

**Order of the
Inter-American Court of Human Rights***
February 7, 2008
Case of Acosta Calderón v. Ecuador
(Monitoring Compliance with Judgment)

HAVING SEEN:

1. The judgment on the merits, reparations, and costs issued by the Inter-American Court of Human Rights (hereinafter, "the Court" or "the Tribunal") on June 24, 2005, by means of which the said Court:

DECLARE[D]:

[u]nanimously, that:

1. [t]he State violated, in detriment of Mr. Rigoberto Acosta Calderón, the Right to Personal Liberty enshrined in Article 7(1), 7(3), and 7(5) of the American Convention on Human Rights, in conjunction with Article 1(1) of the same, in the terms of paragraphs 70, 71, 81, and 84 of this Judgment[;]
2. [t]he State violated, in detriment of Mr. Rigoberto Acosta Calderón, the Right to Personal Liberty and Judicial Protection enshrined in Articles 7(6) and 25 of the American Convention on Human Rights, in conjunction with Article 1(1) of the same, in the terms of paragraphs 97, 99, and 100 of this Judgment[;]
3. [t]he State violated, in detriment of Mr. Rigoberto Acosta Calderón, the Right to a Fair Trial enshrined in Articles 8(1), 8(2), 8(2)(b), 8(2)(d), and 8(2)(e) of the American Convention on Human Rights, in conjunction with Article 1(1) of the same, in the terms of paragraphs 107, 108, 114, 115, 119, 120, and 124 through 127 of this Judgment[;]
4. [a]t the time in which the facts occurred, the State breached its obligation established in Article 2 of the American Convention on Human Rights in connection with Article 7(5) of the same, in the terms of paragraphs 135 and 138 of this Judgment[; and]
5. [t]his Judgment is, *per se*, a form of reparation in the terms of its paragraph 159.

AND DECIDE[D]:

[u]nanimously, that:

6. [t]he State must publish, at least once, in Ecuador's official newspaper and in another newspaper of ample national circulation, both the section called "Proven Facts" as well as the operative part of the [...] Judgment, without the corresponding footnotes, in the terms of paragraph 164 of this Judgment[;]
7. [t]he State must eliminate Mr. Acosta Calderón's name from the public registries [...] in terms of paragraph 165 of this Judgment[;]
8. [t]he State must issue payment for the compensations for pecuniary and non-pecuniary damages to Mr. Acosta Calderón, as well as reimbursement of the costs and expenses to CEDHU and Messrs. Alejandro Ponce Villacís and Acosta Calderón, within a one-year period, as of

* Due to reasons of *Force Majeure*, Judge Manuel Ventura Robles did not participate in the deliberation and signing of this Order.

notification of this judgment, in the terms of paragraphs 160, 168 and 169 through 173 of this Judgment[, and]

9. [t]he Court will monitor compliance with this Judgment and will consider this case closed once the State has fully implemented all of the provisions of this Judgment. Within one year of notification of this Judgment, Ecuador must present a report of the measures taken in its compliance to the Court, in the terms of paragraph 174 of this Judgment.

2. The communications presented by the State of Ecuador (hereinafter "Ecuador" or "the State") on September 25, 2006; September 6, 2007; and December 20, 2007, through which it informed, *inter alia*:

a) as to its obligation to publish, at least once in Ecuador's Official Daily and another daily with high national circulation, both the section entitled "Proven Facts" and the judgment's operative paragraphs, that:

i. the publication was carried out on September 20, 2006, in the Official Registry of Ecuador, N° 360, and

ii. the publication in a daily with high national circulation was carried out on December 29, 2006, in the daily "La Hora";

b) as to the obligation to eliminate the criminal record of Mr. Rigoberto Acosta Calderón from the public registries, that Mr. Acosta Calderón's name is not found registered in the Central National Archive of the National Police, nor in the database administered by the Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas (National Council for the Control of Narcotics), and

c) regarding payments to Mr. Acosta Calderón for pecuniary and non-pecuniary damages, as well as the reimbursement of expenses to CEDHU and messers. Alejandro Ponce Villacís and Acosta Calderón, that:

i. on December 27, 2006, the State made a payment of US\$62,000 to Mr. Acosta Calderón for pecuniary and non-pecuniary damages, and reimbursed costs and expenses through a certificate of deposit in the Banco de Guayaquil. In addition

ii. the State, on October 4, 2006, paid US\$5,000 and US\$2,000 to the Comisión Ecuménica de Derechos Humanos and to Dr. Alejandro Ponce Villacís, respectively, for costs and expenses.

3. The communication presented by the representatives of the victim and his next of kin (hereinafter, "the representatives") on July 30, 2007 and February 1, 2008, in which they expressed, *inter alia*:

a) as to the obligation to publish at least once, in Ecuador's Official Daily and in another daily of high national circulation, the section entitled "Proven Facts" as well as the judgment's operative paragraphs:

i. the State published what the Court ordered in the Official Registry, No. 360, on September 20, 2006, and

ii. the publication in a daily of high circulation has not yet been carried out;

b) as for the obligation to erase the criminal record of Mr. Rigoberto Acosta Calderón from the public registries, the State has complied with said measure, and

c) regarding the payments for pecuniary and non-pecuniary damage to Mr. Acosta Calderón, as well as the reimbursement of costs and expenses to the CEDHU and messers. Alejandro Ponce Villacís and Acosta Calderón, the State did carry out said payments, adding that on December 27, 2006, the State made a payment of US\$62,000 to Mr. Rigoberto Acosta Calderón through a certificate of deposit in his name at the Banco de Guayaquil, "until he appears to lay claim to the assets."

4. The communication presented by the Inter-American Commission of Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") on August 10, 2007, and January 31, 2008, which stated, *inter alia*, that "the information presented by the State allows the conclusion that Ecuador has complied with its international obligations", specifically:

a) as to its obligation to publish, at least once in Ecuador's official daily and in another daily with high national circulation, both the section entitled "Proven Facts" and the judgment's operative paragraphs – both the State and the representatives communicated that the publication in the official daily has been carried out. The Commission added that the State reported that on December 29, 2006, it carried out the publication in the daily "La Hora", and that though it doesn't have the comments of the representatives, "it has seen the document submitted by the State and appreciates the publication made";

b) as for the obligation to erase the criminal record of Mr. Rigoberto Acosta Calderón from the public registry, the State stated that the measure was fully complied with, and therefore "appreciates the actions carried out by the State to comply with this important aspect of the Judgment" and

c) relating to the payments for pecuniary and non-pecuniary damage to Mr. Acosta Calderón, as well as the reimbursement of costs and expenses to the CEDHU and to messers. Alejandro Ponce Villacís and Acosta Calderón, that "except in the case of information to the contrary from the injured party, [the Commission] is of opinion that the State has complied with its obligation."

CONSIDERING:

1. That monitoring the compliance with its decisions is an inherent jurisdictional power of the Court.
2. That on June 24, 2005, the Court issued the Judgment on the merits, reparations, and costs in this case (*supra* Having Seen paragraph 1).
3. That Article 68(1) of the American Convention sets forth that: "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The State, therefore, should assure the domestic implementation of the Tribunal's decisions¹.

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4. That upon monitoring the full compliance with the Judgment on the merits, reparations, and costs in this case, and after analyzing the information and evidence offered by the State, as well as the comments presented by the Inter-American Commission and the representatives in their briefs on compliance with the Judgment (*supra* Having Seen paragraphs 2 and 4), this Tribunal finds that the State has fully complied with each of the measures of reparation called for in the Judgment.
5. That the file of this case contains evidence indicating that the State has published in the Official Daily of Ecuador – the Official Registry – and in the daily "La Hora," of high national circulation, both the section entitled "Proven Facts" and the Judgment's operative paragraphs (*supra* Having Seen paragraphs 2(a), 3(a) and 4(a)).
6. That according to the information and evidence submitted during these proceedings, the State has erased the criminal record of Mr. Rigoberto Acosta Calderón from the public registries, including from the databases of the Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas (National Council for the Control of Narcotics), as well as from the registry of criminal records found in the Comandancia General (Central Command) of the National Police (*supra* Having Seen paragraphs 2(b), 3(b) and 4(b)).
7. That, given that the current whereabouts of Mr. Acosta Calderón are unknown, the State has made a deposit in his name for pecuniary and non-pecuniary damage, and reimbursed costs and expenses through a certificate of deposit in the name of the victim at the Banco de Guayaquil for the amount of US\$62,000 (sixty-two thousand dollars of the United States of America) (*supra* Having Seen paragraphs 2(c), 3(c), and 4(c)). The Court deems it important to note that, according to the stipulations in paragraph 170 of this case's

¹ Cfr. *Case of Baena Ricardo et al.* Jurisdictional authority. Sentence, November 28, 2003. Series C, No. 104, Paragraph 131; *Case of the Girls Yean and Bosico v. Dominican Republic*. Monitoring of compliance with Judgment. Order of the Inter-American Court of Human Rights, November 28, 2007, fourth Considering paragraph, and *Case of Palamara Iribarne v. Chile*. Monitoring of compliance with Judgment. Order of the Inter-American Court of Human Rights, November 30, 2007, third Considering paragraph.

Judgment, if at the end of 10 years the damages have not been claimed by Mr. Acosta Calderón or his heirs, whichever the case, the amount corresponding to that on the certificate of deposit will be returned to the State with interest accumulated.

8. That the State has reimbursed the Comisión Ecuménica de Derechos Humanos and Mr. Alejandro Ponce Villacís in the amount of US\$5,000.00 (five thousand dollars of the United States of America) and US\$ 2,000.00 (two thousand dollars of the United States of America), respectively, for costs and expenses (*supra* Having Seen paragraphs 2(c), 3(c), and 4(c)).

9. That, in keeping with the preceding, it is pertinent to consider the Acosta Calderón case closed and, whenever possible, file the case dossier.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in the exercise of its powers to supervise the compliance with its judgments, pursuant to Articles 67 and 68 of the American Convention on Human Rights, 25(1) of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

1. That in keeping with the preceding in the Considering paragraphs four through eight of this Order, the State has complied with its obligation to:

a) publish, at least once, in the Official Daily of Ecuador and in another daily of high national circulation, both the section entitled "Proven Facts" and the Judgment's operative paragraphs, without footnotes (*operative paragraph six of the Judgment, June 24, 2005*);

b) erase the criminal record of Mr. Rigoberto Acosta Calderón from the public registry (*operative paragraph seven of the Judgment, June 24, 2005*), and

c) make payment for pecuniary and non-pecuniary damage to Mr. Acosta Calderón, as well as reimburse costs and expenses to the CEDHU and messers. Alejandro Ponce Villacís and Acosta Calderón (*operative paragraph eight of the Judgment, June 24, 2005*).

2. That, as a consequence, the State of Ecuador has fully complied with the Judgment of June 24, 2005, in the case of Acosta Calderón, in keeping with the requirements of Article 68(1) of the American Convention on Human Rights that impose on States Parties to the American Convention on Human Rights the obligation to comply with the judgments handed down by the Court.

AND ORDERS:

1. That the Acosta Calderón case be considered closed, for the reason that the State of Ecuador has complied with the Judgment issued by the Inter-American Court of Human Rights on June 24, 2005.
2. To file the case dossier.
3. To present this Order to the General Assembly of the Organization of American States in its next period of ordinary sessions, as part of the Annual Report of the Inter-American Court of Human Rights for the year 2008.
4. To request that the Secretary of the Inter-American Court of Human Rights notify the State of Ecuador, the Inter-American Commission of Human Rights, and the representatives of the victim, of this Order.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary