

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 20, 2010**

**CASE OF VARGAS ARECO V. PARAGUAY
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on merits, reparations, and costs (hereinafter “the Order”) delivered on September 26, 2006, by the Inter-American Court of Human Rights (hereinafter “the Court” or the “Inter-American Court”).

2. The Order of the Court of October 30, 2008, whereby, *inter alia*, it declared:

[...]

2. To keep the procedure open to monitor compliance with the outstanding points in this case, namely:

a) To undertake, in full observance of judicial guarantees and within a reasonable time, all actions necessary to identify, prosecute and punish all those responsible for violations committed in this case (*operative paragraph nine of the Judgment*),

b) To make a public apology and acknowledge the international responsibility, regarding the violations set forth in the Judgment, in the community where the family of Gerardo Vargas Areco lives, in the presence of this family and State civil and military authorities. As part of said act, a plaque shall be installed in memory of the child Vargas Areco (*operative paragraph ten of the Judgment*),

c) To provide medical, psychological and psychiatric care, as appropriate, to De Belén Areco, Pedro Vargas, and John, Mary Elizabeth, Patrick, Daniel, Doralicia, Mario, Mary Magdalene, Sebastian and Jorge Ramon—all of whom have Vargas Areco as their surname—, if required, and for as long as necessary (*operative paragraph eleven of the Judgment*),

d) To implement training programs and courses on human rights for all members of the Paraguayan Armed Forces (*operative paragraph twelve of the Judgment*),

e) To publish in a nationally circulated newspaper, on just one occasion, the chapter on the proven facts of the Judgment, without corresponding footnotes, and the operative paragraphs of the Judgment (*operative paragraph thirteen of the Judgment*),

f) To adapt domestic legislation on voluntary recruitment of children under 18 years in the armed forces of Paraguay, in accordance with the relevant international standards (*operative paragraph fourteen of the Judgment*); and,

g) To pay moratorium interest for the compensation awarded as pecuniary and non-pecuniary damages, as well as reimbursing costs and expenses (*operative paragraphs fifteenth, sixteenth and seventeenth of the Judgment*).

3. The briefs of February 4, April 3 and December 30, 2009, and March 15, 2010, whereby the Republic of Paraguay (hereinafter "the State" or "Paraguay") reported on the compliance with the Judgment (*supra* Having Seen 1).

4. The briefs of September 14, 2009, and May 4, 2010, whereby the representatives of the victims (hereinafter "the representatives") presented its observations on the reports submitted by the State (*supra* Having Seen 3).

5. The communications from May 8, 2009, and May 13, 2010, whereby the Inter-American Commission on Human Rights (hereinafter "the Commission" or "Commission") presented its observations on the reports submitted by the State (*supra* Having Seen 3).

6. The notes of the Secretary of February 19 and March 24, 2010, whereby, following the instructions of the plenary of the Court, it responded to the query submitted by the State on December 30, 2009, on "the criteria used by [the Court] to calculate the accrued interest in [the] case."

CONSIDERING THAT:

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

2. Paraguay is a State Party to the American Convention on Human Rights (hereinafter "the Convention") since August 24, 1989, and acknowledged the jurisdiction of the Court on March 26, 1993.

3. In accordance with the provisions of Article 67 of the Convention, the judgments of the Court should be promptly, and fully, implemented by the State. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the Court's ruling in any case to which they are parties." To this end, States should ensure that the provisions provided for in the Court's Judgments are implemented domestically.¹

4. The obligation to comply with the decisions of the Tribunal corresponds to a basic principle of the law on the responsibility of the State, supported by international jurisprudence, under which states must abide by its international treaty obligations in good faith (*pacta sunt servanda*) and, as noted by the Court and as stipulated in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, neglect its pre-established international responsibility. The conventional obligations of States Parties bind all powers and State bodies.² The

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Heliodoro Portugal V. Panama*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause three, and *Case of Goiburú et al. V. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 19, 2009, Considering Clause three.

² Cf. *International Responsibility in issuance and application of laws in violation of the Convention (art. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause 5, and *Case of Heliodoro Portugal*, *supra* note 1, Considering Clause four.

conventional obligations of State Parties are binding on all branches and bodies of the State.³

5. The States Parties to the Convention must ensure compliance with the provisions and their effectiveness (*effet utile*) within their respective legal systems. This principle applies not only to the substantive norms of human rights treaties (i.e., provisions on protected rights), but also in relation to procedural rules, such as those relating to compliance with decisions of the Court. These obligations must 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 treaties⁴.

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6. Regarding the obligation to undertake, in full compliance with judicial guarantees and in a reasonable time period, all necessary actions to identify, prosecute and punish, if applicable, all those responsible for the violations committed in this case (*operative paragraph nine of the Judgment*), the State provided information on the case file titled "Aníbal López Insfrán and Eduardo Riveros on Homicide in Villarica," begun on December 31, 1989. In this regard, it reported on a recourse to appeal and annulment that was filed by the defense, whereby on July 11, 2005, the Court of Appeal of Villarica ruled to "dismiss the right to not respond to the grievances of the appellant," and, subsequently, in a decision and Judgment of September 13, 2006, "a) withdrew the annulment recourse and b) confirmed the SD No. 01 of March 2, 2005, whereby the citizen was sentenced to one year in prison." The State argued that "[t]he reopening of the case, to investigate the involvement or otherwise of persons other than Lopez Insfrán and Riveros would constitute a violation of constitutional rights and guarantees in criminal matters, against which the State [...] cannot proceed, not even with the explicit order of an international body." The State also considered that a recourse for review would not be appropriate, "unless procedurally beneficial for those convicted, which does not correspond in [this] case." It also indicated that "it is also impossible to reopen the case for to the punishable act of torture, because [it would] constitute double jeopardy," since according to the State "torture had already been investigated as part of the case file for the investigation into the crimes against the child Vargas Areco." In short, the State manifested "[its] inability to effectively comply with [this point] of the Judgment."

7. According to the representatives, the information provided by the State "makes it possible to conclude that the proceeding has not been reopened and no proceeding has been undertaken to investigate the torture that the child Vargas Areco was subjected to." They also noted that the State "cannot invoke exemption from its obligation to investigate and punish through Judgments issued in proceedings that did not comply with the standards of the American Convention." Thus, it must take concrete steps to conduct an investigation in accordance with these parameters.

³ Cf. *Case of CastilloPertuza et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Court of November 17, 1999. Series C No. 59, Considering Clause three; *Case of Baena Ricardo et al. v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause five, and *Case of Heliodoro Portugal, supra* note 1, Considering Clause four.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Yatama, supra* note 2, Considering Clause six, and *Case of Heliodoro Portugal, supra* note 1, Considering Clause 5.

8. The Commission noted that the State "has not provided relevant information to evidence progress towards complying with this point." Regarding the alleged inability of the State to investigate the involvement of persons other than those already prosecuted, it stated that, "it does not understand how investigating the liability of persons other than those already prosecuted can affect the constitutional rights of these people." With regard the alleged impossibility of starting a new case file on torture charges, it noted that "the Court has already ordered the reopening of the investigation [...] because [...] investigations into the causes of death did not comply with the minimum standards of diligence to determine whether an act of torture had been committed or not." Therefore, it requested the Court to clearly state that, "arguments such as those raised by the State [are] not enforceable."

9. In light of the statements made by the parties to the Court, it is necessary to have up-to-date information and a detailed response from the State on the observations made by the representatives and the Commission concerning compliance with this aspect of the Judgment.

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10. Regarding the State's obligation to make a public apology and acknowledge international responsibility -in relation to the violations set forth in the Judgment- in the community where the family of Gerardo Vargas Areco lives and in the presence of said family and civil and military State authorities, as part of which a plaque was installed in memory of the child Vargas Areco (*paragraph ten of the Judgment*), the State reported that on December 15, 2008, a public apology and recognition of international responsibility was made in the City of Bella Vista Norte, in the presence of civil and military authorities, as well as parents, relatives and legal representatives of the family, and was presided over by the Minister of National Defense.

11. The representatives confirmed that the public ceremony to apologize and acknowledge international liability was adjusted to the terms stipulated by the Judgment. Furthermore, they recognized "the willingness expressed by the State to facilitate the transfer and the presence of representatives of the victims in the community where the Vargas Areco family lives." Therefore, it considered that this reparation measure had been complied with.

12. The Commission noted "with satisfaction the information submitted by the State."

13. The President noted that the parties agree as to the fulfillment of operative paragraph ten of the Judgment. Therefore, this matter will be referred to the Court so that, when appropriate, its compliance shall be considered.

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14. Regarding the State's obligation to provide medical, psychological and psychiatric, as appropriate, to De Belén Areco, Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián y Jorge Ramón, all of which have the surname Vargas Areco, if required and for as long as necessary (*operative paragraph eleven of the Judgment*), the State reported on the signing of a

Cooperation Agreement between the Ministry of National Defense and the Asociación de Familiares Víctimas del Servicio Militar Obligatorio [Association of Relatives of Victims of Obligatory Military Service] (AFAVISEM) on July 30, 2008, which provides for the provision medical care to the soldiers who were injured and effected by Compulsory Military Service, as well as to the families of deceased soldiers, by the Central Hospital of the Armed Forces of the Nation. Furthermore, it indicated that the Human Rights Unit of the Ministry of Public Health and Social Welfare was created, which "channels requirements that arise in the area of health," and "already has the background facts for the case, so as to offer appropriate treatment when faced by any eventuality."

15. The representatives noted that "[t]he information provided by the State does not account for effective compliance" as "an agreement exclusively for the "parents, spouses and minors of military personnel killed or left disabled in the act of duty" and limited only to certain medical benefits [...] does not satisfy the State's obligations." They further stated that the hospital is based in Asunción, thus it "can hardly be useful for the provision of efficient care to victims in this case who live in Bel[[]]a Vista Norte, some 570 km away from Asuncion." Finally, it indicated that at a meeting held in February 2009, the State pledged to oversee the health care in the public hospital in the city of Pedro Juan Caballero.

16. The Commission noted that the State must take significant action to give profound and adequate attention to all the victims identified in this case, and noted "worryingly that more than three years after the Judgment were issued, the State had failed to comply with these important reparation measures."

17. The President believes that the Court needs more information on the measures taken to effectively comply with the reparation measure concerning medical, psychological and psychiatric care, including the form and manner in which the due treatment will be provided to the victims, and the difficulties encountered and how they can be resolved.

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18. With regard to the obligation to establish training programs and courses on human rights for all members of the Paraguayan Armed Forces (*operative paragraph twelve of the Judgment*), the State reported that under the "Chief Program on Human Rights and Humanitarian Law Education," adopted in 2002⁵, various institutes that make up the Commando Military Institute of Education of the Army have been implementing programs that material on human rights and international humanitarian law. These courses are aimed at officers, cadets, noncommissioned officers (NCO's), and NCO and soldiers candidates. The topics are addressed "through lectures, talks, conferences, seminars, discussions and assessments," and use the basic text "ME 33-400 Humanitarian Standards Manual - Human Rights and International Humanitarian Law in Armed Forces." Finally, it noted that the educational material titled "Soldier's Guide" and "Human Rights ... everyone's duty" has been distributed.

19. The representatives stated that the information provided by the State does not reveal whether the human rights courses being offered to all students of the various

⁵ Cf. *Case of Vargas Areco v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of October 30, 2009, Considering Clause 25.

military academies. They also noted that the State has not specified if the stages of the courses are annual or biannual, or if they form part of the permanent training curricula of the armed forces. They also indicated that the "Master Program of Education in Human Rights and International Humanitarian Law" was approved in 2002, prior to the Judgment of the Court, and that the reports "refer to the class per[i]ods from 2008, and the information was not up-to-date." They expressed their concern regarding the "apparent exclusion of military commanders from [such courses]."

20. The Commission valued the information provided, however, it noted that the number, or rank, of Armed Forces members trained has not been mentioned, and the State "refers to information from 2008, without any documentation on training programs and courses from 2009 and 2010."

21. The President considers it necessary for the Court to receive up-to-date and specific information on the matter, particularly regarding whether the programs are ongoing, the universe of recipients of these programs and how they were being executed.

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22. Regarding the obligation to publish in a nationally circulated newspaper, on just one occasion, the chapter on the proven facts of the Judgment, without corresponding footnotes, and the operative paragraphs of the Judgment (*operative paragraph thirteen of the Judgment*), the State reported that the publication was made in the La Nation newspaper on October 18, 2007, and it attached a copy.

23. The representatives did not address this point, and the Commission "too[k] note of the information provided by the State [and awaited] the comments of the representatives."

24. The President believes it is essential that the Court have the observations of the representatives regarding compliance with this reparation measure so that the Court can determine its compliance.

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25. Regarding the obligation to adapt domestic legislation on recruitment of children under 18 years in the armed forces of Paraguay, in accordance with the relevant international standards (*operative paragraph fourteen of the Judgment*), the State indicated that it has fully complied with this point. In this regard, in addition to measures already reported ⁶the State said that on May 20, 2008, Law 3485, which amends Law No. 123/52 of CIMEFOR, states in article 10 that "the special courses of Military Instruction and Officer and Reserve Officer Training is aimed at students who are over eighteen years of age."

26. Representatives noted that, "the information provided by the State [...] accounts for the full compliance with [this] obligation." The Commission, meanwhile, valued the report from the State, however, they stressed the need to verify "the

⁶ Cf. *Case of Vargas Areco*, *supra* note 5, Considering Clause 33 and 36.

effective implementation of the amended legislation on voluntary recruitment of children under 18 years of age," which was to waiting for information.

27. The Chairman noted that the parties agree on the compliance with operative paragraph fourteen of the Judgment, as well as on the observations made by the Commission. Therefore, this matter will be referred to the Court so that, when appropriate, it can consider the compliance.

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28. Regarding the obligation to pay moratory interest on the compensation for pecuniary and non-pecuniary damages, and the reimbursement of costs and expenses (*paragraphs fifteenth, sixteenth and seventeenth of the Judgment*), the State argued that, "with regard to interest, an inquiry conducted by the State [to the Court] is being processed," "and it seeks information regarding the criteria used [to] determine the interest."

29. Representatives noted that, "[t]he outstanding payments are the bank moratory interest for Paraguay, accrued between the date that all the debt should have been paid and the day when it was paid, as well as the interest that continues to run on the outstanding moratory interest."

30. The Commission noted that "the State continues to refer to the inquiry made to the Court on the calculation of the respective amounts, even though the inquiry was acquitted by the Court;" therefore, it was waiting for the State to perform the necessary steps to proceed with the respective payment.

31. The President advised that by means of the notes of the Secretariat of the Court, the inquiry made on December 30, 2009, by the State of Paraguay (*supra* Having Seen 6) was replied to. ⁷. Teniendo en cuenta lo anterior, es necesario que la Corte cuente con más información sobre el pago de los intereses moratorios pendientes.

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32. Having monitored compliance with the Judgment, the Presidency considers that further information is required on State actions to implement the outstanding operative paragraphs.

33. In this case it is appropriate to convene a closed hearing so that the Court receive, in accordance with the provisions of Article 69 of its Rules of

⁷ In this regard, the State was informed that "to calculate moratory interest for the payment of compensation for pecuniary and non-pecuniary damages, two timeframes must be considered: 1) the time elapsed between the deadline for compliance with the main obligation to pay and the date on which the payment is made, and 2) the time between the date of such payment and the date when all of the default interest generated is paid. [...] Regarding the first time period, the sum of the compensation plus moratory interest for non-timely payment must be paid. Regarding the second point, the difference between the actual payment and the effective debt (the capital plus interest for the three month delay in payment) must be paid, a difference on which penalty interest is still applied until the date of the full payment of the debt"

Procedure,⁸ complete and up-to-date information on compliance with the reparations measures provided for in the Judgment and hear the respective observations from the Inter-American Commission and the representatives.

THEREFORE:

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

in exercising the powers of the Court to monitor compliance with its decisions, and in accordance with Article 33, 67, 68(1) of the American Convention on Human Rights, Articles 24(1), 25(1) and 25(2) of the Statute of the Court and Articles 4, 15(1), 31 and 69 of the Rules of Procedure of the Court,

RESOLVES:

1. To summon the Inter-American Commission on Human Rights, representatives of the victims and the State of Paraguay to a private hearing to be held at the headquarters of the Inter-American Court on September 2, 2010, between 15:00 and 16: 30, as part of the LXXXVIII Regular Session of the Court, to obtain information from the State on compliance with the outstanding reparation measures ordered in the Judgment on merits, reparations and costs issued in this case, and to hear the respective observations of the Inter-American Commission and the representatives of the victims.
2. To request the Secretariat of the Court to notify the State, the Inter-American Commission and the representatives of the victims of this Order.

⁸ Rules of Procedure of the Court passed during the LXXXV Ordinary Period of Sessions, held from November 16 to 28, 2009.

Diego García Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García Sayán
President

Pablo Saavedra Alessandri
Secretary