

**Order of the
Inter-American Court of Human Rights
of July 6, 2009
Case of Albán-Cornejo *et al.* v. Ecuador
(Monitoring Compliance with Judgment)**

Having Seen:

1. The Judgment on the merits, reparations and costs rendered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on November 22, 2007, whereby it decided, *inter alia*, that:

[...]

5. Within a period of six months as from notification of [the] Judgment, and as provided in paragraph 157 hereof, the State shall publish in its Official Gazette and in another newspaper of national circulation, as a one-time publication, the following: the operative paragraphs of this Judgment, as well as the following paragraphs: 1, 2, 4, 5 and 6 of Chapter I, "Introduction of the Case and Subject-Matter of the Dispute;" 17, 18, 21, 22 and 24 of Chapter IV, "Partial Acknowledgment of International Responsibility;" 44 to 50 of section (b), "Article 5(1) (Right to Humane Treatment)" of the Convention, of Chapter VI; 64 of chapter VII; and 79 to 109 of section B, "Proceedings before criminal jurisdiction," chapter VII.

6. The State shall, within a reasonable term, fully divulge the rights of the patients, using the adequate media and according to the existing legislation from Ecuador and the international standards, in the terms of paragraphs 162 and 163 of the [...] Judgment.

7. The State shall, within a reasonable term, implement an education and training program for justice operators and health care professionals about the laws enacted by Ecuador in relation to patients' rights and the punishment for violating them, pursuant to paragraph 164 of the [...] Judgment.

8. The State must pay Carmen Cornejo de Albán and Bismarck Albán-Sánchez the sum established in paragraph 153, for compensation for pecuniary and non-pecuniary damage, within a period of one year counted from the date of notice of the [...] Judgment, as established in paragraphs 146 to 154 [t]hereof.

9. The State shall, within a period of one year from the date of notice of the [...] Judgment, pay Carmen Cornejo de Albán the sum established in paragraph 168 of the [...] Judgment for the costs and expenses incurred both in the domestic sphere and before the Inter-American system of protection of human rights, in the terms of paragraphs 167 and 168 of the [...] Judgment.

[...]

2. The reports submitted by the Republic of Ecuador (hereinafter "the State" or "Ecuador") on June 2, August 29 and December 12, 2008, and April 7, 2009, by means of which it provided information on the status of compliance with the Judgment.

3. The communications received on May 12, 2008 and March 9, 13 and June 22, 2009, by means of which the victims' representatives (hereinafter "the representatives") submitted their remarks to the reports forwarded by the State.

4. The presentations of May 21 and December 29, 2008, by means of which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted its remarks to the reports forwarded by the State.

Considering:

1. That monitoring compliance with its decisions is a power inherent to the jurisdictional functions of the Court.

2. That Ecuador is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since December 28, 1977, and it acknowledged the Court's mandatory jurisdiction on July 24, 1984.

3. That Article 68(1) of the American Convention sets forth 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." For such purpose, the States must guarantee that the Court's decisions are implemented domestically.¹

4. That in view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State within the established term.

5. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility. The obligations imposed by the Convention upon State Parties bound all powers and authorities of the State.²

6. That the States Parties to the American Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on protected rights), but also to procedural provisions, such as the one concerning compliance with the Court's judgments. These obligations shall be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

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 No. 3; and *Case of Chaparro-Alvarez and Lapo-Íñiguez v. Ecuador. Monitoring Compliance with Judgment*. Order of the Court of April 29, 2009, Considering clause No. 3.

² 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 Cantoral-Huamani and García-Santa Cruz v. Peru. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause No. 5; *Case of Chaparro-Alvarez and Lapo-Íñiguez v. Ecuador. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause No. 5.

³ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. 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 No. 6; and *Case Chaparro-Alvarez and Lapo-Íñiguez v. Ecuador. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause No. 6.

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7. That in relation to Operative Paragraph No. 5 containing the obligation of the State to publish the Judgment on the merits, reparations and costs in the Official Gazette and in another newspaper of national circulation, the State reported that the publication in the Official Gazette was made on February 7, 2008, by Official Registry No. 267. As concerns the publication in a wide-circulation newspaper, it informed that on March 15, 2008, it was made in the newspaper "El Telégrafo." Regarding the publication in a wide-circulation newspaper and according to the statements made by the parties, the State informed that it would "be made in the newspaper ["El Comercio,"] on regular pages as requested."

8. That the representatives, in their observations to the State's report of March 9, 2009, highlighted that the State had published the pertinent paragraphs of the Judgment in the Official Registry. However, they pointed out that the State had not yet made a publication in any of the major newspapers in Ecuador.

9. That the Commission, in its observations submitted on December 29, 2008, declared that, "it appreciates the reference to the publication in the Official Registry." However, it pointed out that "according to the information relating to the circulation range of the selected newspaper, it is widely known that the newspaper *"El Telégrafo"* is among the newspapers with narrowest circulation in Ecuador;" therefore, it concluded that the publication failed to meet the circulation requirements needed to effectively communicate the truth about this case to the public.

10. That according to the State's report in relation to the publication of the pertinent parts of the Judgment made in the Official Gazette and to the statements of the representatives and the Commission on said publication, the Court considers that the State has complied with Operative Paragraph No. 5 of the Judgment. Moreover, regarding the publication of the pertinent parts of the Judgment made by the State on March 15, 2008 in the newspaper *"El Telégrafo"*, taking into account the statements made by the State with regard to a subsequent publication in the newspaper "El Comercio", the Court considers it necessary that the State submit a report on the actions taken to effectively made said publication, and once the observations by the representatives and the Commission have been received, the Court will assess the status of compliance with Operative Paragraph No. 5 of the Judgment.

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11. That in relation to Operative Paragraph No. 6 containing the obligation to fully divulge the rights of the patients, using the adequate media and according to the existing legislation from Ecuador and the international standards, the State reported that the second phase of the Interactive Manual on Human Rights (*Manual Interactivo de Derechos Humanos*) drafting process is under way, and that special emphasis would be placed on justice and bioethics operators. Furthermore, it pointed out that "[t]his initiative will gather new participants like the Public Prosecutor's Office, regarding workers and penitentiary guidelines, and the Ministry of Justice, regarding execution of judgments of the Inter-American Court of Human Rights."

12. That the representatives, in their observations, stated that the State had failed to take any action aimed at divulging the rights of the patients.

13. That the Commission, in its observations, made no comments on this operative paragraph.

14. That the Court notes that, despite the State informed that it had taken actions to implement the Interactive Manual on Human Rights (*Manual Interactivo de Derechos Humanos*) with emphasis placed on justice and bioethics operators, it had failed to submit accurate information on the measures taken to divulge the rights of the patients in compliance with Operative Paragraph No. 6. Considering the representatives' statements, the Court deems it necessary that the State furnish an updated and detailed report on the specific actions taken to fully comply with Operative Paragraph No. 6 of the Judgment (*supra* Having Seen clause number 1.)

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15. That in relation to Operative Paragraph No. 7 containing the obligation of the State to implement within a reasonable term an education and training program for justice operators and health care professional about the laws enacted by Ecuador in relation to patients' rights and the punishment for violating them, the State informed that the implementation of an inter-institutional agreement with the Ministry of Justice (*Ministerio de Justicia*) was under way with the purpose to comply with this paragraph as soon as practicable. Moreover, the State affirmed that on March 17, 2009, Mrs. Carmen Cornejo, Mr. Bismarck Albán, Mr. Alejandro Ponce, Attorney-at-law, Mr. Oswaldo Santos and Mrs. Ibeth Orellana held a meeting and agreed that "[t]he Under-secretariat of Human Rights and [the] Coordination of Public Defense w[ould] summon the law schools of the following universities to a regulatory reform process: U[niversidad] Central, [...] San Francisco de Quito, [...] Católica del Ecuador, [...] del Azuay, [...] Espiritu Santo, [...] Santiago de Guayaquil, [...] de las Américas and further participants they might deem necessary." The process would be focused on the following rules: the Code of Ethics for Medical Doctors, the Criminal Code, the inclusion of the crime of medical malpractice, and a bill of law on medical malpractice.

16. That the representatives, in their observations, highlighted that the State had not yet issued the Rules of Application of Law No. 77 - Law on the Rights and Protections of the Patient (*Ley de Derechos y Amparo del Paciente*)- published in the Official Registry Supplement No. 626 on February 3, 1995. In this regard, they pointed out that no legal rule providing for the crime of medical malpractice, and for the civil, criminal and administrative sanctions associated therewith, had been enacted.

17. That the Commission, in its observations, made no comments on this operative paragraph.

18. That the Court appreciates the decision made by the State to enter into an institutional agreement with the Ministry of Justice to implement an education and training program for justice operators and health care professionals about the laws enacted by Ecuador in relation to patients' rights and the punishment for violating them. Nonetheless, the Court considers it necessary that the State furnish an updated and detailed report on the specific actions taken to fully comply with this operative paragraph of the Judgment (*supra* Having Seen clause number 1.)

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19. That in relation to Operative Paragraph No. 8 containing the obligation of the State to pay Carmen Cornejo de Albán and Bismarck Albán-Sánchez the sum established as compensation for pecuniary and non-pecuniary damage, within a period of one year counted from the date of notice of the Judgment on the merits, reparations and costs, the State informed that by Order No. 007757 of January 10, 2008, the Office of the Attorney General requested the Ministry of Economy and Finance to deposit the amount of the compensation for pecuniary and non-pecuniary damage, and costs. In this regard, it informed that on July 11, 2008, the Undersecretariat of the treasury of the Ministry of Economy deposited in the account of the Office of the Attorney General the requested amount and on August 28, 2008 payment to Mrs. Carmen Cornejo de Albán and Mr. Bismarck Albán-Sánchez was made.

20. That the representatives, in their observations, asserted that the State paid the amounts due as compensation for pecuniary and non-pecuniary damage in a timely fashion, thus complying with the decision of the Court.

21. That the Commission, in its observations, stated that on August 28, 2008, Mrs. Carmen Cornejo de Albán and Mr. Bismarck Albán-Sánchez were paid the amounts due as compensation for pecuniary and non-pecuniary damage.

22. That, based on the statements of the parties, the Court considers that the State has fully complied with Operative Paragraph No. 8 of the Judgment (*supra* Having Seen clause number 1).

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23. That in relation to Operative Paragraph No. 9 containing the obligation of the State to pay Carmen Cornejo de Albán the sum established as costs and expenses incurred both in the domestic sphere and before the Inter-American system of protection of human rights, within a period of one year counted from the date of notice of the Judgment on the merits, reparations and costs, the State reported that the Ministry of Economy reimbursed the costs and expenses on August 28, 2008. (f. 57)

24. That the representatives, in their observations, pointed out that the State reimbursed the costs incurred both in the domestic sphere and the proceedings conducted before the Court.

25. That the Commission, in its observations, asserted that on August 28, 2008, the amount of the costs and expenses was duly paid.

26. That, based on the statements of the parties, the Court considers that the State has fully complied with Operative Paragraph No. 9 of the Judgment (*supra* Having Seen clause number 1).

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27. That the Court appreciates the apologies made by the State, through the Ecuadorian Ministry of Justice and Human Rights, for the human rights violations perpetrated in relation to the instant case. The act of apology was broadcasted on Television through national alert system on December 10, 2008, in Ecuador.

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28. That the Court highly appreciates that the State has fully complied with Operative Paragraphs number 8 and 9 (*supra* Having Seen clause number 1) of the Judgment on the

merits, reparations and costs delivered by the Court on November 22, 2007, and that it has partly complied with Operative Paragraph No. 5 (*supra* Having Seen clause number 1) of said Judgment, in furtherance of the execution and implementation of the decisions of the Court.

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29. That the Court will consider the general status of compliance with the Judgment (*supra* Having Seen clause number 1) once it has received the requested information on 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 33m 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Article 25(1) and 30 of its Statute and Article 30(2) of its Rules of Procedure,

DECLARES:

1. That according to what has been pointed out in Considering clauses No. 21 and 25 of this Order, the State has complied with the following operative paragraphs of the Judgment:

a) pay Carmen Cornejo de Albán and Bismarck Albán-Sánchez the sum established in paragraph 153 of the Judgment as compensation for pecuniary and non-pecuniary damage, under Considering clause No. 22 of this Order (*Operative Paragraph No. 8 of the Judgment*), and

b) pay Carmen Cornejo de Albán the sum established in paragraph 168 of the Judgment as costs and expenses incurred both in the domestic sphere and before the Inter-American system of protection of human rights, under Considering clause No. 26 of this Order (*Operative Paragraph No. 9 of the Judgment*).

2. That according to what has been pointed out in Considering clause No. 10 of this Order, the State has partly complied with Operative Paragraph No. 5 of the Judgment, as it published:

a) in the Official Gazette, as provided in paragraph 157 of the Judgment, within a period of six months as from notification thereof, as a one-time publication, the following: the operative paragraphs of the Judgment, as well as the following paragraphs: 1, 2, 4, 5 and 6 of Chapter I entitled "Introduction of the Case and Subject-Matter of the Dispute;" 17, 18, 21, 22 and 24 of Chapter IV entitled "Partial Acknowledgment of International Responsibility;" 44 to 50 of section (b) entitled "Article 5(1) (Right to Humane Treatment)" of the Convention, of Chapter VI; 64 of Chapter VII; and 79 to 109 of section B entitled "Proceedings before criminal jurisdiction," Chapter VII.

3. That it will maintain open the procedure of monitoring compliance with the matters pending compliance in the present case, namely:

a) to publish in a nationwide circulation newspaper, as provided in paragraph 157 of the Judgment, within a period of six months as from notification thereof, as a one-time publication, the following: the operative paragraphs of the Judgment, as well as the following paragraphs: 1, 2, 4, 5 and 6 of Chapter I entitled "Introduction of the Case and

Subject-Matter of the Dispute;" 17, 18, 21, 22 and 24 of Chapter IV entitled "Partial Acknowledgment of International Responsibility;" 44 to 50 of section (b) entitled "Article 5(1) (Right to Humane Treatment)" of the Convention, of Chapter VI; 64 of Chapter VII; and 79 to 109 of section B entitled "Proceedings before criminal jurisdiction," Chapter VII (*Operative Paragraph No. 5 of the Judgment*);

b) to fully divulge the rights of the patients, within a reasonable term, using the adequate media and according to the existing legislation from Ecuador and the international standards, in the terms of paragraphs 162 and 163 of the Judgment (*Operative Paragraph No. 6 of the Judgment*); and

c) to implement an education and training program for justice operators and health care professionals about the laws enacted by Ecuador in relation to patients' rights and the punishment for violating them, within a reasonable term, pursuant to paragraph 164 of the present Judgment (*Operative Paragraph No. 7 of the Judgment*).

AND DECIDES:

1. To require that the State adopt all the measures necessary to fully and promptly comply with the matters pending compliance pursuant to the stipulations of Article 68(1) of the American Convention on Human Rights.
2. To request that the State present to the Inter-American Court, no later than October 15, 2009, a report indicating all the measures adopted to comply with the reparations ordered by this Court that are pending compliance.
3. To request that the representatives of the next of kin of the victims and the Inter-American Commission on Human Rights present their observations to the State's report mentioned in the previous operative paragraph, within four and six-week term, respectively, computed as of the receipt of that report.
4. To continue monitoring the matters pending compliance of the Judgment on merits, reparations, and costs of November 22, 2007.
5. To request that the Secretariat notify the present Order to the State, the Inter-American Commission on Human Rights, and the victims' next of kin.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary