

**Order of the
Inter-American Court of Human Rights***
of July 6, 2009
Case of Cantos v. Argentina
(Monitoring Compliance with Judgment)

Having Seen:

1. The Judgment on merits, reparations, and costs of November 28, 2002 (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court").

2. The Order of the Inter-American Court of November 28, 2005 regarding compliance with Judgment, whereby it declared:

1. [that] in conformity with Considering clause eight of the [...] Order, that State has complied with the stipulations of operative paragraph five of the Judgment [...] on the payment of expenses generated by the international proceeding before the Inter-American system for the protection of human rights[;]

2. [t]hat it will maintain open the proceeding for monitoring compliance with the paragraphs pending fulfillment in the instant case.
[...]

3. The Order of the Inter-American Court of July 12, 2007 on compliance with the Judgment, whereby it reiterated:

1. [t]hat it will maintain open the proceeding for monitoring compliance with the aspects pending fulfillment in the instant case, namely:

a) "refrain from charging Mr. José María Cantos the filing fee and late charge" (*operative paragraph one of the Judgment of November 28, 2002*);

b) "set at a reasonable sum the professional fees regulated in case C-1099 of the Supreme Court of Argentina, as stipulated in paragraphs 70(b) and 74 [of the Judgment;]" (*operative paragraph two of the Judgment of November 28, 2002*);

* Judge Leonardo A. Franco, of Argentinean nationality, excused himself from hearing the monitoring of compliance with the instant case, in conformity with Articles 19(2) of the Court's Statutes and Article 20 of Court's Rules of Procedure.

c) “assume the payment of the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago del Estero, under the conditions set forth in the previous point” (*operative paragraph three of the Judgment of November 28, 2002*), and

d) “lift the attachments, general property encumbrances and other measures ordered against the assets and commercial activities of Mr. José María Cantos to guarantee payment of the court filing fee and the regulated professional fees” (*operative paragraph four of the Judgment of November 28, 2002*).

AND DECIDE[D]:

1. [t]o call upon the State to adopt all measures necessary to promptly and effectively comply with the operative paragraphs pending compliance that were ordered by the Court in the Judgment on merits, reparations and costs of November 28, 2002, pursuant to article 68(1) of the American Convention on Human Rights[, and]

2. [t]o request that the State submit a report specifying all measures adopted to comply with the reparations ordered by this Court that are still pending compliance, in conformity with Considering clause ten and the declaratory paragraph of this Order, no later than September 28, 2007.

[...]

4. The briefs of October 1, 2007, March 14, 2008, and February 2, 2009, whereby the Republic of Argentina (hereinafter “the State” or “Argentina”) reported on the status of compliance with the Judgment.

5. The briefs of February 4, 2008, April 16, 2008, March 17, 2009, and May 28, 2009, whereby the victim’s representative (hereinafter “the representative”) submitted her observations on the State’s reports on the status of compliance with the Judgment.

6. The briefs of November 15, 2007, May 21, 2008, March 26, 2009, whereby the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted its observations on the State’s reports on the status of compliance with the Judgment.

7. The communication of the Secretariat of February 6, 2009, whereby it requested that the representative submit complementary information on the current status of each of the reparations pending compliance. This requirement was reiterated on March 20 and May 20, 2009.

Considering:

1. That it is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. That Argentina has been a State Party to the American Convention on Human Rights (hereinafter, the “Convention” or the “American Convention”) since September 5,

1984, and that it recognized the compulsory jurisdiction of the Court on that same date.

3. That Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.¹

4. That, considering Article 67 of the American Convention, which stipulates that the judgment of the Court shall be final and shall not be subject to appeal, such judgment shall be fully and promptly complied with by the State.

5. That the obligation to comply with the rulings of the Court corresponds to a basic principle of law on the international responsibility of the State, supported by international jurisprudence, according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and pursuant to Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic order reasons, avoid the international responsibility which has already been established.² The conventional obligations of the States Parties bind all powers and organs of the State.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as those concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced so that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.³

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¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Cantoral Huamani and García Santa Cruz v. Peru. Monitoring Compliance with Judgment*. Order of the Court of April 28, 2009, Considering clause three; and *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador. Monitoring Compliance with Judgment*. Order of the Court of April 29, 2009, Considering clause three.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Cantoral Huamani and García Santa Cruz v. Peru. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause five; and *Case of Chaparro Álvarez and Lapo Ñíguez Vs. Ecuador. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause five.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Cantoral Huamani and García Santa Cruz v. Peru. Monitoring Compliance with Judgment*, *supra* note 1, considering clause six; and *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause six.

7. That in relation to operative paragraph one of the Judgment on refraining from charging Mr. José María Cantos (hereinafter "Mr. Cantos") the filing fee and late fee, on March 14, 2008 and February 2, 2009 the State reported that "the Federal Administration of Public Revenue (Administración Federal de Ingresos Públicos or AFIP) ordered the closing of the fiscal execution presented before the National Administrative Federal Court No. 2, Secretariat No. 4 [...] which sought the judicial collection of the filing fee and late fee [...]". According to the State, this entails full compliance with the orders of the Court in the aforementioned operative paragraph, and it requested that the Court declare the closing of the proceeding for monitoring compliance therewith.

8. That the representative did not refer specifically to compliance with this obligation, even though the Court had requested that it submit complementary information on the current status of each of the reparations pending fulfillment (*supra* Having Seen 7).

9. That in the observations of May 21, 2008 the Commission "value[d] the State's report" on the alleged full compliance with this obligation by indicating that the Federal Administration of Public Revenue had ordered the closing of the fiscal execution file.

10. That considering the information reported by the State and the evidence provided, this Court observes that the State has closed the fiscal execution processed before the National Administrative Court No. 2, Secretariat No. 4, which sought the judicial collection of the filing fee and late fee, which was recognized by the Commission. Therefore, this Court considers that the State has complied with the obligation contained in operative paragraph one of the Judgment.

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11. That with regards to operative paragraph two of the Judgment, on the obligation to set at a reasonable sum the professional fees regulated in case C-1099 of the Supreme Court of Argentina, on October 1, 2007 the State reported that it had performed the following steps:

a) on January 25, 2006, the National Executive Branch ruled Decree No. 99/06, whereby it ordered, *inter alia*, "[to s]ummon the interested parties to establish the basis for execution of the Judgment [of the Inter-American Court] on the payment of the fees regulated in case C-1099 of the Supreme Court, under the conditions stipulated in the Court's Judgment";

b) on May 10, 2006 the Ministry of Justice and Human Rights issued Order No. 749/2009 and "entrusted the Secretariat of Human Rights to [...] perform the steps necessary to summon the interested parties [...]";

c) on February 19, 2007, through Order No. 006 issued by the Secretariat of Human Rights "it was decided to summon the attorneys who represented the State and the Province of Santiago del Estero in the referenced judicial file, to establish the basis for the execution of the [J]udgment of the Inter-American Court of Human Rights", and

d) on March 1, 2007, a work meeting was held with the majority of the interested parties⁴ who provided their proposal [with regards to their fees],” and manifested that the regulated professional fees of the experts and technical consultant “are absolutely reasonable and should be paid with no acquittances.” However, “to achieve compliance with the provisions of Decree [No.] 99/06” the attorneys present in this meeting expressed that they would accept “a partial acquittance of 20% [of their fees]”. The minutes of that meeting indicate that the professionals “declared that if in conformity with the amount [...] and upon receipt of the payment, they will immediately request the lifting of the precautionary measures decreed against José María Cantos.”

12. That the representative indicated that the State’s report on that “they are working with the group of professionals who intervened in the defense of the State” to establish a fair amount for the fees, is “surprising”, not only because of “the delay” in reaching an agreement, since more than 5 years have passed from the delivery of the Judgment, but also because “the State reported on the recommendations of its own employees, which state that there is agreement on the fairness of the proposals by all intervening parties, including the State of Argentina.”

13. That in the observations of November 15, 2007 and May 21, 2008, the Commission took cognizance of the State’s reports on the meeting held to comply with the Court’s order, and indicated that there has been a lack of advances on this issue since the State report of October 1, 2007. Lastly, it indicated that it would await information on the steps taken to comply with this obligation.

14. That the Court values the State’s reports on the meeting held to establish at a fair amount the professional fees of the interested parties, to comply with operative paragraph two of the Judgment. This Court takes cognizance that the State has not reported other advances on compliance with this obligation since October 1, 2007, although it submitted two reports after that date. At that time it presented several documents related to the work meeting held, in which there seemed to be an agreement among the attorneys regarding the fees. Consequently, this Court believes that the State must perform all actions necessary to comply with this reparation and report on the advances of its implementation. This is mandatory since paragraph 74 of the Judgment orders that the reparation measures ordered must be implemented within six months of their notification, and it has been over six years from that date and compliance with this point is still pending, with no State reports thereon.

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15. That with regards to operative paragraph three of the Judgment, on the obligation to assume the payment of the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago del Estero, under the conditions established in operative paragraph two of the Judgment, on February 2, 2009 the State

⁴ According to the minutes of the meeting, submitted by the State, the following people were present at the meeting: “Drs. Jorge Jáuregui and Santiago Bargallo Beade, of their own free will, and representing Claudia Reston, the heirs of Raúl Huidobro, María Eugenia Galíndez, Carlos Raúl Ambrosio, the heirs of Manuel Luis de Palacios, Guillermo Heisinger, Julio González and Cesar Graziani, Drs. Estanislao González Bergez and Daniel Nigro, of their own free will and representing Norma Vicente Soutullo, Dr. María Eugenia Giambra representing María Josefina Zabala; Drs. Juan González Moras and Elea Cristina Peliche, representing Mario Kestelboim, and Dr. Jorge Albertsen representing the heirs of José Osvaldo D’Alessio”. In the same minutes “it was recorded that Drs. Washington Inca Cardoso and Alejandro Cáceres Llamosas did not respond to the summons”.

reported that "it has fully paid the regulated fees to those experts, therefore it [requested] for the Court to take this aspect into consideration in the procedure for monitoring compliance." The State indicated that in 1997 and 1998 "the experts who intervened [in Case -1099] were the expert witnesses ex officio: Juan Bautista Viegas[,] Osvaldo Cristóbal Marum [...] and [...] Néstor Ramón Zubielqui". Additionally, the State provided evidence of payment of "100% of the regulated fees of the technical consultant, Néstor Ramón Zubielqui", as well as of "the payment to the expert witnesses ex officio" Juan Bautista Viegas and Osvaldo Cristóbal Marum, for "50% of the regulated fees," and "the remaining 50% [...] in Debt Consolidation Bonds in National Currency, [...] thus completing the full payment of their regulated fees." On the other hand, the State did not mention the payment of fees and expenses to the attorneys of the State and the Province of Santiago del Estero.

16. That the representative expressed her "surprise" with the information presented by the State according to which "the fees under consideration, which were delaying the compliance with the [J]udgment and were consuming excessive time in meetings, had already been paid and settled before [the Court's ruling]". In this regard, the representative expressed her indignation, as "this [was] one of the bases for filing the action before [the] Court [...], and that the State of [A]rgentina seems to have discovered until now [that the issue had been resolved]".

17. That the Commission took cognizance of the information reported by the State in the brief of February 2, 2009 on the payment of fees to the experts, and valued the State's efforts to comply with the obligations, but believes that because of the victim's lack of information, it was not in a position to fully assess compliance with the obligations pending fulfillment. It did not refer explicitly to compliance with this operative paragraph.

18. Based on the foregoing explanation, in conformity with the information submitted by the State, the Court considers that it has fully complied with the obligation to pay the fees corresponding to all experts. On the other hand, regarding the payment of fees and expenses corresponding to all attorneys engaged by the State and the Province of Santiago del Estero, this Court considers that it lacks information on the status of compliance with this obligation, therefore it considers necessary for the State to provide a detailed and updated report on the advances for its implementation. Consequently, the Court considers that the State has partially complied with the measures ordered in operative paragraph three of the Judgment.

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19. That in relation to operative paragraph four of the Judgment, on the obligation to lift the attachments, general property encumbrances and other measures ordered against the assets and commercial activities of Mr. José María Cantos to guarantee payment of the court filing fee and the regulated professional fees, on March 14, 2008 and February 2, 2009 the State reported that the precautionary measures ordered against Mr. Cantos were not currently in effect, and that "article 207 of the National Code of Civil and Commercial Proceedings prescribes that: 'the encumbrances and attachments will extinguish FIVE (5) years from the corresponding recording in the registry [...]' " and that

"the [corresponding]encumbrances and attachments were applied on 06/12/1996 y 24/11/1997", as per the judicial decision of March 17, 2006, and the note by the Federal Administrator of the AFIP of February 13, 2008, whereby "in any of these assumptions, the measures have expired." In this regard, the State indicated that "it has fully complied with the operative paragraph under consideration" and requested for the Court to declare the closing of the procedure for monitoring compliance with operative paragraph four.

20. That in its observations of March 17, and May 28, 2009, the representative indicated that the circumstance presented by the State in the report of March 14, 2008 was "indescribable", given that "after 5 (five) years and 4 (four) months after the ruling of the [J]udgment on the referred case, [it reported] that the requirement both of the [Court], the Honorable Commission, and the victim had been complied with since 2001-2002 due to the expiration of the measure by itself." In this regard, the representative highlighted the "lack of fairness in the duration of the proceeding, attributable to the behavior of the competent authorities [of over 5 years...] to report that the measures had expired since 2001-2002, meaning prior to the ruling of the [J]udgment." However, the representative did not refer specifically to the alleged compliance by the State, even though the Court requested the submission of complementary information regarding the current status of each of the reparations pending fulfillment (*supra* Having Seen 7).

21. That in its observations of May 21, 2008, the Commission took cognizance of the information presented by the State, according to which the precautionary measures against Mr. Cantos had expired in conformity with Article 207 of the Code of Civil Proceedings of Argentina.

22. That the Court considered the information provided by the Court, according to which, in conformity with Article 207 of the National Code of Civil and Commercial Proceedings [of Argentina], the precautionary measures ruled against Mr. Cantos had expired since 2001 and 2002, respectively. Consequently, these measures are currently not in effect, according to the judicial decision of March 17, 2006, and the note of the Federal administrator of the AFIP of February 13, 2008. Taking into consideration the evidence submitted by the State, as well as the Commission's observations, this Court considers that the State has complied with the obligation contained in operative paragraph four of the Judgment.

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23. That this Court values the full compliance with operative paragraphs one and four of the Judgment on merits, reparations, and costs delivered by the Court on November 28, 2002, as well as partial compliance with operative paragraph three of the aforementioned Judgment, regarding the payment of fees and expenses for Experts, which constitutes an advance by the State in the execution and implementation of the Court's judgments.

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24. That the representative requested the Court to determine and apply some type of sanction to the State, as it considers "its behavior inappropriate with regards to the

treatment of a citizen," Mr. Cantos in this case, and for some type of compensation measure to be determined for the victim, given the "circumstances lived as of the ruling of the [J]udgment."

25. That given the allegations of the representative, and based on the Court's case law, at this stage of monitoring compliance, the Court is empowered to give instructions at the request of a party or *motu proprio* relating to compliance with or implementation of the measures of reparation ordered in its Judgment of November 28, 2002, for effective compliance with the provisions of that ruling. Nevertheless, this does not imply that it can order measures of reparation different from those it already ordered, so as to modify the Judgment.⁵ Consequently, the Court rejects the representative's request in the instant case.

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26. That the Court will consider the general status of compliance with the Judgment (*supra* Having Seen 1), once it receives information on the operative paragraphs of the reparations pending compliance.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

by virtue of its authority to monitor compliance with its own decisions pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, and Articles 25(1) and 30 of its Statute and 30(2) of its Rules of Procedure,

DECLARES:

1. That in conformity with Considering clauses 10 and 22 of this Order, the State has complied with the following obligations:

- a) refrain from charging Mr. José María Cantos the filing fee and late charge (*operative paragraph one of the Judgment*);
- b) lift the attachments, general property encumbrances and other measures ordered against the assets and commercial activities of Mr. José María Cantos to guarantee payment of the court filing fee and the regulated professional fees (*operative paragraph four of the Judgment*).

⁵ Cf. *Case of the Mayagna (Sumo) Awas Tingni*. Monitoring Compliance with Judgment. Order of the Court of May 7, 2008, Considering 46.

2. That in conformity with Considering clause 18 of this Order, the State has partially complied with the following obligation:

a) assume the payment of the fees and expenses corresponding to the experts (*operative paragraph three of the Judgment*).

3. That in conformity with Considering clauses 14 and 18 of this Order, the following obligations are pending compliance:

a) set at a reasonable sum the professional fees regulated in case C-1099 of the Supreme Court of Argentina (*operative paragraph two of the Judgment*), and

b) assume the payment of the fees and expenses of the attorneys engaged by the State and the Province of Santiago del Estero (*operative paragraph three of the Judgment*).

4. It will maintain open the procedure for monitoring compliance with all of the obligations pending compliance mentioned in the two previous declaratory paragraphs.

AND DECIDES:

1. To call upon the State to adopt all measures necessary to promptly and effectively comply with all pending aspects that were ordered by the Court in the Judgment on merits, reparations, and costs of November 28, 2002, in conformity with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, on October 15, 2009, a full and detailed report indicating all measures adopted to comply with the reparations ordered by this Court that are still pending compliance and, specifically, to refer to the information required by this Court, as established in Considering clauses 14 and 18 of this Order.

3. To request the victim's representative and the Inter-American Court of Human Rights to submit their observations on the State report mentioned in the previous operative paragraph, within four and six weeks, respectively, of receipt of the report.

4. To continue monitoring compliance with the paragraphs pending compliance of the Judgment on merits, reparations, and costs of November 28, 2002.

5. To serve notice of this Order upon the State, the Inter-American Commission on Human Rights, and the victim's representative.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary