the report.

12. That the Court notes with concern that approximately seven months have elapsed since the time granted for the State to submit its report on compliance with judgment has expired, and the State has not provided the Court with the requested information, particularly, taking into account that the representatives of the victims and their next of kin allege that there has been a "drastic" reduction in the pensions (*supra* Having seen paragraph 6).

13. That the Court does not have the information required to assess whether any of the reparations have been fulfilled and to determine which reparations ordered by the Court remain pending compliance. In this regard, the Court has received a document in which the State indicates that "the list of the beneficiaries of the payments ordered in the Court's judgments [...] is transmitted, and their cheques are at the Treasury Office, awaiting collection by": *inter alia*, Carlos Alberto Torres Benvenuto, Javier Mujica Ruiz Huidobro, Guillermo Alvarez Hernández, Reymert Bartra Vásquez and Sara Elena Castro Remy, widow of Maximiliano Domingo Gamarra Ferreira (*supra* Having seen paragraph 7). However, the Court has no further information on whether these cheques have been paid out to the victims and their families, which would allow it to assess whether some aspects of the judgment have been complied with.

14. That the obligation to inform the Court about compliance with judgment is an obligation that, to be fulfilled effectively, requires the formal presentation of a document within the allotted time with specific, true, current and detailed information on the issues to which the obligation refers.⁵

15. That, in view of the above findings, the Court considers it urgent that Peru transmit the report on compliance with the judgment as soon as possible and that, in this report, it include detailed information on the alleged reductions in the pensions of the four victims and of the widow of Mr. Gamarra Ferreyra that occurred as of June 2005; and on the above-mentioned administrative-law proceedings filed so that the resolutions issued by the Office of the Superintendent of Banks and Insurance in 1995 and 2002 ordering compliance with the rulings in the final judgments deciding the applications for protective measures would be declared null and void; as well as referring to the connection of the latter with compliance with the terms of the judgment of February 28, 2003, and to the enjoyment of the rights of the victims, as decided in that judgment.

⁵ Cf. *Matter of the Mendoza Prisons*. Order of the Inter-American Court of Human Rights of March 30, 2006, fourteenth considering paragraph; *Matter of the Jiguamiandó and the Curbaradó Communities*. Order of the Inter-American Court of Human Rights of February 7, 2006, sixteenth considering paragraph; and *Matter of the Peace Community of San José de Apartadó*. Order of the Inter-American Court of Human Rights of February 2, 2006, Eighteenth considering paragraph.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority 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 29(2) of its Rules of Procedure,

DECLARES:

That, in accordance with the thirteenth considering paragraph of this Order, since the State has not reported on the status of compliance with the judgment of February 28, 2003, the Court does not have the information required to assess whether any of the reparations have been fulfilled; consequently the Court will continue to monitor compliance with the decisions pending fulfillment in this case. These are:

- a) “[To] 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 filed by the victims” (*sixth operative paragraph of the judgment of February 28, 2003*);
- b) “[A]s indicated in paragraph 180 of [the] judgment, [...to] pay the four victims and Maximiliano Gamarra Ferreyra’s widow the amount of US\$3,000.00 (three thousand United States dollars) for non-pecuniary damage” (*seventh operative paragraph of the judgment of February 28, 2003*);
- c) “[To] pay the amount of US\$13,000.00 (thirteen thousand United States dollars) for expenses and a total of US\$3,500.00 (three thousand five hundred United States dollars) for costs, as stated in paragraph 182 of [the] judgment” (*eighth operative paragraph of the judgment of February 28, 2003*); and
- d) “[T]he possible patrimonial consequences of the violation of the right to property should be established under domestic legislation, by the competent national organs” (*fifth operative paragraph of the judgment of February 28, 2003*).

AND DECIDES:

1. To require the State to adopt the necessary measures to comply promptly and effectively with the decisions of the Court in the judgment on merits reparations and costs of February 28, 2003, that are pending fulfillment, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit to the Inter-American Court of Human Rights, by September 1, 2006, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court that are pending fulfillment, pursuant to the twelfth to fifteenth considering paragraphs of this Order.
3. To request the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit their observations on the

State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

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

5. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and their next of kin.

Sergio García Ramírez
President

Alirio Abreu Burelli

Antônio A. Cançado Trindade

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary