

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

OF NOVEMBER 23, 2012

**CASE OF APITZ BARBERA *ET AL.*
("FIRST ADMINISTRATIVE COURT") v. VENEZUELA**

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objection, merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of August 5, 2008, in which it established that:

16. The State must pay the amounts established in th[e] Judgment for pecuniary and non-pecuniary damage, and as reimbursement of costs and expenses within one year of notification of th[e] Judgment.

17. The State must reinstate Juan Carlos Apitz Barbera, Perkins Rocha Contreras, and Ana María Ruggeri Cova, if they so desire, in a position in the Judiciary in which they have the same salary, fringe benefits and rank as they would have today if they had not been removed from office. If, for legitimate reasons that are beyond the victims' control, the State is unable to reinstate them in the Judiciary within six months of notification of th[e] Judgment, it shall pay each victim the amount established in paragraph 246 of th[e] Judgment.

18. The State must make the publications indicated in paragraph 249 of th[e] Judgment, within six months of its notification.

19. The State must adopt the measures required to approve the Venezuelan Judicial Ethics Code, within one year of notification of th[e] Judgment, in accordance with the provisions of paragraph 253 of th[e] Judgment.

20. The Court will monitor full compliance with th[e] Judgment and will close the instant case when the State has complied fully with its provisions. Within six months of notification of th[e] Judgment, The State must provide the Court with a report on the measures taken to comply with it.

* Judge Diego García-Sayán advised the Court that he was disqualified from hearing the case on January 28, 2008, during the processing of the stage on preliminary objections, merits, reparations and costs in this case. The parties were notified that Judge García-Sayán had disqualified himself and the decision of the President on January 29, 2008. Accordingly, as established in Article 5 of the Court's Rules of Procedure and as Judge García-Sayán had disqualified himself from deliberating this matter, Judge Manuel E. Ventura Robles, Vice President, assumed the presidency for the deliberation of this Order. Judge Eduardo Vio Grossi informed the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this Order.

2. The notes of the Secretariat¹ in which, on the instructions of the President, the State was reminded that, according to the twentieth operative paragraph of the Judgment (*supra* having seen paragraph 1), it should present a report on the measures taken to comply with the Judgment. This time frame had expired without the State forwarding its report, even though it had been reminded to do so on six occasions.

3. The briefs of September 3 and December 8, 2009, December 13, 2010, October 3, 2011, and July 23, 2012, in which the representative of the victims (hereinafter "the representative") submitted arguments in relation to monitoring compliance with this Judgment.

4. The Order issued by the President on December 18, 2008, in which he convened the State, the victims and their representatives, and the Inter-American Commission on Human Rights (hereinafter "the Commission") to a private hearing in order to receive updated information on the aspects of the Judgment pending compliance.

5. The private hearing held by the Court at its seat in San José, Costa Rica, on January 29, 2010.² During this hearing, among other documents, the Court was provided with a certified copy of Judgment 1939 of the Constitutional Chamber of the Supreme Court of Justice of December 18, 2008.

6. The notes of the Secretariat of January 11 and October 10, 2011, and May 14, 2012, in which, on the instruction of the acting President, the State was again reminded to present a report on the steps taken to comply with the measures ordered in the Judgment. At the date of this Order this report has still not been presented.

7. The note of the Secretariat of October 10, 2011, in which, on the instructions of the Court in plenary, a note was sent to the Minister for Foreign Affairs consulting whether it was appropriate to continue forwarding the communications to the agent appointed by the State, or whether they should be sent to another official. At the date of this Order, this consultation has not been answered.

8. The brief of May 18, 2012, in which the Agent of the State before the inter-American system indicated that the State's representative in this case is Mayerling Rojas Villasmil, who forwarded the Court a certified copy of "judgment 1939 of the Constitutional Chamber of the Supreme Court of Justice of December 18, 2008." In addition, he indicated that, during the private hearing on monitoring compliance held in this case, the said "representative [had] explained the legal reasons why" the Judgment of this Court "cannot be judicialized in Venezuela." Lastly, he stated that he "could only urge" the Court, "in its next Order on monitoring compliance with judgment, to rule on the analysis of the legal grounds argued by the Bolivarian Republic of Venezuela concerning compliance" with the Judgment.

¹ The notes of March 20 (REF.: CDH-12.489/177), May 19 (REF.: CDH-12.489/181), June 26 (REF.: CDH-12.489/185), July 29 (REF.: CDH-12.489/189), September 8 (REF.: CDH-12.489/194), and November 12, 2009 (REF.: CDN-12.489/197).

² In accordance with Article 6(2) of the Rules of Procedure, the Court held the private hearing with a committee of judges composed of: Judge Manuel Ventura Robles, Judge Margaret May Macaulay, Judge Rhadys Abreu Blondet and Judge Eduardo Vio Grossi. At this hearing, there appeared: (a) for the Inter-American Commission: Silvia Serrano, Adviser; (b) for the victims and their representatives: Héctor Faúndez Ledesma, and (c) for the State of Venezuela: Mayerling Rojas Villasmil, Agent, and Gilberto Guerrero Rocca, Deputy Agent.

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention”) since August 9, 1977, and recognized the compulsory jurisdiction of the Court on June 24, 1981.
2. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions. Moreover, owing to the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, they must be complied with fully and promptly by the State. Also, the State must ensure the implementation of the measures ordered by the Court in its decisions at the domestic level,³ pursuant to Article 68(1) of the American Convention.
3. The States Parties to the Convention that have recognized the compulsory jurisdiction of the Court are compelled to comply with the obligations established by the Court. These obligations include the State’s duty to advise the Court of the steps taken to comply with the measures ordered by the Court in the said decisions. The prompt observance of the State’s obligation to inform the Court of how it is complying with each aspect ordered by the latter is essential for evaluating the status of compliance with the Judgment as a whole.⁴
4. In notes sent by the Secretariat of the Court (*supra* having seen paragraphs 2 and 6 and 7), the State was reminded of its obligation to provide information on the measures taken to comply with the Judgment.
5. Notwithstanding the above, based on the information available, the Court: (1) will recall what was indicated in the Judgment handed down in the instant case, and then summarize (2) the judgment delivered by the Constitutional Chamber of the Supreme Court of Justice, and (3) the arguments of the parties during the private hearing held in this case. Having clarified the foregoing, it will analyze: (4) the obligation to comply with the decisions issued by the Inter-American Court, and (5) the application of Article 65 of the American Convention in this case.

1. The Judgment handed down by the Inter-American Court

6. The Court examined the disciplinary proceedings that led to the removal, in October 2003, of three of the five justices who, at that time, constituted the second most important court of Venezuela. In the ruling that resulted in the removal, the five judges of the First Court granted preventive *amparo* (constitutional protection) that suspended the effects of an administrative act that had refused to register a sale. The granting of this *amparo* was characterized as an “inexcusable miscarriage of justice” by the Administrative and Political Chamber (hereinafter “SPA”) of the Supreme Court of Justice. This led to a disciplinary proceeding, because this error constituted grounds for removal. However, the judges’ disciplinary body, the Commission for the Operation and Restructuring of the Judicial System (hereinafter “CFRSJ”), ordered the removal merely transcribing the considerations used by the SPA to characterize the said decision as an inexcusable miscarriage of justice.

³ Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 131, and *Case of Salvador Chiriboga v. Ecuador*. Monitoring compliance with judgment. Order of the Court of October 24, 2012, second considering paragraph.

⁴ Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Court of September 22, 2005, seventh considering paragraph, and *Case of Salvador Chiriboga v. Ecuador*. Monitoring compliance with judgment. Order of the Court of October 24, 2012, third considering paragraph.

7. In this specific case, the Court considered that the fact that neither the law nor jurisprudence permitted filing a request for review of the impartiality of the disciplinary judge was a violation of the right to be tried by an impartial court.⁵ The Court specified that a challenge grants the parties the right to move for a judge to be set aside when, irrespective of the personal conduct of the judge challenged, there are facts that can be proved or elements of conviction that raise well-founded doubts or legitimate concerns about his impartiality, thus signifying that his decision is seen as being motivated by reasons other than the law and, consequently, the functioning of the judicial system is distorted.⁶ Even though the members of the disciplinary body could have disqualified themselves, the Court considered this insufficient, owing to the impossibility of the justiciable having any remedy to challenge the judge who, although he should have disqualified himself, did not do so.⁷

8. Also, when deciding the factual dispute with regard to judicial independence, the Court noted “the existence of an intimidating conduct towards the judges of the First Court.” When determining the legal consequences of the foregoing, the Court indicated that “public officials, especially the most senior Government authorities, must be particularly careful to ensure that their public declarations do not constitute a form of interference with or pressure on judicial independence, or could induce or invite actions by other authorities that violate the judge’s independence or affect his or her liberty.”⁸

9. In addition, the violation of the American Convention arising from the problems relating to judicial independence in this case was as follows: since the members of the CFRSJ did not have a clearly-defined stability, because they could be removed without any previously established procedures and at the sole discretion of the Supreme Court of Justice, the Court concluded that due guarantees did not exist to ensure that the pressure exerted on the First Court would not influence the decisions of the disciplinary body. Based on the foregoing, the Court declared that the State had violated the right of the victims to be tried by a court with sufficient guarantees of independence.⁹

10. Furthermore, regarding the “obligation to state the reasons,” the Court noted that the removal was based on the arguments of the reviewing body, without an analysis being made of the inexcusable miscarriage of justice as a disciplinary offense; this required, first, providing the reasoning relating to the suitability of the victims to exercise their functions.¹⁰ Second, no reasoning was provided on the serious nature of the offense supposedly committed and on the proportionality of the punishment adopted.¹¹ Third, the Court indicated that “the obligation to state the reasons does not require a detailed response to every argument made by the parties, but may vary according to the nature of the decision and, in each case, an analysis must be made of whether this guarantee has been observed.”¹² Consequently, it found that the disciplinary body should have responded

⁵ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, paras. 63 to 67.

⁶ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, para. 63.

⁷ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, para. 65.

⁸ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, para. 131.

⁹ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, paras. 147 and 148.

¹⁰ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, paras. 87 and 88.

¹¹ Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, para. 89.

¹² Cf. *Case of Apitz Barbera et al. (“First Administrative Court”) v. Venezuela*, para. 90.

autonomously, at least, to the main arguments of the defense related to: (i) the alleged lack of constitutive effects of the preventive measure adopted, and (ii) that the decision of the judges who were removed supposedly gave a plausible legal interpretation of the scope of the preventive *amparo*. The Court considered that the reasoning should act as a guarantee that would allow a distinction to be made between a “reasonable difference in legal interpretations,” and an “inexcusable miscarriage of justice” that would adversely affect the suitability of the judge to exercise his or her functions, so that judges are not punished for adopting duly founded legal positions, even if these positions differ from those held by review bodies.¹³ The Court concluded that, “[s]ince that was not the case, the reality was that the disciplinary proceeding ended up by being a mere formality” and, consequently, the obligation to state the reasons for the punishment of removal was ignored, thereby violating the ‘due guarantees’ ordered in Article 8(1) of the American Convention.¹⁴

11. The Court also noted that the victims offered a probative element and the disciplinary body never ruled on its admission, or conducted the necessary steps to assess it. The Court considered that the said evidence was the only one offered by the victims and its purpose was to clarify a decisive aspect of the case; in other words that the measure of *amparo* granted by the judges could not have produced constitutive effects and that, therefore, there was no inexcusable miscarriage of justice. Consequently, the Court considered that the disciplinary body should have, at least, provided a minimum response, accepting or refusing the production of the said evidence and even ordering the victims themselves to obtain it. By not doing so, the “due [judicial] guarantees” of the victims were ignored.¹⁵

12. Regarding the effectiveness of the remedies, the Court noted that the remedies in this case were filed against two actions: (i) the preventive measure of suspension imposed by the CFRSJ in the context of the disciplinary investigation for the mishandling of a case file, and (ii) the sanction of removal imposed by the said disciplinary body owing to the perpetration of an “inexcusable miscarriage of justice.”¹⁶ Regarding the application for *amparo* against the decision ordering the suspension of justices Apitz and Rocha, the Court concluded that Article 25(1) had been violated in relation to Article 1(1) of the Convention, because this remedy did not operate with the promptness required to address claims relating to presumed human rights violations.¹⁷ Regarding the appeal to a higher body filed against the decision ordering the removal, the Court considered that it violated the right to a reasonable time established in Article 8(1) of the Convention, because Venezuela offered no explanation of the reasons why the Supreme Court of Justice took more than nine months to decide the matter.¹⁸ In relation to the appeal for annulment and the measure of preventive *amparo* against the sanction of removal, the Court analyzed each remedy independently, indicating that: (i) regarding the preventive *amparo*, Article 25((1) of the Convention was violated because the SPA took more than three years to rule on the admissibility of this preventive *amparo* and the time that elapsed could not be justified in any way in order to ensure the promptness of the *amparo*,¹⁹ and (ii) regarding the appeal

¹³ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 90.

¹⁴ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 91.

¹⁵ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 94.

¹⁶ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 149.

¹⁷ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 156.

¹⁸ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, paras. 160 and 161.

¹⁹ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 171.

for annulment, the Court considered that Article 8(1) of the Convention was violated because the State was unable to justify that the time taken by the SPA to decide this appeal was in keeping with the principle of a reasonable time.²⁰

2. The judgment of the Constitutional Chamber of the Supreme Court of Justice declaring the Judgment delivered by the Inter-American Court unenforceable

13. In its judgment of December 18, 2008, the Constitutional Chamber of the Supreme Court of Justice, the Chamber decided to declare that “[t]he judgment of the Inter-American Court of Human Rights of August 5, 2008, ordering the reinstatement in their functions of the former justices of the First Administrative Court [...], condemning the Bolivarian Republic of Venezuela to pay sums of money, and to make the publications relating to the judges’ disciplinary system is unenforceable.”²¹ The Constitutional Chamber based this decision on the following arguments:

- i) The Inter-American Court [...] cannot try to exclude or disregard the domestic constitutional order, because the Convention contributes to or complements the Constitution that, in the case of our country, is the supreme law and the basis of the legal system”;²²
- ii) “Article 23 of the Constitution does not grant international human rights treaties ‘supra-constitutional’ rank, so that when there is opposition or contradiction between a provision of the Constitution and a norm of an international treaty, the Judiciary must determine which is applicable, taking into consideration both the provisions of the said norm and the case law of this Constitutional Chamber of the Supreme Court of Justice”;²³
- iii) “A system of principles that is supposedly absolute and supra-historical cannot be imposed above the Constitution” and “the theories that attempt to limit national sovereignty and self-determination on the pretext of universal values, are unacceptable”;²⁴
- iv) In “the supposed verification by [the Inter-American] Court of the violation of the rights and freedoms protected by the Convention, it issued measures of a compulsory nature regarding the regulation and administration of the Judiciary that are the exclusive competence of the Supreme Court of Justice and established directives for the Legislature with regard to the judicial career and the responsibilities of the judges, violating the sovereignty of the Venezuelan State in the organization of the public powers and in the selection of its officials, which is inadmissible”;²⁵
- v) “Apart from the possible contradiction between the norms that protect individual

²⁰ Cf. *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 181.

²¹ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice (file of monitoring compliance, tome I, folio 178).

²² Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 163.

²³ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 163.

²⁴ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 164.

²⁵ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 165.

- rights and those that relate to the common good, it is clear that the Inter-American Court of Human Rights, by failing to restrict itself to ordering compensation for the supposed violation of rights, used the judgment analyzed to interfere unacceptably in the regulation and administration of the judicial sector which corresponds exclusively to the Supreme Court of Justice”;²⁶
- vi) “The Inter-American Court equated absolutely the rights of the tenured judges and the provisional judges, which is absolutely unacceptable and contrary to the law”;²⁷
 - vii) “The contested judgment attempts to disregard the definitive nature of administrative and judicial decisions that have acquired the status of *res judicata* by ordering the reinstatement of the judges who were removed”;²⁸
 - viii) “[I]t is not a question of interpreting the meaning and scope of the judgment of the Inter-American Court [...], or of disregarding the treaty validly signed by the Republic that substantiates it, or of eluding the commitment to execute the decisions pursuant to the provisions of Article 68 of the [American] Convention on Human Rights, but of applying a minimum standard of adaptation of the judgment to the domestic constitutional order,”²⁹ and
 - ix) “The execution of the judgment of the Inter-American Court [...] would affect essential principles and values of the constitutional order of the Bolivarian Republic of Venezuela and could result in institutional chaos within the system of justice, by attempting to modify the autonomy of the Judiciary established by the Constitution and the disciplinary system establishes by law; moreover, it also aspires to obtain the reinstatement of the, today, former justices of the First Administrative Court.”³⁰ In addition, the Constitutional Chamber asked the Executive, “based on the same principle and pursuant to the provisions of Article 78 of the American Convention on Human Rights, to [...] proceed to denounce this Convention, in view of the evident usurpation of functions in which the Inter-American Court has incurred [...] with the judgment that is the subject of this decision.”³¹

3. Arguments of the parties during the private hearing

14. During the private hearing, the State argued, in relation to compliance with the

²⁶ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 166.

²⁷ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 171.

²⁸ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 174.

²⁹ In this regard, the judgment cited, as an example, the decision in which “the judgment delivered by the Inter-American Court of Human Rights on May 30, 1999, in the case of Castillo Petruzzi *et al.* was declared unenforceable by the Plenary Chamber of the Supreme Council of Military Justice of Peru, considering, among other matters, that the Judiciary ‘is autonomous and, in the exercise of its functions, its members do not depend on any administrative authority, which reveals a resounding ignorance of the relevant Peruvian laws’; which ‘attempts to ignore the Peruvian Constitution and subject it to the American Convention on Human Rights in the interpretation that the judges of the said Court make *ad libitum* in that judgment.’” Judgment 1939 of the Constitutional Chamber of the Supreme Court of Justice of December 18, 2008, folio 175.

³⁰ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 176.

³¹ Judgment 1939 of December 18, 2008, of the Constitutional Chamber of the Supreme Court of Justice, folio 177.

Judgment, that:

[T]he formal and actual execution [...] of [...] the provisions of the decision of August 5, [2008,] involves immediate and direct action by [several] organs that form part of the branches or powers [of the State].

In relation to [...] operative paragraph 17 [regarding the reinstatement of the victims to the Judiciary], the potential formal and actual execution corresponds to the Plenary Chamber of the Supreme Court of Justice, which has the constitutional mandate, pursuant to article 267 of the Constitution of the Bolivarian Republic of Venezuela (hereinafter the Venezuelan Constitution) to guide, regulate and administer the Judiciary through any of its internal organs.

The potential execution of the other operative paragraph [...] regarding the publications compliance with which is established in [paragraph] 249 of [the Judgment], corresponds to the Executive through the Ministry of Foreign Affairs.

The other operative paragraph is number 19, regarding the sanction and definitive promulgation of the Venezuelan Code of Judicial Ethics, which unquestionably corresponds to the branch of the public powers that exercises legislative functions, and this is the National Assembly. [...]

In addition, it is important to stress that the 1999 Constituent Assembly established, in Article 3.3.5 and 3.3.6 of the Constitution, a broad and extensive list of competences attributed to the Constitutional Chamber for the exercise of constitutional justice, and within this list of competences and pursuant to the reiterated and uncontested case law of this Constitutional Chamber, not only is it responsible for control of the constitutionality of public decisions, but also any other decision the execution of which is intended to be carried out in the domestic sphere and the constitutionality of which is questioned [...]; nevertheless, it should be noted, without ruling on the merit or validity of this decision, but simply analyzing whether its formal and actual execution, in the domestic sphere, contradicts, attacks or infringes the constitutional public order of the Republic.

[T]he Attorney General's Office [...] involved in operative paragraph [...] 16 of the judgment of the Court of August 5, 2008, filed, with the legitimacy that it possesses, an appeal for constitutional interpretation before the Constitutional Chamber in which, according to the criteria of the Attorney General's Office, the constitutionality of the execution of the judgment of the [Inter-American] Court in the domestic sphere was questioned, because the Attorney General's Office considered that it infringed provisions relating to the constitutional public order. The appeal was decided by decision 1939 of the Constitutional Chamber of December 18, 2008, which established that the judgment of [the Inter-American Court] of August 5, 2008, was unenforceable in the domestic sphere, because the Constitutional Chamber found that it was contrary to explicit provisions of the Constitution.

[T]he Constitutional Chamber, in decision [...] 1541 of 2008, [...] indicated expressly that the Venezuelan State, as a subject of international law, is bound by the principle of *pacta sunt servanda*. It should also be emphasized that it does not deny [...] that, under article 23 of the Constitution of the Bolivarian Republic of Venezuela, all those international treaties validly signed and ratified by the Republic that establish more favorable provisions with regard to human rights have constitutional rank in the domestic sphere, so that status of the Republic, as a subject of international law, is not being denied and is not a matter for discussion at this time. [...] However, on the other hand, in the domestic sphere, the national organs, as distinct from the State as a subject of international law, the domestic national organs are bound, above all, by the legal norms and judgment issued by the judicial organs, even though it is not denied that the actions of the latter, in the domestic sphere, may have repercussions in the international sphere; in other words, giving rise to State responsibility as a subject of international law.

Based on all the foregoing, it can be seen that, in view of Judgment 1939 of 2008 of the Constitutional Chamber, which is binding in nature in the domestic sphere, the Plenary Chamber of the Supreme Court of Justice finds that there is an obstacle of a strictly domestic nature, so that the said Plenary Chamber considers that it would be *contra legem* for the Chamber not to abide by the judgment of the Constitutional Chamber. [...] [I]t is not the purpose of this hearing [...], and is not appropriate to issue value judgments on the judgment of the Constitutional Chamber 1939 of 2008, because, in addition, it is in no way binding on this [...] Inter-American Court [...], its scope is limited and exhausted in the domestic sphere [...], but [...] it does place limits on whether or not the national organs, in the specific case the Supreme Court of Justice, may proceed to execute the judgment.

Similarly, the above-mentioned judgment 1939 of 2008 of the Constitutional Chamber inhibits the Executive from complying with operative paragraphs 16 and 18. Regarding operative paragraph [...]

19 [of the Judgment of the Inter-American Court of August 5, 2008] it is observed that, irrespective of whether that [...] Court has ordered the Venezuelan State to approve and promulgate the Code of Judicial Ethics, the Constitutional Chamber [...], by decision 1,048 of 2006, ordered the National Assembly to approve and subsequently promulgate this Code of Ethics, so that, accordingly, we consider [...] that it would be ineffective and could waste procedural energy for that [...] Court, to establish any repercussions from this operative paragraph, since the National Assembly enacted the Ethics Code,³² whether as the result of the judgment in the international order or the judgment in the domestic order [...].

15. The State concluded that:

On this occasion, the Venezuelan State, through its representative, wishes to inform [the Court] that for us, **it is impossible to comply with** the Judgment as regards operative paragraphs 16 and 17, because we already have a judgment which is self-explanatory [...]; however, with regard to [those] two paragraphs, the State has already established its position in relation to the judgment of the Plenary Chamber. (Bold type added)

16. During the private hearing, the representative indicated that:

Almost all the operative paragraphs of the Judgment are pending compliance, including the one referred to by the State concerning the adoption of the Judicial Ethics Code. The Court has not established that the Judicial Ethics Code should be issued with a specific time frame. What the Court ordered was the adoption of a Judicial Ethics Code based on the parameters indicated by the Court as regards the independence and impartiality of the judges. An Ethics Code that guarantees the tenure of judges and guarantees their independence and impartiality [...].

The Deputy Agent of the State has referred to a judgment of the Constitutional Chamber in which [...] he eluded a key word in that judgment; [...] it declares that this Judgment is unenforceable; it declares that this Judgment will not be complied with; it declares that this Judgment will not be observed and is not observed [...].

[T]he Venezuelan press report[ed] that the judges of the First Administrative Court have been appointed; these positions of judge were vacant, which indicates that the operative paragraph of the Judgment could have perfectly well been complied with. In other words, it would have been possible to appoint the judges who were victims in this case to these positions. It would have been possible to reinstate them and this was not done, but rather other judges were appointed, [...] and this reflects the State's unwillingness, disinclination to comply with the Judgment. Moreover, the appointment of these lawyers to the First Court occurred a long time before the Constitutional Chamber of the Supreme Court of Justice delivered the judgment mentioned by the State.

[... A] judgment delivered by the Constitutional Chamber declaring this Judgment of the Inter-American Court unenforceable evidently causes us concern, [...] because it reveals the intention of a fundamental organ of the Venezuelan State to disobey a Judgment of the Inter-American Court. I do not believe that it is possible to come here and declare that [...] the Judgment of the Inter-American Court has international validity and that the State respects and observes this; but, meanwhile, that the judgment of the Constitutional Chamber of the Supreme Court of Justice is valid in the domestic sphere and must also be respected and observed. [...]

17. Following the private hearing, the representative indicated that "Article 65 of the Convention is an auxiliary means available to the Court to require compliance with its decisions and does not entail the Court renouncing its authority to monitor compliance with the Judgment." In this regard, the representative asked that, "even if [...] this means that the Court renounces its competence to monitor compliance with its own judgments, in the terms of Article 65 of the American Convention [...], the General Assembly of the [OAS] should be informed of this situation, as a case of frank non-compliance" by the State. In addition, the representative requested that, in application of Article 65 of the Convention, this Court "recommend to the General Assembly [...] specific measures to obtain

³² During the private hearing the State provided a copy of the gazette in which the "*Código de Ética del Juez Venezolano y la Jueza Venezolana*" [Venezuelan Code of Judicial Ethics] was published (Official Gazette No. 39,236 of August 6, 2009).

compliance" with the Judgment.

18. During the private hearing, the Inter-American Commission observed that:

The information provided to the [...] Court reflects the total failure to comply with three of the four measures established in the Judgment delivered by this Court and, regarding these three measures, the Commission [considers that] the provisions of domestic law cannot be used to obstruct compliance with international obligations. [...]

The Commission would only like to mention that, as regards the reinstatement [of the judges who were removed,] that, in the Judgment, the Court left open the possibility that, should well-founded reasons exist not to comply with the reinstatement, a payment should be made to the victims. And, regarding the other payments for non-pecuniary damage and costs, and in relation to the publications, the Commission wishes to recall that, in other cases, the Venezuelan State has made publications, has made payments, so that it is evident that there is no domestic constraint to comply with those aspects [...].

Regarding the Ethics Code, the Commission wishes to underscore that the Court was not informed of the Code by formal channels. The Commission found out about its adoption informally and, therefore, reserves the possibility of presenting additional observations when the State presents it during the proceeding of compliance with the Judgment and [...] it asks the State, when presenting it, to explain how the Ethics Code complies with the principles of independence and impartiality that were established in the Court's Judgment.

4. The obligation to comply with the decisions of the Court

19. First, the Court observes that, in operative paragraph 19 of the Judgment, the State was ordered "to adopt, within one year of notification of this Judgment the necessary measures for the approval of the Code of Judicial Ethics."³³ Furthermore, that this should be done in accordance with the provisions of paragraph 253 of this Judgment, which indicated that the Ethics Code should "ensure both the impartiality of the disciplinary organ, permitting, *inter alia*, that its members can be challenged, and its independence, providing for an appropriate procedure for appointing its members and ensuring their tenure."³⁴

20. In the instant case, the State has not presented information on compliance with this measure. However, in the judgment handed down in the case of *Chocrón Chocrón v. Venezuela*, this Court indicated, as a proven fact,³⁵ that the "*Código de Ética del Juez Venezolano y la Jueza Venezolana*" [the Judicial Ethics Code] was published on August 6, 2009,³⁶ and subsequently amended on August 23, 2010,³⁷ and "establishes the ethical principles that guide the conduct of the judges of the Republic, as well as their disciplinary regime, in order to ensure their independence and suitability."³⁸ On that occasion, the Court

³³ *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, operative paragraph 19.

³⁴ *Case of Apitz Barbera et al. ("First Administrative Court") v. Venezuela*, para. 253.

³⁵ *Cf. Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, para. 66.

³⁶ *Cf. Case of Chocrón Chocrón v. Venezuela*, para. 66 and *Código de Ética del Juez Venezolano y la Jueza Venezolana*, published in Official Gazette No. 39,236 of August 6, 2009 (file of attachments to the pleadings and motions brief, volume III, attachment 10, folios 1295 to 1315).

³⁷ *Cf. Case of Chocrón Chocrón v. Venezuela*, para. 66 and reform of the *Código de Ética del Juez Venezolano y la Jueza Venezolana*.

³⁸ *Case of Chocrón Chocrón v. Venezuela*, para. 66. In this regard, article 39 of the Ethics Code establishes that "[t]he organs that, in the exercise of jurisdiction, have disciplinary jurisdiction over the judges of the Republic are the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court, which shall hear and apply in first and second instance, respectively, the disciplinary proceedings for violation of the principles and obligations contained in [the] Code." The Code also establishes the decisions that may constitute disciplinary offenses and their

pointed out that the said Code stipulated that “[a]s of the entry into force of the [...] Code, and once the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court have been established, the Commission for the Operation and Restructuring of the Judicial System shall cease to exercise its competences and, consequently, any cases that are underway shall be suspended and shall be referred to the Judicial Disciplinary Tribunal.”³⁹ However, the Court observed that, according to the evidence in the file of that case, to date, the disciplinary organs have not been established.⁴⁰ Thus, the Court stated that, “although at the date of the delivery of this Judgment, the said Code of Ethics has been promulgated, the Court orders that it be implemented as soon as possible in order to ensure the impartiality, independence and stability of the disciplinary organs to be created.”⁴¹

21. Regarding the other operative paragraphs pending compliance, the Court reiterates that, when this Court has ruled on the merits and the reparations and costs in a case submitted to its consideration, the State must observe the provisions of the Convention that refer to compliance with this judgment or judgments.⁴² Under Article 67 of the American Convention, “[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.” Moreover, 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.” The treaty-based obligation of the States Parties to comply promptly with the Court’s decisions is binding on all the powers and organs of the State.

22. The obligation to comply with the provisions of the Court’s decisions corresponds to a basic principle of the law on the international responsibility of the 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.⁴³ The treaty-based obligations of the States Parties are binding on all the powers and organs of the State;⁴⁴ in other words, all the powers of the State (Executive, Legislative, Judicial, or other branches of public authority) and other public or State authorities of any level. All these authorities have the obligation to comply with international law. This interpretation is derived directly from the principle contained in the said Article 27 of the Vienna Convention on the Law of Treaties.

corresponding sanctions (articles 29 to 33), as well as the characteristics, terms and stages of the disciplinary proceeding (articles 51 to 90).

³⁹ *Case of Chocrón Chocrón v. Venezuela*, para. 66.

⁴⁰ *Cf. Case of Chocrón Chocrón v. Venezuela*, paras. 109, 141 and 163.

⁴¹ *Case of Chocrón Chocrón v. Venezuela*, para. 163.

⁴² *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 60.

⁴³ *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 7, 2012, fourth considering paragraph.

⁴⁴ *Cf. Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, third considering paragraph, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 7, 2012, fourth considering paragraph.

23. Furthermore, as Venezuela recognized during the private hearing, the States Parties to the Convention cannot invoke provisions of constitutional law or other aspects of domestic law to justify failure to comply with or to enforce the obligations contained in the said treaty.⁴⁵

24. As the Court has indicated,⁴⁶ Article 63(1) of the Convention reproduces the text of a customary norm that constitutes one of the fundamental principles of the law on the international responsibility of States.⁴⁷ When an unlawful act occurs that can be attributed to a State, this creates its international responsibility for the violation of an international norm. Based on this responsibility, a new legal responsibility arises for the State consisting in the obligation to make reparation.⁴⁸

25. 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 Court's decisions. 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.⁴⁹

26. The Court has also established that it is aware that the domestic authorities are subject to the rule of law and are, therefore, obliged to apply the provisions in force in the legal system.⁵⁰ Nevertheless, when a State is a party to an international treaty, such as the American Convention, all its organs, including its judges and other organs involved in the administration of justice, are also subject to the treaty, which obliges them to ensure that the effects of the provisions of the Convention and, consequently, the decisions of the Inter-American Court, are not affected by the application of norms contrary to its object and purpose. The judges and organs involved in the administration of justice at all levels are obliged to exercise *ex officio* a control of the conformity of domestic laws with the American

⁴⁵ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of La Cantuta v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 20, 2009, fifth considering paragraph, and *Case of Cantoral Benavides v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 20, 2009, fifth considering paragraph. See also General comments adopted by the Human Rights Committee, General Comment No. 31, The nature of the General Legal Obligation Imposed on States Parties to the Covenant, eightieth session, U.N. Doc. HRI/GEN/1/Rev.7 (2004), p. 192.

⁴⁶ Cf. *Case of Castillo Páez v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 43, para. 50, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C. No. 252, para. 302.

⁴⁷ Cf. *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 184*; *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Jurisdiction)*. Judgment No. 13, 13 September 1928, P.C.I.J. Series A, No. 17; and *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Jurisdiction)*. Judgment No. 8, 26 July 1927, P.C.I.J. Series A, No. 9.

⁴⁸ *Case of Garrido and Baigorria. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 40.

⁴⁹ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 7, 2012, fifth considering paragraph.

⁵⁰ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Furlan and family members v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 302.

Convention within their respective terms of reference and the corresponding procedural regulations. In this task, the judges and organs involved in the administration of justice should take into account not only the treaty, but also its interpretation by the Inter-American Court, the ultimate interpreter of the American Convention.⁵¹ This is the consistent standard that this Court has indicated as a mechanism by which the judicial organs can prevent potential human rights violations. However, this “control of conformity with the Convention” also plays an important role in compliance with or implementation of a specific judgment of the Inter-American Court, especially when a judicial organ is responsible for this compliance. In this situation, the judicial organ has the function of ensuring that the American Convention and the rulings of this Court prevail over domestic laws that obstruct compliance with the provisions in any specific case.

27. Thus, for example, the highest courts in the region have referred to and applied the control of conformity with the Convention taking into account interpretations made by the Inter-American Court. In this regard, the Constitutional Chamber of the Supreme Court of Justice of Costa Rica has indicated that:

It should be noted that if the Inter-American Court of Human Rights is the natural organ to interpret the American Convention on Human Rights [...], the authority of its decision when interpreting the Convention and evaluating domestic laws in light of this treaty, either in contentious cases or as the result of a mere consultation, shall have – in principle – the same significance as the provision interpreted.⁵²

28. For its part, the Constitutional Court of Bolivia has indicated that:

Indeed, the Pact of San José, Costa Rica, as a norm that forms part of the constitutional corpus, is composed of three essential strictly interrelated parts: the first, consists of the preamble, the second is entitled obligations, and the third relates to the organs. Chapter VIII of this instrument regulates the Inter-American Court of Human Rights; consequently, based on a criterion of “systemic” constitutional interpretation, it should be established that this organ and, therefore, the decisions that it issues, also form part of this constitutional corpus.

This is so, based on two legal grounds, namely: (1) The purpose of the jurisdiction of the Inter-American Court of Human Rights, and (2) The application of the legal doctrine of the practical effects [*effect util*] of judgments concerning human rights.⁵³

29. Furthermore, the Supreme Court of Justice of the Dominican Republic has established that:

Consequently, not only the provisions of the American Convention on Human Rights are binding for the Dominican State and, consequently, for the Judiciary, but also its interpretation by the jurisdictional organs created as a means of protection under Article 33 of the Convention, which attributes the competence to hear matters related to compliance with the commitments assumed by the States Parties.⁵⁴

30. And the Peruvian Constitutional Court has stated that:

⁵¹ Cf. *Case of Almonacid Arellano et al. vs. Chile*, para. 124, and *Case of Furlan and family members v. Argentina*, para. 302.

⁵² Judgment of May 9, 1995, delivered by the Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Action on unconstitutionality. Decision 2313-95 (Case file 0421-S-90), considering paragraph VII.

⁵³ Judgment issued on May 10, 2010, by the Constitutional Court of Bolivia (Case file No. 2006-13381-27-RAC), section III.3. on “The Inter-American Human Rights System. Conclusions of law and effects of the judgments delivered by the Inter-American Court of Human Rights”.

⁵⁴ Decision No. 1920-2003 issued on November 13, 2003, by the Supreme Court of Justice of the Dominican Republic.

[t]he binding nature of the judgments of the [Inter-American] Court is not exhausted by their operative paragraphs which, evidently, concern only the State that is a party to the proceedings), but extends to their legal grounds or *ratio decidendi*, with the added element that, owing to the prevalence of the [Fourth Final and Transitory Provision (FFTP) of the Constitution and Article V of the Preliminary Title of the [Code of Constitutional Procedure], in this sphere the judgment is binding for every national public authority, even in those cases in which the Peruvian State has not been a party to the proceedings. Indeed, the [Inter-American] Court's competence to interpret and apply the Convention, recognized in Article 62(3) of this treaty, added to the mandate of the FFTP of the Constitution, means that the interpretation of the Convention's provisions made during any proceedings is binding for all the domestic public authorities including, evidently, this court.⁵⁵

31. The said Court has also established that:

The direct connection between the Inter-American Court of Human Rights and this Constitutional Court is evident; a dual connection: on the one hand, *restorative*, because when the fundamental right that has been violated is interpreted in light of the decisions of the Court, the possibility of providing it with an adequate and effective protection is optimized and, on the other hand, *preventive*, because it is by respecting this that the unfortunate institutional consequences entailed by the adverse judgments of the Inter-American Court of Human Rights for the legal certainty of the Peruvian State are avoided.⁵⁶

32. The Supreme Court of Justice of Argentina has stated that "the Argentine State is obliged to comply with [the decisions of the Inter-American Court] (Art. 68(1), ACHR); therefore, the said court has established that "in principle, it must subordinate the content of its decisions to those of the said international court."⁵⁷ This Supreme Court has also stated "that the interpretation of the American Convention on Human Rights must be guided by the case law of the Inter-American Court of Human Rights," because "it is an obligatory interpretation criterion for the Argentine constitutional powers in the sphere of their competence and, consequently, also for the Supreme Court of Justice of the Nation, in order to safeguard the obligations assumed by the Argentine State under the inter-American system for the protection of human rights."⁵⁸

33. For its part, the Supreme Court of Justice of Mexico has indicated that "all the terms of the judgments of the Inter-American Court of Human Rights are binding for the Judiciary of the Federation. Therefore, [when Mexico has been a party to the case,] not only the specific operative paragraphs of the Judgment are binding for the Judiciary, but also all the criteria contained in the Judgment deciding the respective litigation."⁵⁹

34. In addition, the Court Constitutional of Colombia has stated that, since the Colombian Constitution indicates that the constitutional rights and obligations should be interpreted "in according with the human rights treaties ratified by Colombia," the result is "that the case law of the international organs responsible for interpreting those treaties constitutes relevant interpretative criteria to determine the meaning of the constitutional norms on fundamental rights."⁶⁰

⁵⁵ Judgment delivered by the Constitutional Court of Peru on July 21, 2006 (Case file No. 2730-2006-PA/TC), twelfth considering paragraph.

⁵⁶ Cf. Judgment 00007-2007-PI/TC delivered by the Plenary of the Constitutional Court of Peru on June 18, 2007 (Lawyers' Professional Association of Callao v. Congress of the Republic), twenty-sixth considering paragraph.

⁵⁷ Judgment delivered by the Supreme Court of Justice of the Argentina Republic on December 23, 2004 (Case file 224. XXXIX), "Espósito, Miguel Angel, ref/prescription of the criminal action filed in his defense," sixth considering paragraph.

⁵⁸ Judgment of the Supreme Court of Justice of Argentina, Mazzeo, Julio Lilo *et al.*, remedy of cassation and on unconstitutionality. M. 2333. XLII. *et al.* of July 13, 2007, para. 20

⁵⁹ Plenary of the Supreme Court of Justice of Mexico, Miscellaneous file 912/2010, decision of July 14, 2011, para. 19.

⁶⁰ Judgment C-010/00 issued on January 19, 2000, by the Constitutional Court of Colombia, para. 6.

35. In addition, the Criminal Chamber of the Supreme Court of Justice of Guatemala has issued several decisions declaring the self-executing nature of the judgments handed down by the Inter-American Court of Human Rights in the cases of *the "White Van" (Paniagua Morales et al.)*,⁶¹ *the "Street Children" (Villagrán Morales et al.)*,⁶² *Bámaca Velásquez*,⁶³ and *Carpio Nicolle et al.*,⁶⁴ all against the State of Guatemala. In these judgments, the Inter-American Court found that the criminal proceedings relating to each of the said cases had violated the American Convention on Human Rights and, consequently, ordered the Guatemalan State to conduct an effective investigation into the facts that gave rise to these violations, and to identify, prosecute and punish those responsible. In compliance with the measures ordered by the Inter-American Court, the Criminal Chamber of the Supreme Court declared the nullity of the corresponding domestic judgments, as well as of all subsequent proceedings and, consequently, ordered a new trial that respected the rules of due process of law, and complied with the purposes of criminal proceedings, which is to prove the facts and punish those responsible. Lastly, the Criminal Chamber of the Supreme Court declared that, since the Republic of Guatemala could not invoke its domestic law or argue the absence of procedures or laws to comply with the international judgment, the act of executing the latter had the effect of a special act of the ordinary procedure.

36. Also, in the case of *Fermín Ramírez v. Guatemala*, the Inter-American Court ordered the State to conduct a new trial of the petitioner. The Court observed and assessed positively, the terms of Decision No. 96-2006 taken by the Supreme Court of Justice of Guatemala, which constituted a significant precedent in the sphere of the inter-American system as regards the execution of the judgments of this Court, by appointing a court to conduct a new trial based on the decision of the Inter-American Court.⁶⁵

37. Also on May 12, 2010, by Decision No. 240, the Plenary of the Supreme Court of Justice of Panama indicated that "the Republic of Panama, as a member of the international community, recognizes, respects and complies with the decisions of the Inter-American Court of Human Rights," and decided to refer the Court's judgment in the case of Tristán Donoso to the Criminal Chamber of the Supreme Court of Justice.⁶⁶ Subsequently, the Second Criminal Chamber of the Supreme Court of Justice delivered a judgment in which it indicated that "based on the provisions of the judgment of January 27, 2009, handed down by the Inter-American Court of Human Rights, this Superior Court finds it necessary to acquit Santander Tristán Donoso of the charges as author of the offense of calumny [...] and, consequently, to annul the punishment."⁶⁷

⁶¹ Cf. Decision No. MP001/2005/46063 of the Criminal Chamber of the Supreme Court of Justice of Guatemala of December 11, 2009.

⁶² Cf. Decision No. MP001/2008/of the Criminal Chamber of the Supreme Court of Justice of Guatemala 63814 of December 11, 2009.

⁶³ Cf. Decision No. MP001/2009/10170 of the Criminal Chamber of the Supreme Court of Justice of Guatemala of December 11, 2009.

⁶⁴ Cf. Decision No. MP001/2008/2506 of the Criminal Chamber of the Supreme Court of Justice of Guatemala of December 11, 2009.

⁶⁵ *Case of Fermín Ramírez v. Guatemala. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of May 9, 2008, eighth considering paragraph.

⁶⁶ Supreme Court of Justice of Panama, Decision No. 240 of May 12, 2010, complying with the Judgment of the Inter-American Court of Human Rights of January 27, 2009, in the case of Santander Tristán Donoso v. Panama.

⁶⁷ Supreme Court of Justice de Panama, Criminal Chamber, Judgment of May 12, 2010.

38. Finally, in the case of *Gelman v. Uruguay*, the Court indicated that the democratic legitimation of certain acts or facts in a society is limited by the international norms and obligations that protect the human rights recognized in treaties such as the American Convention. Thus, even in democratic instances, a “control of conformity with the Convention’ should prevail, and this is a function and task of any public authority and not only of the Judiciary.”⁶⁸

39. In sum, this Court considers that the State cannot invoke a decision of a domestic court to justify its non-compliance, even when that court is the highest in the domestic legal order. Moreover, the existence of a decision at the domestic level, such as the judgment of the Supreme Court finding that the judgment delivered by the Inter-American Court is unenforceable disregards the basic principles of international law on which the implementation of the American Convention is based (*supra* considering paragraphs 21 to 26). The manifest non-compliance expressed by the judgment of the Supreme Court of Justice prevents the Convention from having practical effects and its application in the specific case by its ultimate interpreter. Similarly, it fails to recognize the principle of international *res judicata* with regard to a matter that has already been decided and annuls and renders illusory the right of access to inter-American justice for the victims of human rights violations, which perpetuates the human rights violations that were found in the judgment. Therefore, pursuant to the international law that has been democratically and sovereignly accepted by the Venezuelan State,⁶⁹ it is unacceptable that, when the Inter-American Court has delivered a judgment, domestic law or the State’s authorities attempt to make it ineffective.

5. Application of Article 65 of the American Convention in this case

40. Regarding the application of Article 65 of the Convention, the Court reiterates that, first, it must determine the degree of compliance with its decisions, in particular the reparations ordered, so as to determine whether it is appropriate to inform the General Assembly of those cases in which a State found responsible for violations of the Convention “has failed to comply with its decisions.”⁷⁰

41. To this end, the Court’s Rules of Procedure regulate the request made to the State for information on the measures taken in order to comply with the judgments of the Court, as well as to obtain the observations of the Commission and of the victims or their representatives. Once the Court has this information it can assess whether its decisions have been complied with, guide the State’s actions to this end and, as appropriate, fulfill the obligation to inform the General Assembly in the terms of Article 65 of the Convention.⁷¹

42. It is pertinent to recall that the provision of sufficient information on the measures

⁶⁸ Cf. *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. para. 239.

⁶⁹ The Court takes note of the denunciation of the American Convention presented by Venezuela, under Article 78 of the said Convention. Cf. Note of the OAS Secretary General No. OEA/2.2/81/12 of September 11, 2012. This denunciation has no effects on what has been indicated.

⁷⁰ Cf. Order of the Inter-American Court “Monitoring compliance with judgments (applicability of Article 65 of the American Convention on Human Rights)” of June 29, 2005, seventh considering paragraph.

⁷¹ Cf. Order of the Inter-American Court “Monitoring compliance with judgments (applicability of Article 65 of the American Convention on Human Rights),” eighth considering paragraph, and *Case of Baena Ricardo et al. Jurisdiction*, para. 134.

adopted is a State obligation established by this Court,⁷² and the General Assembly of the Organization of American States has reiterated the need for States Parties to provide, in a timely fashion, the information requested by the Court so as to enable the Court to comply fully with its obligation to report to the General Assembly on compliance with its judgments.⁷³

43. Therefore, and taking into account the decision of the Constitutional Chamber of the Supreme Court of Justice declaring the Judgment of the Court unenforceable (*supra* para. 13) and that the State has rejected, and refused and failed to comply with the measures ordered, the Court considers it appropriate to apply Article 65 of the American Convention, which establishes:

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a State has not complied with its judgments, making any pertinent recommendations.

44. Also, Article 30 of the Court's Statute establishes that:

The Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

45. Thus, in application of Article 65 of the American Convention and Article 30 of the Statute, the Court will incorporate this Order into its 2012 Annual Report so that it may be submitted to the consideration of the General Assembly of the Organization of American States. This course of action is necessary in cases such as this, where the State's highest court has issued a ruling indicating the frank intention of not meeting the obligation to comply with a judgment of the Court. In this situation, the American States have established a system of collective enforcement where all the States Parties must make every effort to ensure that there is no evident failure to comply with the Court's judgments.

46. The important role of the notion of collective enforcement for the implementation of the international decisions of human rights bodies has been emphasized in other decisions issued by this Court,⁷⁴ by the Human Rights Committee⁷⁵ and by the European Court of Human

⁷² Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Court of September 22, 2005, seventh considering paragraph, and *Case of Salvador Chiriboga v. Ecuador. Monitoring compliance with judgment*. Order of the Court of October 24, 2012, third considering paragraph.

⁷³ Cf. General Assembly, Resolution AG/RES. 2587 (XL-O/10) adopted at the fourth plenary session held on June 8, 2010, and entitled "Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights," fourth operative paragraph.

⁷⁴ In this regard, in contentious cases such as *Goiburú et al. v. Paraguay*, *La Cantuta v. Peru*, and the *Mapiripán Massacre v. Colombia*, the Court has applied this concept to establish that the States Parties to the Convention must collaborate with each other to eliminate the impunity of the violations committed in these cases, by the prosecution and punishment, as appropriate, of those responsible. Consequently, the Court declared that the mechanism of collective enforcement established under the American Convention, together with the regional, international and universal obligations in this regard, obliged the States of the region to collaborate in good faith in this regard, either by the extradition or the prosecution on their territory of those responsible for the facts of the said cases.

⁷⁵ "[E]very State party has a legal interest in the performance by every other State party of its obligations. This follows from the fact that the "rules concerning the basic rights of the human person" are *erga omnes* obligations and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance of, human rights and fundamental freedoms." General comments adopted by the Human Rights Committee, General Comment No. 31, The nature of the General

Rights.⁷⁶ The concept of collective enforcement has also been used by the Committee of Ministers of the Council of Europe to assess non-compliance with some judgments,⁷⁷ and was one of the reasons for the 2009 amendment of Article 46 of the European Convention of Human Rights to enhance the mechanisms for the execution and monitoring of the judgments by assigning new faculties to the Committee of Ministers and the European Court.⁷⁸

47. In this regard, this Court has indicated that the American Convention, as well as the other human rights treaties, are applied in keeping with the notion of collective enforcement and have a special character that differentiates them from other treaties that regulate reciprocal interests between States Parties.⁷⁹ This concept of collective enforcement is closely related to the practical effects of the judgments of the Inter-American Court, because the American Convention embodies a system that constitutes a real regional public order, the maintenance of which is in the interest of each and every State Party. The interest of the signatory States is the preservation of the system for the protection of human rights that they themselves have created, and if a State violates its obligation to comply with the decisions of the only jurisdictional organ in this matter, it is violating the undertaking to comply with the Court's judgments made towards the other States. Therefore, the task of the General Assembly of the Organization of American States, in the case of manifest non-compliance with a judgment delivered by the Inter-American Court by one of the States, is precisely that of protecting the practical effects of the American Convention and preventing inter-American justice from becoming illusory by being at the discretion of the internal decisions of a State.

48. Lastly, the Court finds it pertinent to recall that, once it has determined the application of Articles 65 of the Convention and 30 of the Statute in cases of non-compliance with its judgments, and has advised this in its Annual Report for the consideration of the General Assembly of the Organization of American States, the Court may continue requiring the State to present information on compliance with the respective judgment when it considers this pertinent. If, following the above, the respective State fails

Legal Obligation Imposed on States Parties to the Covenant, eightieth session, U.N. Doc. HRI/GEN/1/Rev.7 at 225 (2004), para. 2.

⁷⁶ "Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a 'collective enforcement.'" ECHR, *Case of Ireland v. United Kingdom* (No. 5310/71), Judgment of 18 January 1978, para. 239. Similarly, ECHR, *Case of Mamatkulov and Askarov v. Turkey* (No. 46827/99 and 46951/99), Judgment of 4 February 2005, para. 100. Also, in the *Case of Soering v. United Kingdom*, the European Court declared that the European Convention should be interpreted with regard "to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. [...] Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective." ECHR, *Case of Soering v. United Kingdom* (No. 14038/88), Judgment of 7 July 1989, para. 87. Similarly, ECHR, *Case of İlhan v. Turkey* (No. 22277/93), Judgment of 27 June 2000, para. 51; *Case of Glasenapp v. Germany* (No. 9228/80), Judgment of 28 August 1986, para. 48, and *Case of Shamayev et al. v. Georgia and Russia* (No. 36378/02), Judgment of 12 April 2005. Final, 12 October 2005, para. 302.

⁷⁷ ECHR, *Case of Loizidou v. Turkey*, (No. 15317/89), Judgment of 23 March 1995, and Council of Europe, Committee of Ministers, Resolution (Res DH (2001) 80) regarding the judgment of the European Court of Human Rights of 28 July 1998 in the *Case of Loizidou v. Turkey*, adopted by the Committee of Ministers on June 26, 2001.

⁷⁸ "The Parties to the Convention have a collective duty to preserve the Court's authority – and thus the Convention system's credibility and effectiveness – whenever the Committee of Ministers considers that one of the High Contracting Parties refuses, expressly or through its conduct, to comply with the Court's final judgment in a case to which it is party." Council of Europe, Committee of Ministers, Explanatory report on Protocol 14 to the European Convention. Available at: <http://conventions.coe.int/Treaty/EN/Reports/Html/194.htm> (last consulted, November 23, 2012).

⁷⁹ Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*, para. 96.

to demonstrate compliance with the pending aspects of the judgment to the Court, the Court may continue including this non-compliance each year when presenting its Annual Report to the General Assembly,⁸⁰ unless the State, the representative or the Commission provide information on the implementation of and compliance with the Judgment; and these are aspects on which the Court will assess the pertinence of making the respective ruling.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and pursuant to Articles 65, 67 and 68(1) of the American Convention on Human Rights, and Article 30 of its Statute,

DECLARES THAT:

1. As indicated in having seen paragraphs 2 and 6 and considering paragraph 4 of this order, the State has not complied with its obligation to inform this Court of the measures taken to comply with the operative paragraphs of the Judgment on preliminary objection, merits, reparations and costs delivered on August 5, 2008.

2. The State is in substantial non-compliance with the measures ordered in the Judgment on preliminary objection, merits, reparations and costs of August 5, 2008, namely:

a) To make the payment of the amounts establish in th[e] Judgment for pecuniary and non-pecuniary damage and reimbursement of costs and expenses (*sixteenth operative paragraph of the Judgment*);

b) To reinstate Juan Carlos Apitz Barbera, Perkins Rocha Contreras and Ana María Ruggeri Cova, if they so desire, in a position in the Judiciary in which they have the same salary, fringe benefits and rank as they would have had today if they had not been removed (*seventeenth operative paragraph of the Judgment*);

c) To make the publications indicated in the Judgment (*eighteen operative paragraph of the Judgment*), and

d) To adopt the measures required to approve the Venezuelan Code of Judicial Ethics, within one year of notification of the Judgment, in accordance with the provisions of the Judgment (*nineteenth operative paragraph of the Judgment*).

AND DECIDES:

1. To incorporate into the next Annual Report of the Inter-American Court of Human Rights the decisions taken in this Order so as to inform the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights, of the failure of the State of Venezuela to comply with its obligation: (i) to

⁸⁰ Cf. Order of the Inter-American Court "Monitoring compliance with judgments (applicability of Article 65 of the American Convention on Human Rights)," ninth considering paragraph.

make the payments established in the Judgment for pecuniary and non-pecuniary damage and reimbursement of costs and expenses; (ii) to reinstate Juan Carlos Apitz Barbera, Perkins Rocha Contreras and Ana María Ruggeri Cova, if they so desire, in a position in the Judiciary in which they have the same salary, fringe benefits and rank as they would have had today if they had not been removed; (iii) to make the publications indicated in the Judgment, and (iv) to adopt the measures required to approve the Venezuelan Code of Judicial Ethics, within one year of notification of the Judgment, in the terms of the Judgment of this Court of August 5, 2008.

2. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission, and the representative of the victims, when this Order has been incorporated into the Annual Report of the Inter-American Court.

Manuel E. Ventura Robles
Acting President

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary