

Order of the
Inter-American Court of Human Rights
of November 17, 2004
Case of the “Five Pensioners” v. Peru
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The Judgment on merits, reparations and costs, which the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) delivered on February 28, 2003, wherein it

unanimously,

1. Declare[d] that the State [had] violated the right to property embodied in Article 21 of the American Convention on Human Rights, as stated in paragraphs 93 to 121 of [the] judgment, to the detriment of Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Álvarez Hernández, Maximiliano Gamarra Ferreyra and Reymert Bartra Vásquez.

2. Declare[d] that the State [had] violated the right to judicial protection embodied in Article 25 of the American Convention on Human Rights, as stated in paragraphs 125 to 141 of [the] judgment, to the detriment of Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Álvarez Hernández, Maximiliano Gamarra Ferreyra and Reymert Bartra Vásquez.

3. Declare[d] that the State [had] failed to comply with the general obligations of Articles 1(1) and 2 of the American Convention on Human Rights, in relation to the violations of the substantive rights indicated in the preceding operative paragraphs, as stated in paragraphs 161 to 168 of [the] judgment.

4. Declare[d] that th[e] judgment constitute[d] *per se* a form of reparation for the victims, as stated in paragraph 180 of th[e] judgment.

5. Decide[d] 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. Decide[d] that the State [had 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.

7. Decide[d] that, as indicated in paragraph 190 of [the] judgment, in fairness, the State [had 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. The State [had to] comply with the provisions of this operative paragraph within one year at the latest of notification of [the] judgment.

8. Decide[d] that the State [had 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.

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

10. Declare[d] that the State [had to] comply with [the] judgment within one year of receiving notification thereof.

11. Declare[d] that, [if] the State [fell] in arrears with the payments, it [was to] pay interest on the amount owed corresponding to bank interest on payments in arrears in Peru.

12. Decide[d] that it [would] monitor compliance with [the] judgment and [would] consider the case closed when the State ha[d] complied fully with its provisions. Within one year from notification of the judgment, the State [was to] provide the Court with a report on the measures taken to comply with [the] judgment, as stated in paragraph 186 [of the judgment].

2. Note CDH-12.034/187 of March 12, 2003, wherein the Secretariat of the Court (hereinafter "the Secretariat"), in keeping with Article 57(1) of the Court's Rules of Procedure (hereinafter "the Rules of Court"), notified the State of Peru (hereinafter "the State" or "Peru") of the February 28, 2003 Judgment (*supra* Having Seen 1).

3. Note CDH-12.034/195 dated April 1, 2004, wherein the Secretariat, on instructions from the President of the Court (hereinafter "the President"), requested the State to submit the report on compliance with the Judgment, since the deadline for the State to present the report in question had expired on March 12, 2004.

4. Note CDH-12.034/199 dated May 4, 2004, where the Secretariat, following the President's instructions, reiterated the request made in the note of April 1, 2004 (*supra* Having Seen 3) to the effect that the State had to submit the report on compliance with the Judgment as soon as possible.

5. Note CDH- 12.034/203 of July 27, 2004, where the Secretariat, following the instructions of the Court *en banc*, informed the State that at its LXIII regular session it was brought to the Court's attention that Peru had not submitted the report that it was to have presented by March 12, 2004 at the latest (*supra* Having Seen 1, 2, 3 and 4). The Secretariat again asked the State to send forthwith the report on compliance with the Judgment delivered by the Court, as had been requested in notes CDH-12.034/195 of April 1, 2004, and CDH- 12.034/199 of May 4, 2004 (*supra* Having Seen 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. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the binding jurisdiction of the Court on January 21, 1981. The Court delivered its Judgment on merits, reparations and costs in this case on February 28, 2003 (*supra* Having Seen 1).

3. 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. Because the judgments of the Court are final and not subject to appeal, as established in Article 67 of the American Convention, the State is to comply with them fully and promptly.

5. The States Parties to the Convention that have accepted the Court’s binding jurisdiction have a duty to honor the obligations ordered by the Court. Peru, therefore, must take all measures necessary to effectively comply with what the Court decided in the Judgment of February 28, 2003 (*supra* Having Seen 1). This obligation includes the State’s duty to report to the Court on the measures adopted to comply with what the Court ordered in that Judgment. This obligation of the State to tell the Court how it is complying with what the Court ordered is, therefore, essential in order to assess the status of compliance.

6. March 12, 2004, was the expiration of the one-year time period set in the Judgment on merits, reparations and costs of February 28, 2003 (*supra* Having Seen 1) for the State to submit a report on compliance with the obligations established in that judgment.

7. On three different occasions, the Secretariat, following the instructions of the President and of the Court *en banc* (*supra* Having Seen 3, 4 and 5), requested the State to submit the report on compliance with the judgment; to date, however, the State has sent no information whatever.

8. Because the Court has received no information on compliance with the judgment on merits, reparations and costs of February 28, 2003, it does not have the data it needs to assess whether reparations have been complied with and to determine which reparations ordered by the Court have yet to be complied with.

9. The Court will consider the general status of compliance with its February 28, 2003 judgment on merits, reparations and costs once it receives the pertinent information.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its rulings and in accordance with articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, articles 25(1) and 30 of its Statute and Article 29(2) of its Rules of Procedure,

DECIDES:

¹ Cf. *Case of Baena-Ricardo et al.. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131.

1. To call upon the State to submit a report, by January 31, 2005 at the latest, concerning compliance with the Judgment on merits, reparations and costs that the Court delivered on February 28, 2003.
2. To call upon the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to present their comments on the State's report, mentioned in the preceding operative paragraph, within four weeks and six weeks, respectively, of receiving it.
3. To continue monitoring compliance with the judgment on merits, reparations and costs of February 28, 2003.
4. To send notice of the present Order to the State, to the Inter-American Commission on Human Rights and to the representatives of the victims and their next of kin.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary