

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF SEPTEMBER 22, 2006\***

**CASE OF LORI BERENSON-MEJÍA V. PERU**

**MONITORING COMPLIANCE WITH JUDGMENT**

**HAVING SEEN:**

1. The Judgment on the merits, reparations and legal costs issued on November 25, 2004 (hereinafter "the Judgment") by the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), whereby the Tribunal declared, *inter alia*:

unanimously, [that]

1. [t]he State violated the right to personal integrity enshrined in Articles 5(1), 5(2) and 5(6) of the American Convention on Human Rights, as relating to Article 1(1) thereof, to the detriment of Mrs. Lori Berenson, on account of the detention conditions to which she was submitted at the Yanamayo imprisonment facility, in the terms of paragraphs 98 through 109 of the [...] Judgment.

unanimously, [that]

2. [t]he State violated Articles 9, 8(1), 8(2), 8(2) (b), (c), (d), (f) and (h) and 8(5) of the American Convention on Human Rights, in connexion with Article 1(1) thereof, to the detriment of Mrs. Lori Berenson, as regards the proceedings before the military courts, in the terms of paragraphs 113 through 121, 139 through 150, 158 through 161, 166 through 168, 183 through 186, 191 through 194 and 198 through 199 of the [...] Judgment.

[b]y six votes to one, [that]

3. [i]t has not been proved that the State has violated, to the detriment of Mrs. Lori Berenson, Articles 9, 8(1), 8(2), 8(2) (b), (c), (d), (f), and (h), 8(4) and 8(5) of the American Convention on Human Rights, in connexion with Article 1(1) thereof, as regards the proceedings before the ordinary courts, in the terms of paragraphs 124 through 128, 151 through 156, 162 through 164, 169 through 181, 187 through 189, 195 through 196 and 200 through 209 of the [...] Judgment.

Judge Medina Quiroga dissenting.

[b]y six votes to one, [that]

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\* Judge Oliver Jackman informed the Court that, for reasons beyond his control, he would be unable to attend the deliberation of this Order. Judge Diego García-Sayán, a Peruvian national, excused himself from hearing the instant case, pursuant to sections 19(2) of the Statute and 19 of the Rules of Procedure of the Court.

4. [t]he State failed to comply, at the time when the military proceedings were followed against Mrs. Lori Berenson, with the duty established under Article 2 of the American Convention, in the terms of paragraphs 218 through 226 of the [...] Judgment.

Judge Medina Quiroga dissenting.

AND [, UNANIMOUSLY,] DECID[ED] THAT:

1. [T]he State must have its domestic legislation amended to conform with the standards of the American Convention, in the terms of paragraphs 233 and 234 of the [...] Judgment.

2. [The] Judgment constitutes, in and of itself, a form of reparation, in the terms of paragraph 235 of the [...] Judgment.

3. [T]he State must publish, in the *Diario Oficial* (Official Gazette) and in another national daily newspaper, both the Section of this Judgement entitled "Proven Facts" and the operative paragraphs of the [...] Judgment, in the terms of paragraph 240 of the [...] Judgment.

4. [T]he State must provide Mrs. Lori Berenson with adequate and specialized medical care, in the terms of paragraph 238 of the [...] Judgment.

5. [T]he State must waive, in favor of Mrs. Lori Berenson, the debt imposed as reparation for pecuniary damages established under civil law in favor of the State, in the terms of paragraphs 239 and 245 of the [...] Judgment.

6. [T]he State must adopt, forthwith, the measures necessary for having detention conditions in the Yanamayo penal facility conform to international standards, to transfer to other prisons those who, on account of their personal conditions, cannot be held at the heights where the aforesaid imprisonment facility is located, and to report every six months to this Court on such changes, in the terms of paragraph 241 of the [...] Judgment.

7. [T]he State must pay Ms. Rhoda Berenson and Mr. Mark Berenson the amount fixed in paragraph 243 of the [...] Judgment for legal costs and expenses, in the terms of paragraphs 244 through 246 of the [...] Judgment.

8. [T]he State must effect reimbursement of legal costs and expenses pursuant to paragraph 243 of the [...] Judgment, within a six-month time limit, as from the date the [...] Judgment has been served upon it, as it has been set forth in paragraph 245 of [the] Judgment.

9. [T]he State may discharge its pecuniary obligations by tendering United States Dollars or an equivalent amount in the national currency of the State, to be figured out at the New York, USA, exchange rate between both currencies on the day prior to the day payment is effected.

10. [th]e payment ordered for legal costs and expenses in the [...] Judgment shall not be affected, reduced or conditioned by tax reasons, be they present or future, in the terms of paragraph 245 of the [...] Judgment.

11. [S]hould the State fall into arrears with its payments, interest shall be paid on the amount owed, at the banking default interest rate current in Perú.

12. [I]f the beneficiaries of payments for legal costs and expenses are not able to receive the monies within the established term of one year, as from the date the notice of judgment is served upon them, due to causes attributable to them, the State shall deposit said amounts in an account in the name of the beneficiaries, or draw a certificate of deposit from a reputable Peruvian bank, in the terms of paragraph 246 of the [...] Judgment.

13. [i]t will monitor full compliance with [the] Judgment and will close the instant case once the State has thoroughly implemented the provisions therein. The State shall, within a year, as from the date [the] Judgment be served upon it, submit to the Court a first report on the measures adopted in compliance therewith, in the terms of paragraph 247 of the [...] Judgment.

2. The Judgment on the Request for Interpretation of the Judgment on the merits, reparations and legal costs handed down by the Court in June 23, 2005 wherein it decided, unanimously:

1. [T]o dismiss, on the grounds of its not being in order, the request for interpretation of the Judgment on the merits, reparations and legal costs, dated November 25, 2004 in the Case of Lori Berenson-Mejía, filed by the representatives of the victim and her relatives [; and]

2. [T]o continue monitoring compliance with the Judgment on the Merits, Reparations and Legal Costs dated November 25, 2004 in the Case of Lori Berenson-Mejía, under the terms set forth in paragraph 247 of said judgment.

3. The communications filed by the Illustrated State of Perú (hereinafter "the State") on June 14, 2005, August 26, 2005, December 6, 2005, January 18, 2006, January 19, 2006, February 3, 2006 and March 29, 2006, whereby it reported, *inter alia*, that:

a) in connection with the obligation of having its legislation amended to conform with the standards of the American Convention:

i. it promulgated, by means of Legislative Order No. 957 of July 22, 2004, the new *Código Procesal Penal* (Code of Criminal Procedure) that would enter in force in the different *Distritos Judiciales* (Court Districts) in the country according to the Official Calendar approved on October 6, 2005; and

ii. it created the *Comisión Especial Multisectorial encargada de la Incorporación de la Normativa Antiterrorista Internacional* (Special Multi-Sector Commission in charge of Incorporating International Rules on Anti-Terrorism), the aim of which is to propose draft bills to enact into national statutes the provisions in international instruments against terrorism.

b) in connection with the obligation to publish in the *Diario Oficial* (Official Gazette) and in another national daily newspaper, both the Section entitled "Proven Facts" and the operative paragraphs of the Judgment, the State published the pertinent parts of the Judgment en el *Diario Oficial "El Peruano"* ("El Peruano" Official Gazette) and in national daily newspaper "El Comercio", and caused the same sections to be published in the electronic portal of the Ministry of Justice;

c) in connection with the obligation to provide Mrs. Lori Berenson with adequate and specialized medical care, as well as special food, the State has had the victim checked medically and psychologically, and points out that she shows a good health condition and, her background of vascular problems, dyspepsia and chronic low back pain notwithstanding, she is physically, psychologically and emotionally stable, she maintains good interpersonal relations and participates normally in work and sports activities; furthermore, the mild climate in the region where the Huacariz imprisonment facility is

located has been beneficial for her health evolution, as far as her vascular problem is concerned;

d) in connection with the obligation to waive, in favor of the victim, the debt imposed as reparation for pecuniary damages established under civil law in the Judgment handed down by the *Sala Nacional de Terrorismo* (National Terrorism Chamber) on June 20, 2001, amounting to one hundred thousand Nuevos Soles, the State had complied with such order, as it was published in the *Diario Oficial "El Peruano"* ("El Peruano" Official Gazette), by means of *Resolución Suprema* (Supreme Resolution) No. 001-2006-JUS of January 16, 2006;

e) in connection with the obligation to adopt the measures necessary for having detention conditions in the Yanamayo imprisonment facility conform to international standards, the State pointed out that:

i. it holds a population of 52 inmates;

ii. the penitentiary conditions in which they are held are the applicable ones under the ordinary conditions of imprisonment pursuant to the *Código de Ejecución Penal* (Penal Enforcement Code) and the Rules and Regulations thereunder;

iii. such conditions afford inmates the possibility of receiving visits from family and friends three times a week for a minimum period of eight hours a day and of communicating with their lawyers from Monday through Friday for a period of no less than six hours a day, besides the possibility of moving about the rooms in their wing from 06.00 hours through 18.00 hours in the yards and hallways, from 18.00 hours through 21.00 hours in the hallways and from 21.00 hours on in closed quarters; and

iv. measures have been adopted in order to preserve the inmate's health, they can resort to a permanent medical service every day during the 12 daytime hours and to a nursing service covering 24 hours a day.

f) in connection with the obligation to pay Ms. Rhoda Berenson and Mr. Mark Berenson the amount fixed for legal costs and expenses, including default interest accrued to date, the State had effected such payments.

4. The communications filed by the representatives of the victim and her next of kin (hereinafter "the representatives") on November 3, 2005, January 5, 2006 and July 21, 2006, whereby they stated that:

a) in connection with the obligation of having the domestic legislation of Peru amended to conform with the standards of the American Convention:

i. the new *Código Procesal Penal* (Code of Criminal Procedure) promulgated by the State does not imply amending substantive legislation, on the contrary, it violates the *Constitución Política del Perú* (Political Constitution of Peru), by giving the *Policía Nacional* (National Police) powers that go beyond the provisions therein and

that run contrary to the right every citizen has not to be detained but upon an order by a judge, except when caught in the act of perpetrating an offense; and

ii. as far as substantive legislation regarding terrorism is concerned, no change has been effected and, to the contrary, it is threatened to harden such legislation even further. Besides, the statute must be amended to establish a more proportional enforcement of punishments. Lastly, laws No. 28726 and 28730, promulgated in May 2006, violate the Peruvian Constitution by ignoring the proportionality principle and the double jeopardy principle.

b) in connection with the obligation to provide Mrs. Lori Berenson with adequate and specialized medical care, as well as special food, the State had provided nothing but general examinations, and the victim's family had had to continue providing specialized treatment;

c) in connection with the obligation to waive, in favor of the victim, the debt imposed as reparation for pecuniary damages established under civil law in the Judgment handed down by the *Sala Nacional de Terrorismo* (National Terrorism Chamber) on June 20, 2001, amounting to one hundred thousand Nuevos Soles, it has taken the State more than a year to adopt the resolution whereby such debt was waived; and

d) in connection with the obligation to adopt the measures necessary for having detention conditions in the Yanamayo penal facility conform to international standards, the State has failed to point out which improvements it has effected in the aforementioned imprisonment facility.

5. The communications filed by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on January 20, 2006, March 3, 2006 and May 12, 2006, whereby it observed that:

a) in connection with the obligation to have its domestic legislation amended to conform with the standards of the American Convention, the information filed by the State sheds no light on the scope of anti-terrorist legislation and on whether it conforms to the Convention, for which reason it should be met for the Court to require the State to provide detailed information on the matter;

b) in connection with the obligation to publish in the *Diario Oficial* (Official Gazette) and in another national daily newspaper, both the Section entitled "Proven Facts" and the operative paragraphs of the Judgment, the State has complied with the aforementioned obligation;

c) in connection with the obligation to provide Mrs. Lori Berenson with adequate and specialized medical care, as well as special food, it would be met to require the State to inform on whether the specialized treatment in favor of the victim is being provided at the expense of the State;

d) in connection with the obligation to waive, in favor of the victim, the debt imposed as reparation for pecuniary damages established under civil law in the Judgment handed down by the *Sala Nacional de Terrorismo* (National

Terrorism Chamber) on June 20, 2001, amounting to one hundred thousand Nuevos Soles, the State has complied with the aforementioned obligation;

e) in connection with the obligation to adopt the measures necessary for having detention conditions in the Yanamayo penal facility conform to international standards, the State should provide additional information in order to report which are the specific measures have been carried out for the purpose of improving the conditions within the imprisonment facility and in what situation is the medical consultation office taking care of the inmates to be found, as well as on whether they have the possibility of accessing medical care of their own as an alternative to the one provided by the physician at the imprisonment facility; and

f) in connection with the obligation to pay Ms. Rhoda Berenson and Mr. Mark Berenson the amount fixed for legal costs and expenses, including default interest accrued to date, the State has adopted measures aimed at complying with such payment, but verification of whether the aforesaid payment included the appropriate amount for default interest is still pending.

**CONSIDERING:**

1. That it is an inherent attribute of the jurisdictional functions of the Court to monitor compliance with its decisions.
2. That Peru has been a State Party to the American Convention since July 28, 1978, and accepted the compulsory jurisdiction of the Court on January 21, 1981.
3. That on November 25, 2004 the Court handed down the Judgment on the merits, reparations and legal costs in the instant case (*supra* Having Seen clause No. 1).
4. 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.” To this end, the States must ensure the implementation of the decisions in the Court’s judgments at the domestic level.<sup>1</sup>
5. That in view of the definitive and unappealable nature of the Judgments of the Court, pursuant to Article 67 of the American Convention, the State must comply with them promptly and completely.
6. That the obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must fulfill 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, for reasons of an internal nature, fail to

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<sup>1</sup> Cf. *Case of the "Five Pensioners"*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3; and *Case of the "Juvenile Reeducation Institute"*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3.

assume international responsibility when already established.<sup>2</sup> The treaty obligations of the States Parties are binding for all the powers and organs of the State.

7. 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 is applicable regarding not only to the substantive norms of human rights treaties (that is to say, the ones containing provisions about the protected rights), but also to the procedural norms, such as those referring to compliance with the decisions of the Court. These obligations must be interpreted and applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>3</sup>

8. That the States Parties to the Convention that have accepted the compulsory jurisdiction of the Court have the duty to comply with the obligations ordered by the Court. In such sense, Peru must adopt all the provisions necessary in order to effectively comply with the provisions of the Court in the Judgment of November 25, 2004 (*supra*, Having Seen clause No. 1). Such obligation includes the State's duty to report to the Court on the provisions adopted to comply with the measures ordered by the Court in the aforementioned Judgment. The State's prompt compliance with this obligation to inform the Court about the manner in which it is complying with each one of the measure ordered by the Court is fundamental for assessing the status of compliance with the judgment as a whole.

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9. That when monitoring full compliance of the Judgment on the merits, reparations and legal costs in the instant case, and after considering the information brought forth by the State, by the Commission and by the representatives in their briefs on compliance with the Judgment (*supra* Having Seen clauses No. 3 through 5), the Court has examined with which provisions in the aforementioned Judgment the State has complied, as well as those with which compliance is still pending.

10. that the representatives did not file the information requested by the Secretariat of the Court relating to compliance with the requests in operative paragraphs three, regarding to the obligation to publish the pertinent excerpts from the Judgment, and seven and eleven, regarding to the payment of compensation for legal costs and expenses sustained in court. On account of the foregoing, this Tribunal will assess compliance with such obligations on the basis of the information provided by the State and by the Commission.

11. That the State has complied with the obligation to:

- a) publish in the *Diario Oficial* (Official Gazette) and in another national daily newspaper, both the Section entitled "Proven Facts" and the operative paragraphs of the Judgment, for such excerpts have been published in the

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<sup>2</sup> Cf. *Case of the "Five Pensioners"*, *supra* note 1, Considering clause No. 7; *Case of Bámaca-Velásquez*, *supra* note 1, Considering clause No. 5, and *Case of the "Juvenile Reeducation Institute"*, *supra* note 1, Considering clause No. 5.

<sup>3</sup> Cf. *Case of the "Five Pensioners"*, *supra* note 1, Considering clause No. 8; *Case of Bámaca-Velásquez*, *supra* note 1, Considering clause No. 6, and *Case of the "Juvenile Reeducation Institute"*, *supra* note 1, Considering clause No. 6.

*Diario Oficial "El Peruano"* ("El Peruano" Official Gazette) and in the national daily newspaper *"El Comercio"* (*third operative paragraph in the Judgment of November 25, 2004*) (*supra* Having Seen clauses No. 3(b) and 5(b);

b) waive, in favor of Mrs. Lori Berenson, the debt imposed as reparation for pecuniary damages established under civil law in favor of the State (*fifth operative paragraph in the Judgment of November 25, 2004*) (*supra* Having Seen clauses No. 3(d), 4(c) and 5(d); and

c) pay Ms. Rhoda Berenson and Mr. Mark Berenson the amount fixed in paragraph 243 of the Judgment, for legal costs and expenses, including default interest on such amount (*seventh and eleventh operative paragraphs in the Judgment of November 25, 2004*) (*supra* Having Seen clauses No. 3(f) and 5(f).

12. That the Court considers it essential for the State to file additional and updated information on the following provisions, in order to determine whether there has been full compliance thereof:

a) the requirement in the first operative paragraph of the Judgment, in connection with the obligation to have Peruvian domestic legislation amended to conform with the standards of the American Convention (*supra* Having Seen clauses No. 3(a), 4(a) and 5(a)). Specifically, the State shall report on the amendments that may have been made in substantive, as well as procedural, anti-terrorist legislation, as from the date the Judgment was served upon it;

b) the requirement in the fourth operative paragraph of the Judgment, in connection with the obligation to provide Mrs. Lori Berenson with adequate and specialized medical care, for in the information brought forth it is not specified whether the specialized treatment of the victim is being provided at the expense of the State (*supra* Having Seen clauses No. 3(c), 4(b) and 5(c); and

c) the requirement in the sixth operative paragraph of the Judgment, in connection with the obligation to have the detention conditions at the Yanamayo imprisonment facilities conform to international standards (*supra* Having Seen clauses No. 3(e), 4(d) and 5(e)).

13. That the Court will consider the general compliance status of the Judgment on the merits, reparations and legal costs of November 25, 2004, once it has received the pertinent information on the measures with which compliance is still pending.

**THEREFORE:**

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

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

**DECLARES:**



1. That, in accordance with what has been pointed out in the eleventh Considering clause of the instant Order, the State has complied with the obligation to:

- a) publish in the *Diario Oficial* (Official Gazette) and in another national daily newspaper, both the Section entitled "Proven Facts" and the operative paragraphs of the Judgment (*third operative paragraph in the Judgment of November 25, 2004*);
- b) waive, in favor of Mrs. Lori Berenson, the debt imposed as reparation for pecuniary damages established under civil law in favor of the State (*fifth operative paragraph in the Judgment of November 25, 2004*); and
- c) pay Ms. Rhoda Berenson and Mr. Mark Berenson the amount fixed in paragraph 243 of the Judgment, for legal costs and expenses, including default interest on such amount (*seventh and eleventh operative paragraphs in the Judgment of November 25, 2004*).

2. That it will continue the procedure on monitoring compliance with the points on which compliance is pending, to wit:

- a) having domestic legislation amended to conform with the standards of the American Convention (*first operative paragraph in the Judgment of November 25, 2004*);
- b) provide Mrs. Lori Berenson with adequate and specialized medical care (*fourth operative paragraph in the Judgment of November 25, 2004*); and
- c) having detention conditions in the Yanamayo penal facility conform to international standards, transferring to other prisons those who, on account of their personal conditions, cannot be held at the heights where the aforesaid imprisonment facility is located, and report every six months to this Court on such changes (*sixth operative paragraph in the Judgment of November 25, 2004*).

**AND DECIDES:**

1. To require the State to adopt all measures necessary to comply effectively and promptly with the provisions ordered by the Court in the Judgment on the merits, reparations and legal costs of November 25, 2004, with which compliance is pending, pursuant to 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, by January 20, 2007, at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court, with which compliance is still pending, in accordance with what is pointed out in the Twelfth Considering clause and in the second Declares clause of the instant Order.

3. To request the representatives of the next of kin of the victims and the Inter-American Commission on Human Rights to submit their observations on the report of the State mentioned in the preceding operative paragraph within four and six weeks, respectively, as from the receipt thereof.

4. To continue monitoring the provisions of the Judgment on the merits, reparations and legal costs of November 25, 2004, with which compliance is pending.

5. To request the Secretariat of the Court to serve this Order upon the State, upon the Inter-American Commission, and upon the representative of the victim and her next of kin.

Sergio García-Ramírez  
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Sergio García-Ramírez  
President

Pablo Saavedra-Alessandri  
Secretary