

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 22, 2010
CASE OF HERRERA ULLOA V. COSTA RICA
SUPERVISION OF COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal") on July 2, 2004, whereby, *inter alia*, it ruled:

4. The State must nullify, in every respect, the November 12, 1999, judgment made by the Criminal Court of the First Judicial Circuit of San José, in the terms stated in paragraphs 195 and 204 of the Judgment.

5. Within a reasonable period of time, the State must bring its domestic legal procedures into conformity with the provisions of Article 8(2)(h) of the American Convention on Human Rights, in relation to Article 2 thereof, in the terms stated in paragraph 198 of the present Judgment.

6. The State must pay compensation for immaterial damage to Mr. Mauricio Herrera Ulloa in the amount of USD 20,000.00 (twenty thousand United States dollars) or the equivalent in Costa Rican currency, in the terms stated in paragraphs 200, 203, 204 and 205 of the present Judgment.

7. The State must pay Mr. Mauricio Herrera Ulloa the amount of US\$ 10,000.00 (ten thousand United States dollars) or the equivalent in Costa Rican currency, to defray the expenses incurred by his legal defense before the inter-American system for the protection of human rights, in the terms stated in paragraphs 202, 203, 204 and 205 of the present Judgment.

[...]

9. Should the State fall into arrears, it shall pay interest on the amount owed, based on the default interest rate in Costa Rica, in the terms specified in paragraphs 203 and 204 of the present Judgment.

2. The Orders of supervision of compliance with the Judgment issued by the Court on September 12, 2005, September 22, 2006, and July 9, 2009. In the last Order, the Tribunal declared that the following points were in the process of being complied with:

* Judge Manuel E. Ventura Robles, of Costa Rican nationality, did not form a part of the Tribunal in the present case. Consequently, he did not participate in the deliberation or signing of the present Order.

a) To nullify the November 12, 1999, judgment issued by the Criminal Court of the First Judicial Circuit of San José (*operative paragraph four of the Judgment*). The State has paid the principal sum related to the civil compensation judgment, leaving pending that which refers to the difference regarding the interest and costs in accordance with Considering Clause 18 of the [...] Order.

b) To bring its domestic legal system in to line with the combined provisions of Article 2 and 8(2)(h) of the American Convention on Human Rights (*operative paragraph five of the Judgment*).

3. The briefs of October 15, 2009, May 31 and November 17, 2010 and their respective annexes, through which the Republic of Costa Rica (hereinafter “the State” or “Costa Rica”) informed about the progress with regard to compliance with the outstanding points of the Judgment.

4. The briefs of November 27, 2009 and October 26, 2010, through which the representatives of the victim (hereinafter “the representatives”) submitted their observations to the reports presented by the State.

5. The briefs of December 3, 2009, August 4 and November 8, 2010, through which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) issued its observations to the reports presented by the State and to the observations of the representatives.

6. The *amicus curiae* briefs and their annexes presented by the following persons: José Tomás Guevara Calderón, William Bermúdez Bolívar, José Francisco Corrales Gutiérrez, Heriberto Hidalgo Segura, Manuel Antonio Coto Aguirre, Marco Vinicio Picado González, Juan José Maltés Montiel, José Ruiz Pérez, Ángel Aragón Calderón, Rafael Antonio Rojas Madrigal, Jorge Rodríguez Sánchez and J.A. Coto Aguirre.

CONSIDERING:

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

2. Costa Rica is a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since November 22, 1969 and recognized the adjudicatory jurisdiction of the Inter-American Court on July 2, 1980.

3. Article 68.1 of the American Convention stipulates that “[t]he State Parties to the Convention promise to comply with the decision of the Court in any case to which they are parties.” Therefore, the States must ensure that decisions of the Tribunal are implemented

domestically.¹

4. Given the judgments of the Court are final and definitive, in accordance with Article 67 of the American Convention, they shall be promptly and fully complied with by the State.²

5. The duty to comply with that established in the decisions of the Tribunal corresponds to a basic principle of the law of international responsibility of the State, supported by international jurisprudence; according to which the States shall fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as put forth by this Court and under Article 27 of the Vienna Convention on the Law of Treaties of 1969, they cannot, for internal reasons, stop assuming the international responsibility already established.³ The treaty obligations of States Parties are binding on all State bodies and organs.⁴

6. The State Parties to the Convention shall guarantee compliance with treaty dispositions and *effet utile* within their respective domestic law. This principle is applied, not only regarding substantive rules of human rights treaties (namely, the ones that contain dispositions regarding the protected rights), but also in relation to procedural norms, such as those concerning compliance with decisions of the Court. These obligations shall be interpreted and applied within their respective domestic law. This principle applies, not only to the substantive rules of human rights treaties (namely, those containing dispositions on protected rights), but also regarding procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied in such a manner that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties⁵.

a) *Obligation to nullify the judgment issued on November 12, 1999, by the Criminal Court of the First Circuit of San Jose*

7. Regarding the obligation to nullify, in every respect, the judgment issued on November 12, 1999, by the Criminal Tribunal of the First Judiciary Circuit of San Jose

¹ Cf. *Case of Baena Ricardo and others v. Panama. Competence* Judgment of November 28, 2003. Series C No. 104, paragraph 131; *Case of Ivcher Bronstein vs. Peru. Monitoring Compliance with Judgment*. Order of the Court of August 27, 2010, Considering Clause three, and *Case of Santander Tristán Donoso vs. Panama. Monitoring Compliance with Judgment*. Order of the Court of September 1, 2010, Considering Clause three.

² Cf. *Case of De la Cruz Flores v. Peru. Supervision of Compliance of Judgment*. Order of the Court of September 1, 2010, Considering Clause four, and *Case of Santander Tristán Donoso, supra* note 1, Considering Clause four.

³ 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, par. 35; *Case of Baena Ricardo and others, supra* note 2, Considering Clause five, and *Case of Vargas Areco, supra* note 2, Considering Clause four.

⁴ 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, Considering Clause three; *Case of Ivcher Bronstein, supra* note 1, Considering Clause four, and *Case of Santander Tristán Donoso, supra* note 1, Considering Clause five.

⁵ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, paragraph. 37; *Case of De la Cruz Flores, supra* note 2, Considering Clause six, and *Case of Santander Tristán Donoso, supra* note 1, Considering Clause six.

(fourth operative paragraph of the Judgment), the State reported the following: a) regarding the amount owed in interests, the Contentious Administrative and Civil Court of the Treasury Department approved, by means of a judgment on September 8, 2009, the payment of legal and moratorium interests to the amount of ₡8.447.457,44 colones, paid to *La Nacion* on November 13, 2009, and b) regarding the amount owed in personal costs, the Contentious Administrative Tribunal, First Section of the Second Circuit of San Jose approved by means of a resolution on February 23, 2010, the amount of ₡422,372.87 colones, which "is available to [the company] by drawing from the expenses fund that the State sets aside for this purpose." Also, it manifested that it has requested the processing of the corresponding procedures so that said amount be deposited in the bank account of the company. For the aforementioned, the State considered that "it has fulfilled the obligations arising from the Judgment of July 2, 2004; therefore, it request[ed that] full compliance with this issue be declared."

8. The representatives informed that "the State has paid in full the amounts that were owed as compensation [...] as well as all outstanding interests and [the] costs, in such a way that the issues concerning capital in the Judgment can be considered satisfied."

9. The Inter-American Commission stated that, "from the available information, it can be gathered that the total fulfillment of payments for compensation, interests and costs are still outstanding."

10. From the information provided by the parties, the Tribunal concludes that the State has complied with the obligation to nullify, in every respect, the judgment issued on November 12, 1999, by the Criminal Court of the First Circuit of San Jose, pursuant to the fourth operative paragraph of the Judgment, having complied fully with the payment of interests and costs owed pursuant to the eighteenth paragraph of the Order of the Inter-American Court of July 9, 2009.

b) Obligation to bring its domestic legal system into conformity with the provisions of Article 8(2)(h) of the American Convention

11. Regarding the obligation to bring its domestic legal system into conformity with the provisions of Article 8(2)(h) of the American Convention, in conjunction with Article 2, within a reasonable time period (fifth operative paragraph of the Judgment), Costa Rica reported that on April 29, 2010, the Legislative Assembly approved Law No. 8.837, "Law for the Creation of Appeal Proceedings for Judgments, additional amendments to the system of appeals and implementation of new orality rules in criminal proceedings" (hereinafter also "Law No. 8.837"), whose text was published on June 9, 2010, in "La Gaceta," the official newspaper for the State of Costa Rica. Also, it included a copy of the official publication of said law, which:

a) made various amendments to the Code of Criminal Procedure, such as expanding the judgment appeals system by adding a criminal judgment appeals proceeding; reforming the review procedure; and, strengthening the principle of orality in criminal proceedings;

b) created the judgment appeals recourse so that all judgments and dismissals issued in the trial phase are appealable.⁶ The appeals recourse “would enable the complete examination of the judgment when the interested party disagrees with the facts established, the incorporation and evaluation of evidence, the legal foundation or the drawing up of the sentence. The High Court will pronounce the points that are explicitly questioned, as well as stating, even ex officio, the absolute defects and violations of due process found in the judgment.”⁷ Also, Law No. 8.837 provides for a reduced number of reasons for inadmissibility of judgment appeals recourses as well as stating that the procedure must be resolved even when defects exist in its drafting. If such defects were to completely impede that the claim be heard, the Tribunal of Appeal may act so that the party rectify them, pointing out the aspects that must be clarified and corrected.⁸ Regarding evidence in the Tribunal of Appeal, it provides that, “[for] a full review of the trial or sentence issued by the trial court, through the judgment appeals recourse, the Tribunal, at the request of the party, will have the power to examine the record of evidence presented at the trial, as long as it is necessary, pertinent and useful for the goals of the appeal, the object of the case or for the verification of an offense. The same procedure would be applied with everything the accused says.” Also, Law 8.837 states that regarding testimony evidence and expert witnesses that, exceptionally, it shall be given directly before the Tribunal of Appeal, as well as in circumstances under which certain evidence can be considered to be new. Additionally, it provides for the possibility for said Tribunal of Appeal to use the available documentation system, so as to more readily monitor what happened in the trial court.⁹ The Tribunal of Appeal would determine the legality and grounds of the claims made during the appeal proceedings, so as to assess that the way the trial judges weighed the evidence and on what they based their decision.¹⁰ Finally, it regulates everything related to the order of the Tribunal of Appeal and the **retrial**;¹¹ and,

⁶ Cf. Article 458.- Appealable Orders, Code of Criminal Procedure, reformed by Article 4 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process”

⁷ Cf. Article 459.- Origin of the Recourse of Appeal, Code of Criminal Procedure, reformed by Article 4 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

⁸ Cf. Article 462.- Processing, Code of Criminal Procedure, reformed by Article 4 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

⁹ Cf. Article 464.- Evidence in Appeals of Judgment, Code of Criminal Procedure, reformed by Article 4 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

¹⁰ Cf. Article 465.- Examination and resolution, Code of Criminal Procedure, reformed by Article 4 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

¹¹ Cf. Article 465. - Examination and Resolution, *supra* note 10, and Article 466.- Referring trial, Code of Criminal Procedure, reformed by Article 4 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

c) it modified the judicial review proceeding, which shall act against the judgment issued by the tribunals of appeal¹²: i) when the existence of contradictory orders issued by said tribunals are alleged, or by said tribunals and by the Court of Criminal Review,¹³ or ii) when the judgment does not comply with or erroneously applies a substantive or procedural legal precept.¹⁴

12. The representatives took positive note of the sanction made on April 29, 2010 by the Legislative Assembly of Costa Rica to the “Law for the Creation of Appeal Proceedings for Judgments, additional amendments to the provisions of appeals and implementation of new orality rules in criminal proceedings,” which became the Law of the Republic No. 8.837 after its publication in the “La Gaceta”, Costa Rica’s Official State Newspaper, on June 9, 2010. Also, they stated that although “full compliance with this chapter of the Judgment will only be achieved when the new procedural system gains complete practical enforcement,” it must, however, be assumed that the State will apply this system appropriately and in good faith. Also, they manifested that “with the introduction of the new procedural system, the State has complied formally with that set forth by the Judgment and that any divergence that may arise during the application of said system would relate to general compliance with duties that Costa Rica must undertake in accordance with the Convention, rather than the execution of the Judgment on the [present case].” Finally, the representatives stated that with “the complete and definitive execution of the Judgment, [...] Costa Rica honors once again its recognized commitment to the international protection of human rights.”

13. The Inter-American Commission “evaluat[ed] the progress stemming from the approval of the Law No. 8.837 and consider[ed] that it incorporates elements taken into account by the Court in its [J]udgment regarding the scope of Article 8(2)(h) [...] of the American Convention.” Also, it observed that, in relation to this progress, it is necessary to assess its practical implementation, since the Commission “has a great number of petitions related to the issue set forth in the present operative paragraph of the [J]udgment.”

14. The Tribunal positively values the various measures adopted by Costa Rica to comply with the Judgment of the present case, fundamentally, taking into account the high complexity of the material—the system of appeals for criminal matters—and the measures which are necessary to comply with this goal. Notwithstanding the difficulties, since the issuance of the Judgment, the State adopted various measures in order to advance toward full compliance with its provisions. Accordingly, the Inter-American Court viewed the approval of Law No. 8.503 “Law of Opening of Criminal Cassation” (hereinafter “Law of Opening”) positively and the fact that said law was approved one year and seven months after the notification of the Judgment. Also, the Tribunal valued that the Judicial Power adopted “immediate measures,” even before the approval of the Inaugural Law, so as to bring judicial practice in to line with the provisions of the Judgment.¹⁵

¹² Cf. Article 467.- Appealable Orders, Code of Criminal Procedure, reformed by Article 5 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

¹³ Cf. Article 468.- Motives, Code of Criminal Procedure, reformed by Article 5 of the “Law of Creation of Recourses of Appeal of Judgments, other reforms to the regimen of challenges and implementation of new rules of orality in the criminal process.”

¹⁴ Cf. Article 468.- Motives, Code of Criminal Procedure, *supra* note 13.

¹⁵ Cf. *Case of Herrera Ulloa v. Costa Rica*, Supervision of Compliance of Judgment. Order of the Court of July 9, 2009, Considering Clause twenty-eight.

15. On this occasion, the Court also positively views the actions of the State that considered it necessary to strengthen the amendments implemented by the Inaugural Law, and, *motu proprio*, initiated a new process of legal reform, which concluded with the approval of Law. No. 8.837. Through this law, in addition to maintaining the judicial review recourse, an appeals proceeding for criminal judgments is created which, *inter alia*: a) provides for the revision of a judgment before a superior tribunal; b) consists of a simple procedure, free of major formalities, that avoids any requirements or restrictions that infringe upon the essence of the right to appeal, and c) makes it possible to fully weigh up all the issues debated and analyzed by the trial court.

16. The Inter-American Court concludes that, by ensuring increased monitoring of judgments issued by a trial court in criminal law matters at the domestic level, Costa Rica has fully complied with operative paragraph five of the Judgment, and thus, concludes the present case. The future application of the appeal proceeding does not concern the supervision of compliance with the case of Herrera Ulloa.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its powers of supervision of compliance with its decisions, pursuant to Articles 67 and 68(1) of the American Convention on Human Rights, Article 30 of the Statute, and Article 31(1) of its Rules of Procedure,

DECLARES:

1. That in accordance with the provisions set in paragraphs 10, 14, 15, and 16 of the present Order, the State has fully complied with the operative paragraphs of the Judgment issued in the present case. These operative paragraphs stipulate that the State shall:

A) nullify, in every respect, the November 12, 1999 judgment of the Criminal Court of the First Judicial Circuit of San José, as provided for in paragraphs 195 and 204 of the Judgment (*operative paragraph four of the Judgment*), and

b) bring its domestic legal system in to line with the provisions of Article 8(2)(h) of the American Convention on Human Rights, in conjunction with Article 2. (*operative paragraph five of the Judgment*).

2. That, consequently, the Republic of Costa Rica has fully complied with the Judgment issued on July 2, 2004, in the case of Herrera Ulloa, in accordance with that set forth in

Article 68(1) of the American Convention on Human Rights, that obliges the State Parties to the American Convention to comply with the judgments issued by the Court.

AND RESOLVES:

1. To conclude the case of Herrera Ulloa, given that the Republic of Costa Rica has fully complied with the provisions of the Judgment issued by the Inter-American Court of Human Rights on July 2, 2004.
2. To close the present case.
3. To communicate this Order to the General Assembly of the Organization of American State during its next ordinary period of sessions through the 2010 Annual Report of the Inter-American Court of Human Rights.
4. To Secretariat of the Inter-American Court of Human Rights shall notify the Republic of Costa Rica, the Inter-American Commission on Human Rights, and the representatives of the victim of this present order.

Diego García-Sayán
President

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So directed,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary