

**Order of the
Inter-American Court of Human Rights**

August 27, 2010

Case of Albán Cornejo et al. V. Ecuador

Monitoring Compliance with Judgment

Having Seen:

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

2. The Order on Monitoring Compliance with Judgment issued by the Court on July 6, 2009, through which it declared:

1. That according to what has been pointed out in Considering clauses No. 21 and 25 of the [...] 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 the [...] 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 decide[d]:

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.

[...]

3. The brief of the Secretariat of the Court (hereinafter "the Secretariat") of October 21, 2009, through which it requested that the Republic of Ecuador (hereinafter "the State" or "Ecuador") forward the corresponding state report on the monitoring of compliance with the judgment.

4. The State's report filed on November 25, 2009, through which it referred to the monitoring of compliance with the Judgment.

5. The briefs of the victims' representative (hereinafter "the representative") received on October 26, 2009 and January 6, February 18, March 16, May 27, and June 29, 2010, through which it presented its observations on the monitoring of compliance with the Judgment.

6. The briefs of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) filed on May 13 and August 4, 2010, through which it presented its observations on the monitoring of compliance with the Judgment.

7. The Secretariat’s communication of July 1, 2010, through which it requested that the representative and the State forward, no later than July 12, 2010, the copy of the publication or, in its case, the original of the corresponding parts of the Judgment of the present case, which according to the representative was made on March 3, 2010, in “El Diario El Comercio.” The communications from the representative of July 7, 2010, and from the State of July 14, 2010, through which they forwarded the previously mentioned copies.

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

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Baen Ricardo et al. v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause Number three, and *Case of Vargas Areco V. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of July 20, 2010, Considering clause number three.

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 Baena Ricardo. Monitoring Compliance with Judgment*, *supra* note 1, Considering Clause number five, and *Case of Vargas Areco V. Paraguay. Monitoring Compliance with Judgment*, *supra* nota 1, Considering Clause number four.

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

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7. With regard to operative paragraph five in reference to the State's obligation to publish the Judgment on merits, reparations, and costs in another newspaper of ample national circulation, the State informed that "it agreed with the beneficiaries to publish the extract of the Judgment ordered by the Court [again] in the "Diario El Comercio", the newspaper with the highest national circulation," in attention to that stated by the parties. The State indicated that the publication was made in the Newspaper "El Comercio", in regular pages as required, on March 3, 2010.

8. In its observations the representative indicated that on March 3, 2010, the State published in the newspaper "El Comercio" that ordered in paragraph 157 of the Judgment, but he indicated that from the operative paragraphs of the Judgment it "published only numbers 1, 2, and 3," [...] omitting [...] the publication of paragraphs 4, 5, 6, 7, 8, 9, and 10." Therefore, he states that the Court must order that the State publish the mentioned operative paragraphs.

9. In its observations the Commission stated that "-except for an opinion to the contrary of the injured party- the State complied with the obligation to publish the judgment" in the newspaper "El Comercio."

10. Pursuant with that stated by the parties, this Court has verified that the State made, according to its commitment, a new publication of the corresponding parts of the Judgment on March 3, 2010, in the newspaper "El Comercio," but it did not publish operative paragraphs 4, 5, 6, 7, 8, 9, and 10. Therefore, this Tribunal considers that the State shall publish the mentioned paragraphs in the Newspaper "El Comercio" making reference to the publication of March 3, 2010 and clarifying that on that occasion it left out said paragraphs. Thus, it asks that the State inform of the diligences carried out to make the mentioned publication, and once the observations of both the representative and the Commission have been received, this Court will evaluate the state of its compliance.

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³ Cr. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Baena Ricardo et al. v. Panama. Monitoring Compliance with Judgment*, *supra* note 1, Considering Clause number six, and *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment*, *supra* note 1, Considering Clause number five.

11. With regard to the sixth operative paragraph in reference to the obligation to, within a reasonable period of time, fully divulge the rights of the patients, using the adequate media and taking into consideration the existing legislation in Ecuador and international standards, the State has informed that the Ministry of Health prepared a pamphlet with the patients' rights, which is being diffused nationally in different health units.

12. In his observations the representative stated that he visited several health units in the city of Quito and he is not aware of the mentioned pamphlet. Additionally, he stated that the pamphlet is "of a small format, with a font that is difficult to read," which does not satisfy the concept of an ample campaign of diffusion. He added that it includes a partial reference to the "Health Legislation" and it does not mention the Law on the Rights and Protection of the Patient, enacted in the year 1995 and published on February 2, 1995, in Official Registry No. 626, which is unknown by the citizens and "unknown or voluntarily ignored by those who work in the health area." Therefore, an ample diffusion campaign of said law is necessary.

13. In its observations, the Commission valued the elaboration of the mentioned pamphlet; "however, it considers it necessary that the State clarify its scope of diffusion and the characteristics that would make the pamphlet comply with the conditions established by the Court." Additionally, it observed that "it would be useful to have the information regarding the other measures that could complement the elaboration of the pamphlet for the adequate implementation of the reparation ordered by the Tribunal."

14. Based on the aforementioned, the Tribunal considers it necessary that the State present an updated and detailed report on the specific diligences carried out to achieve compliance with the sixth operative paragraph of the Judgment, in which it shall state, among others, a) program and timetable to divulge patients' rights, and in its case, the diffusion of the pamphlet made; b) the media in which the diffusion has been made; c) to which people or groups the diffusion is addressed, and d) the health units to which the pamphlet has been delivered. Likewise, it asks the State for its point of view regarding the representative's observations in reference to the format of the pamphlet and its content, and that it mention how the pamphlet and its diffusion comply with that ordered by the Court in the mentioned operative paragraph.

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15. With regard to the seventh operative paragraph in reference to the State's obligation to, 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, the State informed that the Ministry of Justice and Human Rights has hired a consultancy that will develop: a) a training module in human rights of the patients for justice operators and health professionals; b) an informative guide that includes the national and international legal frameworks on the right to health in general and the rights of specific patients, addressed to health professionals and training in the use of the module, and c) a "guide for the team of the Sub-Secretariat of Human Rights and Coordination of Public Defense of the Ministry of Justice and Human Rights in order to replicate its content in training sessions." It added that for its application it is working on an agreement with the Ministry of Public Health. The project will be addressed to operative personnel in the cities of Quito, Guayaquil, and Loja, and to the provincial directors through videoconferences.

16. In its observations the representative asked that the Court request from the Ministry of Justice and Human Rights a copy of the mentioned consultancy contract, duly legalized, stating in detail: objectives, methods, means, resources, timetable, and costs of the execution of the project, in compliance with the principle of transparency. Likewise, it requested that the Court ask the State for a copy of the general module on human rights, drawn up and validated by the Ministry of Justice and Human Rights.

17. In its observations the Commission stated that it does not have information regarding the programs mentioned by the State or with a timetable, progress and results obtained in their application. Therefore, the Commission is awaiting the filing of said information, as well as the start of the training programs as soon as possible.

18. The Court values the measures the State has adopted upon celebrating an institutional agreement with the Ministry of Justice and Human Rights to develop a training module in human rights of patients addressed to the justice operators and health professionals. However, this Tribunal considers it necessary that the State present updated and detailed information on: a) content of the module, main subjects, approach (methodology), materials, and their handling; legislation and jurisprudence; b) timetable for the application of the training sessions and indication of the staff that will be in charge of them; c) methodology, materials, administration, and timetable for the implementation of the replication training, and d) list of the justice operators and health professionals that will receive the training module, their respective positions, and entity to which they belong. Therefore, in order to monitor compliance with the seventh operative paragraph of the Judgment (*supra* Having Seen paragraph 1), the Court requests that the State provide the mentioned information as well as the specific measures carried out in this sense.

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19. The Court will consider the general state of compliance with the Judgment (*supra* Having Seen paragraph 1) once it receives the corresponding 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 33, 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 Articles 31(2) and 69 of its Rules of Procedure,

Declares:

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

- a) publish operative paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Judgment, in the terms stated in paragraph 10 of the present Order (*fifth operative paragraph 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 (*sixth operative paragraph 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 (*seventh operative paragraph 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 December 6, 2010, 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 representative of the victim and the Inter-American Commission on Human Rights present the observations considered appropriate 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 or their representatives.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alesandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary