

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF JULY 12, 2007**

CASE OF GARCÍA ASTO AND RAMÍREZ ROJAS V. PERÚ

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on the merits, reparations and costs delivered on November 25, 2005 (hereinafter "the Judgment"), by the Inter-American Court of Human Rights (hereinafter "the Court" or the "Inter-American Court"), whereby the Court:

DECIDE[D]:

unanimously:

1. To admit the State of Peru's acknowledgment of those facts that took place prior to September 2000, in terms of paragraphs 52 to 60 of the [...] Judgment.

DECLARE[D]:

unanimously, that:

2. The State violated, to the detriment of Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas, the Right to Personal Liberty, the Right to a Fair Trial, and the Right to Judicial Protection embodied in Articles 7(1), 7(2), 7(3), 7(5), 7(6), 8(1), 8(2), 8(2)(f), 8(5), and 25 of the Convention, in relation to Article 1(1) thereof, during the first judicial proceedings to which they were subjected, in accordance with paragraphs 104 to 115, 130 to 134, 149 to 154, and 157 to 162 of the [...] Judgment.

In a vote of six to one, that:

3. The State violated, to the detriment of Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas, the Right to Personal Liberty embodied in Article 7(3) of the Convention, in relation to Article 1(1) thereof, during the second judicial proceedings against them, in accordance with paragraphs 117 to 125 and 136 to 144 of the [...] Judgment.

Ad hoc Judge, Santistevan de Noriega, partially dissenting.

Unanimously, that:

* Judge Diego García-Sayán, of Peruvian nationality, excused himself from participating in the present case, in accordance with Articles 19(2) of the Court's Statute and 19 of the Court's Rules of Procedure.

4. The State violated, to the detriment of Mr. Wilson García Asto, during the second judicial proceedings against him, the Right to a Fair Trial embodied in Articles 8(1) and 8(2)(c) of the Convention, in relation to Article 1(1) thereof, in accordance with paragraph 155 of the [...] Judgment.

Unanimously, that:

5. The State violated, to the detriment of Mr. Urcesino Ramírez Rojas, during the second judicial proceedings against him, the Right to a Fair Trial embodied in Article 8(1) of the Convention, in relation to Article 1(1) thereof, in accordance with paragraphs 163 to 172 of the [...] Judgment.

Unanimously, that:

6. The State violated, to the detriment of Mr. Wilson García Asto and Urcesino Ramírez Rojas, during the initial judicial proceedings against them, Article 9 of the Convention, in relation to Article 1(1) thereof, in accordance with paragraphs 197 to 202 and 205 to 208 of the [...] Judgment.

In a vote of six to one, that:

7. A violation of Article 9, in accordance with paragraphs 179 to 195 of the [...] Judgment, was not proven.

Judge Medina Quiroga dissenting.

Unanimously, that:

8. The State violated, to the detriment of Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas, the Right to Humane Treatment embodied in Articles 5(1) and 5(2) of the Convention, in relation to Article 1(1) thereof, in accordance with paragraphs 220 to 229, 232 and 233 of the [...] Judgment.

Unanimously, that:

9. The State violated, to the detriment of Mr. Napoleón García Tuesta, Ms. Celia Asto Urbano, Ms. Elisa García Asto, Mr. Gustavo García, Ms. María Alejandra Rojas, Mr. Marcos Ramírez Álvarez, Ms. Santa Ramírez Rojas, Mr. Pedro Ramírez Rojas, Ms. Filomena Ramírez Rojas, Mr. Julio Ramírez Rojas, Ms. Obdulia Ramírez Rojas, Mr. Marcelino Ramírez Rojas, and Ms. Adela Ramírez Rojas, the rights embodied in Article 5(1) of the Convention, in relation to Article 1(1) thereof, in respect to paragraphs 230, 231, 234, and 235 of the [...] Judgment.

Unanimously, that:

10. [The] Judgment constitutes *per se* a form of reparation, in terms of paragraph 268 thereof.

AND ORDER[ED]:

Unanimously, that:

11. The State shall provide Mr. Wilson García Asto with free medical and psychological care, including free medicine, through its health services, in terms of paragraph 280 of the [...] Judgment.

12. The State shall provide Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas the opportunity to have professional training and update, through the granting of scholarships, in terms of paragraph 281 of the [...] Judgment.

13. The State shall pay Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas, within one year, the material damages specified in paragraphs 261, 262, and 263 of the [...] Judgment, in respect to paragraphs 288, 291, 292, 294, and 295 thereof.

14. The State shall pay Mr. Wilson García Asto, Mr. Urcesino Ramírez Rojas, Mr. Napoleón García Tuesta, Ms. Celia Asto Urbano, Ms. Elisa García Asto, Mr. Gustavo García, Ms. María Alejandra Rojas, Mr. Marcos Ramírez Álvarez, Ms. Santa Ramírez Rojas, Mr. Pedro Ramírez Rojas, Ms. Filomena Ramírez Rojas, Mr. Julio Ramírez Rojas, Ms. Obdulia Ramírez Rojas, Mr. Marcelino Ramírez Rojas and Ms. Adela Ramírez Rojas, within one year, the immaterial damages specified in paragraphs 270, 271, 273, and 275 of the [...] Judgment, in respect to paragraphs 255, 288, 290, 291, 292, 293, 294, and 295 [...] thereof.

15. The State shall pay, within the period of one year, for the costs and expenses accrued during both the domestic and international proceedings, the quantity specified in paragraph 287 of the [...] Judgment to Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas, in terms of paragraphs 289, 291, 292, 294, and 295 thereof.

16. The State shall publish once, within six months, in the Official Gazette and in another newspaper of nation-wide circulation, the section relative to the proven facts of the Judgment without the corresponding footnotes and the operative paragraphs of the Judgment, in terms of paragraph 282 thereof.

17. The Court will monitor the full compliance with this Judgment and will regard the present case closed once the State has fully carried out the terms of this Judgment. Within the period of one year, which shall commence with the notification of this Judgment, the State shall submit a report to the Court specifying the measures that have been implemented to achieve compliance, in respect to paragraph 296 of the [...] Judgment.

[...]

2. The communication submitted by the State of Peru (hereinafter "the State", "the Peruvian State" or "Peru") on March 21, 2007, whereby the State reported that:

a) regarding the responsibility to provide free medical and psychological care to Mr. Wilson García Asto through its health services, including the provision of free medicine, that the State has coordinated the procedures to be followed in order to provide medical care to Mr. García Asto with the Ministry of Health. Mr. García Asto should seek membership to the Integral Health Insurance ("*Seguro Integral de Salud*") establishment that has jurisdiction over his residence and bring with him the Judgment of the Court that confirms his status as a victim of human rights violations as well as his National Identity Card;

b) regarding the obligation to provide Mr. García Asto and Urcesino Ramírez Rojas the opportunity to have professional training and update, through the granting of scholarships, the State has requested the collaboration of the Ministry of Education to implement the professional update and training of the victims;

c) regarding the obligation to pay, within one year, the amounts determined in the Judgment in compensation for material damages, immaterial damages and costs and expenses, that the State has made the payments, with the exception of \$7,400.00 to Mr. Urcesino Ramírez Rojas and the creation of a \$25,000.00 trust in the name of Marcos Ramírez Álvarez remain pending;

d) regarding the obligation to publish in the Official Gazette and in a newspaper of nation-wide circulation, the relevant parts of the Judgment, that the State published on March 5, 2006 in the Official Gazette "El Peruano" the section regarding proven facts and the operative paragraphs of the Judgment of the present case. The publication in another newspaper of nation-wide circulation remains pending, and

e) regarding the new criminal proceeding against Mr. Urcesino Ramírez Rojas, that "even though it is not a matter of the monitoring of compliance with the Judgment, it is important to note that in domestic criminal proceedings Mr. Ramírez Rojas was found guilty and condemned." On May 2, 2006, the National Criminal Chamber ("*Sala Penal Nacional*") found Mr. Urcesino Ramírez Rojas guilty of Disturbance of the Peace –Terrorism by Association– and condemned him to fourteen years, five months and 26 days in prison. Due to the time Mr. Ramírez Rojas had already spent in prison, his sentence was considered served. Mr. Ramírez Rojas filed an appeal to annul said Judgment. On November 11, 2006, the case file was sent to the Supreme Court of Justice and is pending Judgment.

3. The communications presented by the representatives of the victims and their next of kin (hereinafter "the representatives") on February 9, 2006, May 29, 2006, December 28, 2006, January 22, 2007, and April 23, 2007, whereby the representatives stated, *inter alia*:

a) regarding the responsibility to provide free medical and psychological attention to Mr. Wilson García Asto through its health services, including the provision of free medicine, that:

i) on September 14, 2006, the Ministry of Health issued Mr. García Asto a credential that authorized him to receive health and psychological care, including the provision of free medicine;

ii) as a result of many steps taken by the victim and his family, Mr. García Asto was authorized for medical attention for only one year and has received medical attention in the Cayetano Heredia National Hospital since mid-November 2006;

iii) since Ministerial Resolution No. 485-2006 only referred to medical and psychological attention, even though the Court's Judgment included the provision of free medicine, the victim was denied medicine at first in the Cayetano Heredia Hospital, and

- iv) after steps taken personally before the Hospital's Director Office, the hospital informally authorized the dispensing of free medicine. However, in reality since the hospital did not have his medicine Mr. García Asto ultimately had to pay for it.
- b) regarding the obligation to provide Mr. García Asto and Mr. Urcesino Ramírez Rojas the opportunity to have professional training and update, through the granting of scholarships, that:
- i) the State has not adopted any measures to take care of said costs and Mr. García Asto and his family took care of all the costs necessary for his reincorporation into the *Universidad Nacional de Callao* and to finish his university studies in systems engineering;
 - ii) on October 25, 2006 Mr. Ramírez Rojas informed the State of his interest in completing a Masters in Economics during the 2007-2008 school year at the *Universidad Nacional Mayor San Marcos*, but he did not receive a response from the State, and
 - iii) several communications have been sent to the National Council of Human Rights ("*Consejo Nacional de Derechos Humanos*") asking for a working meeting to deal with the granting of scholarships for Mr. Ramírez Rojas, but no response has been given.
- c) regarding the obligation to pay within one year, Mr. Wilson García Asto y Mr. Urcesino Ramírez Rojas, the amounts determined in the Judgment in compensation for material damages, that:
- i) in February 2006 the State paid Mr. García Asto the compensations ordered by the Court and thereby complied with this part of the Judgment, and
 - ii) Mr. Ramírez Rojas received part of his compensation for material and immaterial damages, with \$7,400.00 remaining pending.
- d) regarding the obligation to pay Wilson García Asto, Urcesino Ramírez Rojas, Napoleón García Tuesta, Celia Asto Urbano, Elisa García Asto, Gustavo García, María Alejandra Rojas, Marcos Ramírez Álvarez y Santa Ramírez Rojas, Pedro Ramírez Rojas, Filomena Ramírez Rojas, Julio Ramírez Rojas, Obdulía Ramírez Rojas, Marcelino Ramírez Rojas and Adela Ramírez Rojas, within one year, the amounts determined in the Judgment in compensation for immaterial damages, that:
- i) in February 2006 the State paid Mr. García Asto and his family the compensations ordered by the Court and has thereby complied with this part of the Judgment;
 - ii) Mr. Ramírez Rojas received part of his compensation for material and immaterial damages, with the exception of US\$ 7,400.00;

- iii) the State paid Mr. Ramírez Rojas' next of kin the compensations ordered by the Court, with the exception of that owed to his son Marcos Antonio Ramírez Álvarez, and
 - iv) it only remains that the State pay the compensation of US\$ 25,000.00 to Marcos Ramírez Álvarez. Since he has reached the age of majority it is no longer necessary to set up a trust in his name.
- e) regarding the obligation to pay within one year, the amount determined in the Judgment for the costs and expenses accrued in the domestic and international proceedings before the inter-American system of protection of human rights, that:
- i) in February 2006, the State paid Mr. Wilson García Asto the amount ordered by the Court for costs and expenses and therefore the State has complied with this part of the Judgment, and
 - ii) Mr. Ramírez Rojas has been paid this portion of the Judgment along with his compensation for material and immaterial damage, with the exception of US\$7,400.00.
- f) regarding the obligation to publish in the Official Gazette and in other newspapers of nation-wide circulation, the relevant parts of the Judgment, that:
- i) the State published the relevant parts of the Judgment in the Official Gazette, however, the publication in a newspaper of nation-wide circulation is still pending, and
 - ii) the representatives ask the Court to instruct the State that before publishing the parts of the Court's Judgments in a newspaper of nation-wide circulation, the State inform Mr. García Asto and Mr. Ramírez Rojas of the date it will be published so that the reparation measure can fulfill its intended purpose.
- g) regarding the new criminal proceedings against Mr. Urcesino Ramírez Rojas, that:
- i) although the Judgment of the Court did not expressly order the termination of all violations, it tacitly includes the State's obligation to cease all acts that generated the violations in the second trial against Mr. Ramírez Rojas, in particular of Articles 7(3) and 8(1) of the Convention;
 - ii) this aspect is part of the monitoring of compliance since, as stated in paragraphs 173 and 175 of the Judgment, "the Court extended the effects of its power to monitor the compliance of the Judgment to the verification of compliance by the State of due process of law, with all guarantees and defenses, in favor of Mr. Urcesino Ramírez Rojas";
 - iii) on January 24, 2006 the National Terrorism Chamber ("*Sala Nacional de Terrorismo*") decided to grant Mr. Ramírez Rojas provisional freedom effective as of January 26, 2006;

iv) on May 2, 2006 the Judgment was handed down by the National Criminal Chamber of Terrorism ("*Sala Penal Nacional de Terrorismo*") during a public judicial proceeding. Said Judgment violates and challenges that which was resolved in not only the operative paragraphs, but also in the Considerings of the Court's Judgment;

v) Mr. Ramírez Rojas filed an appeal to annul said Judgment, but he had not been able to access a copy of the Judgment or the revision of the case file in the procedural term;

vi) the criminal proceedings against Mr. Ramírez Rojas were joined with other proceedings without the necessary binding connection given that they emanated from completely different reports;

vii) the District Attorney ("*Fiscal Superior*") accused Mr. Ramírez Rojas of terrorism and for being part of the terrorist organization The Shining Path. This accusation was based on the validation of proof from the first criminal proceedings that was annulled as a result of the *habeas corpus* motion filed by his defense;

viii) the facts which founded the prosecution of Mr. Ramírez Rojas contradict the facts considered proven by the Court regarding his detention and the police investigation, and

ix) the evidence to which the National Chamber of Terrorism ("*Sala Nacional de Terrorismo*") refers could not be used in a new case against Mr. Ramírez Rojas without violating the American Convention on Human Rights and ignoring the jurisprudence of the Court, since a substantiating element of the accusation can not be put forward if it has not been obtained under the minimal guarantees.

4. The communication presented by the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") on May 16, 2007, whereby the Commission stated, *inter alia*:

a) regarding the obligation to provide free medical and psychological care to Mr. Wilson García Asto through its health services, including the provision of free medicine, that it values the advances made to give Mr. García Asto medical and psychological attention and hopes that the State carries out the necessary actions to overcome the hurdles that have blocked the free provision of medicine;

b) regarding the obligation to provide Mr. García Asto and Mr. Urcesino Ramírez Rojas the opportunity to have professional training and update, through the granting of scholarships, that the State should comply with this reparation in light of the interest manifested by the victims;

c) regarding the obligation to pay, within one year, the amounts determined in the Judgment for compensation for material damages, immaterial damages, and costs and expenses, that the State has paid the amounts due with the exception of the pending payment of US\$7,400.00 to Mr. Ramírez Rojas and the payment of compensation for Marcos Ramírez Rojas, who has

reached the aged of majority and therefore it is no longer necessary to create a trust;

d) regarding the obligation to publish in the Official Gazette and in another newspaper of nation-wide circulation, the relevant parts of the Judgment, that the State has partially complied with this obligation because the publication in another newspaper of nation-wide circulation is pending, and

e) regarding the new criminal proceedings against Mr. Urcesino Ramírez Rojas, that "it is important to monitor this issue, in accordance with the terms of the Judgment and the principles of effectiveness, and the Commission trusts that the Supreme Court of Peru, when deciding the pending appeal, will observe [...] the rights of Mr. Ramírez Rojas to be judged according to due process of law, with full guarantees of a hearing and defense for the accused".

CONSIDERING:

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

2. That Peru has been a State Party to the American Convention since July 28, 1978 and that it accepted the binding jurisdiction of the Court on January 21, 1981.

3. That on November 25, 2005, the Court delivered the Judgment on the merits, reparations, and costs in this case (*supra* Having Seen paragraph 1).

4. That, pursuant to Article 68(1) of the American Convention, "[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, States are required to guarantee implementation of the Court's rulings at the domestic level.¹

5. That, given the final and not-subject-to-appeal nature of the Court's judgments, as established in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

6. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of the international responsibility of the States, as supported by international case law, under which States are required to comply with the 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 treaty obligations of States Parties are binding on all State powers and organs.²

¹ Cf. *Case of the Constitutional Court v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering paragraph third; *Case of Sawhoyamaxa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 02, 2007, Considering paragraph second, and *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 29, 2006, Considering paragraph third.

² Cf. *Case of Baena-Ricardo et al. v. Panama*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2002, Considering paragraphs second and third; *Case of Sawhoyamaxa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment, *supra*

7. That the States Parties to the American Convention are required to guarantee compliance with the provisions thereof and secure their effects (*effet utile*) at the domestic law level. This principle applies not only in connection with the substantive provisions of human rights treaties (i.e. those dealing with the protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.³

8. That those States Parties to the American Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations set by the Court. This obligation includes the State's duty to inform the Court on the measures adopted to comply with this Court's Judgment, as well as in the instant Order. Timely fulfillment of the State's obligation to report to the Court on the manner in which it is complying with each of the aspects ordered by the latter is essential to evaluate the status of compliance in this case.⁴ Furthermore, the OAS General Assembly has reiterated that, with the purpose that the Tribunal can fully comply with the obligation to report about the compliance with its decisions, it is necessary that State Parties timely provide to the Court the information that the latter requests them.⁵

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9. That the Court values the State's efforts to comply with the reparations ordered by this Tribunal in the Judgment on the merits, reparations, and costs in the instant case. However, while monitoring the full compliance with said Judgment, and after analyzing the information provided by the State, Commission, and representatives in their respective communications regarding compliance with the Judgment (*supra* Having Seen paragraphs 2 through 4), the Court observes that the State has only partially complied with each of the points delineated in said Judgment and therefore none of them can be declared completely fulfilled by the State.

10. That the State has provided Mr. García Asto with free medical and psychological attention; however, Mr. García Asto has had to pay for medications, which is one of the State's obligations stipulated in the Judgment (*supra* Having Seen paragraphs 2(a), 3(a) and 4(a)).

note 1, Considering paragraph third, and *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph fifth.

³ Cf. *Case of the Constitutional Court v. Peru*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph sixth; *Case of Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph fourth, and *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph sixth.

⁴ Cf. *Case of Barrios-Altos v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering paragraph seventh; *Case of Yatama v. Nicaragua*. Monitoring Compliance with Judgment, *supra* note 1, Considering paragraph seventh, and *Case of Ricardo Canese v. Paraguay*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2006, Considering paragraph thirteenth.

⁵ General Assembly, Resolution AG/RES. 2292 (XXXVII-O/07) adopted in fourth plenary session, celebrated on June 5, 2007, titled "Observations and Recommendations to the Inter-American Court of Human Rights' Annual Report".

11. That although the State has taken steps toward the implementation of professional training and update for the victims, compliance with this obligation is still pending (*supra* Having Seen paragraphs 2(b), 3(b) and 4(b)).

12. That the State decided to pay the victims all of the monetary reparations ordered by the Tribunal in one sole sum, including compensation for material and immaterial damages as well as reimbursement for costs and expenses. However, both the payment of US\$ 7,400.00 to Mr. Ramírez Rojas and the compensation for Marcos Ramírez Rojas remain pending (*supra* Having Seen paragraphs 2(c), 3(c), 3(d), 3(e) and 4(c)). Since the parties have not specified under which category of reparations the remaining US\$ 7,400.00 owed to Mr. Ramírez Rojas falls, the Tribunal is unable to declare that the State has complied with its obligation to indemnify Mr. Ramírez Rojas. However, the Court considers that the State has complied with the other monetary reparations for the remaining victims, with the exception of the compensation owed to Mr. Marcos Ramírez Rojas. Due to the fact that he has reached the age of majority it is no longer necessary to create a trust in his name (*supra* Having Seen paragraphs 3(d)(iv) and 4(c)).

13. That the State has published the relevant sections of the Judgment in an the Official Gazette, but not in another newspaper of nation-wide circulation (*supra* Having Seen paragraphs 2(d), 3(f) y 4(d)).

14. That with respect to compliance with the requirements for due process of law, with full guarantees of a hearing and defense for the accused, in the new criminal proceeding against Mr. Urcesino Ramírez Rojas, the Court notes that there is a difference of opinion between the parties as to whether this Court is competent to monitor said aspect (*supra* Having Seen paragraphs 2(e), 3(g) and 4(e)).

15. That pursuant to the principle of *compétence de la compétence*, this Court cannot leave it to the parties to determine that which is within the Court's jurisdiction. This decision is a duty that is to be fulfilled by the Court in the exercise of its jurisdictional functions.⁶

16. That paragraphs 173 through 175 of the Judgment indicate the following:⁷

173. The Court observes that the other allegations by the Commission and the representatives with respect to Article 8 of the Convention to the detriment of Mr. Urcesino Ramírez Rojas relate to matters that shall be resolved in the new process that is on course at the moment. In that respect, the Court considers that it does not have competence to supersede the national judge in the evaluation of evidence in a particular case.

174. As indicated previously, the State "is obligated, by virtue of its general duties to respect rights and to give them domestic legal effects (arts 1(1) and 2 of the Convention), to ensure that violations such as those that have been declared in the [...] Judgment do not recur in its jurisdiction."

175. Thus, the State must ensure that the new process against Mr. Urcesino Ramírez Rojas complies with the requirements of due process of law, with full guarantees of a hearing and defense for the accused.

⁶ Cf. *Ivcher Bronstein Case*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 31; *Case of Nogueira de Carvalho et al.* Judgment of November, 2006. Series C No. 161, para. 43, and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 45.

⁷ The footnotes have been omitted.

17. That, even if the respect to due process of law in the new proceedings against Mr. Ramírez Rojas is part of the considerations of the merits in the Judgment delivered in the present case,⁸ said aspect does not relate to the reparation measures ordered in the operative paragraphs thereof.⁹

18. That paragraphs 174 and 175 of the Judgment indicate the general duties of every State Party to the American Convention, such as Peru, to respect the rights and freedoms recognized therein and to ensure the free and full exercise of those rights and freedoms to all persons subject to their jurisdiction, in accordance with Article 1(1) of the Convention.

19. That pursuant to paragraph 173 of the Judgment, specifically with respect to monitoring compliance with said Judgment, the assessment of possible violations occurred in the new proceedings against Mr. Ramírez Rojas that were not analyzed by the Tribunal in its Judgment is excluded from the jurisdiction of this Court. The assessment of said possible violations would be a matter that the Tribunal can assess under its contentious jurisdiction, through the submission of a new application, and not through the mechanism of monitoring compliance with its Judgments.

20. That notwithstanding the aforementioned, this Court considers pertinent to recall, as per paragraphs 174 and 175 of the Judgment, that it is a duty of every State Party to the American Convention to ensure that the requirements of due process of law, with full guarantees of a hearing and defense for the accused, are respected in legal proceedings followed under its jurisdiction.

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21. Regarding the aforementioned, the Court considers it essential that the State provide additional updated information regarding the following points, in order for the Court to determine whether the State has fully complied with said obligations:

a) that which is required in operative paragraph eleventh of the Judgment, in relation with the obligation to provide free medical and psychological care to Mr. Wilson García Asto through its health services, including the free provision

⁸ Cf. *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 185, that in turn cites the judgment of the Constitutional Court of Peru in the case of Arturo Castillo Chirinos, Court Record N° 2730-06-PA/TC, dated July 21, 2006, paras. 12 and 13: "[...] The binding nature of the judgments of the [Inter-American Court] is not limited to the operative section (which implicates only the State that is a party in the proceeding), but also is extended to its foundation or *ratio decidendi* [...]"

⁹ The Court has repeatedly indicated that, with respect to interpretations of its judgments, the Court can clarify the operative paragraphs or considerations, "provided that such considerations have a bearing on the operative paragraphs." In this sense, cf. *Case of Acevedo Jaramillo. Request of Interpretation of the Merits, Reparations and Costs* (Art. 67 of the American Convention on Human Rights) Judgment of November 24, 2006. Series C No. 157, para. 27; *Case of the Serrano Cruz Sisters. Request of Interpretation of the Merits, Reparations and Costs* (Art. 67 of the American Convention on Human Rights). Judgment of September 9, 2005. Series C No. 131, para. 14; and *Case of Lori Berenson Mejía. Request of Interpretation of the Merits, Reparations and Costs* (Art. 67 of the American Convention on Human Rights) Judgment of June 23, 2005. Series C No. 128, para. 12. Cf. also, Judgment C-180/06 of the Constitutional Court of Colombia from March 8, 2006, which indicated that "such effects on constitutional matters support not only the same decision contained in the operative paragraphs of the judgment, but also the juridical reasons contained in the considerations that are related directly and wholly (*ratio decidendi*)".

of medicine (*supra* Having Seen paragraphs 2(a), 3(a) y 4(a) and Considering paragraph tenth);

b) that which is required in operative paragraph twelfth of the Judgment, regarding the obligation to provide to Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas the possibility of professional training and update through the granting of scholarships (*supra* Having Seen paragraphs 2(b), 3(b) y 4(b) and Considering paragraph eleventh);

c) that which is required in operative paragraphs thirteenth, fourteenth, and fifteenth of the Judgment regarding the payment of material and immaterial damages, costs and expenses to Mr. Urcesino Ramírez Rojas, and the obligation to pay Mr. Marcos Ramírez Álvarez the amount stated for immaterial damages, considering he has reached the age of majority and it is no longer necessary to create a trust in his name (*supra* Having Seen paragraphs 2(c), 3(c), 3(d), 3(e), 4(c) and Considering paragraph twelfth). In this regard, it is important that the parties provide the Tribunal with specific information regarding the obligations which have been paid by the State and those which are still pending compliance, and

d) that which is required in operative paragraph sixteenth of the Judgment, regarding the obligation to publish once in another newspaper of nation-wide circulation the proven facts and operative paragraphs of the Judgment, without the corresponding footnotes (*supra* Having Seen paragraphs 2(d), 3(f) y 4(d) and Considering paragraph thirteenth).

22. That the Court shall consider the general state of compliance with the Judgment on the merits, reparations and costs of November 25, 2005 after it receives the relevant information on the pending measures of 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, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

DECIDES:

1. To call upon the State to adopt such measures as may be necessary to promptly, effectively, and fully comply with the measures of reparation ordered by the Court in the Judgment on the merits, reparations and costs of November 25, 2005, as established in Article 68(1) of the American Convention on Human Rights.

2. To request that the State submit a report to the Inter-American Court of Human Rights, no later than by September 28, 2007, specifying all such measures as may

have been adopted to fully comply with the reparations ordered by this Court, as established in the Considering paragraph twentieth first of the present Order.

3. To call upon the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

4. To continue monitoring those aspects of the Judgment on the merits, reparations and costs of November 25, 2005, that are still pending compliance.

5. To request that the Secretariat of the Court notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims and their family members.