

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 17, 2010
XIMENES LOPES V. BRAZIL
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on merits, reparations and costs of July 4, 2006 (hereinafter "the judgment"), delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court").
2. The Orders on monitoring compliance with judgment of May 2, 2008, and September 21, 2009. In the latter, the Inter-American Court declared that it would maintain open the procedure of monitoring compliance in relation to the operative paragraphs that establish the State's obligation to:
 - a) Guarantee, within a reasonable time, that the domestic proceedings to investigate and, if appropriate, punish those responsible for the facts of this case are effective (*sixth operative paragraph of the judgment*), and
 - b) Continue implementing an education and training program for the medical, psychiatric, psychological, nursing, and nursing auxiliary personnel and for all those persons connected with the provision of mental health care, in particular, with regard to the principles that should govern the treatment of individuals with mental disabilities, in accordance with the international standards in this regard and those established in the judgment (*eighth operative paragraph of the judgment*).
3. The brief of January 29, 2010, and its attachment, in which the Federative Republic of Brazil (hereinafter "the State" or "Brazil") provided information on the measures of reparation that remained pending.
4. The briefs of September 22, 2009, and April 1, 2010, and their respective attachments in with the representatives of the victim and his next of kin (hereinafter "the representatives") presented additional information on the case and submitted their observations on the report presented by the State, respectively.
5. The brief of May 11, 2010, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its observations on the State's report and the observations of the representatives.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Brazil has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 25, 1992, and, pursuant to its Article 62, accepted the compulsory jurisdiction of the Court on December 10, 1998.

3. 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 State must ensure implementation at the national level of the Court’s decisions in its judgments.¹

4. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly.

5. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law on the international responsibility of the State, supported by international case law, according to which a State must comply with 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 invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.³

6. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (namely, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

7. The States Parties to the Convention that have accepted the contentious jurisdiction of the Court are bound to fulfill the obligations established by the Court. This obligation includes the State’s duty to inform the Court of the measures adopted to comply with the aspects ordered by the Court in the said decisions. The timely observance of the State obligation to advise the Court how it is complying with each aspect ordered by the latter is fundamental in order to assess the status of compliance with the judgment as a whole.⁵

¹ Cf. *Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Cesti Hurtado v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, third considering paragraph, and *El Amparo v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, third considering paragraph.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Cesti Hurtado v. Peru*, *supra* note 1, fifth considering paragraph, and *El Amparo v. Venezuela*, *supra* note 1, fifth considering paragraph.

³ Cf. *Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, third considering paragraph; *El Amparo v. Venezuela*, *supra* note 1, fifth considering paragraph, and *Serrano Cruz Sisters v. El Salvador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, fifth considering paragraph.

⁴ Cf. *Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Cesti Hurtado v. Peru*, *supra* note 1, sixth considering paragraph, and *El Amparo v. Venezuela*, *supra* note 1, sixth considering paragraph.

⁵ Cf. *“Five Pensioners” v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph; *García Prieto et al. v. El Salvador. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, fifth considering paragraph, and *Ivcher Bronstein v. Peru. Monitoring compliance with*

*
* *
*

8. Regarding the obligation to ensure that the domestic proceedings to investigate and, if appropriate, punish those responsible for the facts of this case are effective (*sixth operative paragraph of the judgment*), the State advised that, on October 7, 2009, members of the *Advocacia-General de la Unión* (AGU), and representatives of the Ministry of Foreign Affairs (MFA), the Ministry of Health, and the Special Human Rights Secretariat of the Presidency of the Republic (SEDH) held meetings with the representatives in order to discuss compliance with the judgment. On December 7, 2009, the representatives of AGU and MFA met with the authorities of the Judiciary and the Public Prosecutor's office of the state of Ceará in charge of the judicial proceedings relating to the instant case in order to discuss the need to comply with the judgment. Furthermore, Brazil recalled that, on June 29, 2009, the Third Court of the District of Sobral, Ceará, delivered a judgment sentencing the accused in Criminal Action No. 2000.0172.9186-1, regarding the facts of this case. A remedy (*recurso en sentido estricto*) and an appeal (*recurso de apelación*) were subsequently filed; consequently, the criminal action is currently being examined by the Court of Justice of the state of Ceará (TJ-CE). The State added that deliberation of the remedy was included on the agenda for the decision of the TJ-CE and that, when the remedy has been decided, the appeal that was filed will also be included on the said court's agenda.

9. The representatives confirmed the information provided by the State concerning the meeting held on October 7, 2009. In addition, they recalled that, almost 11 years after the victim's death, no final judgment has been delivered in the legal actions relating to the facts of the instant case. Although they acknowledged the State's current efforts to discuss full compliance with this operative paragraph with them, and also to follow up on the measures together with the competent authorities of the state de Ceará, the representatives emphasized that this obligation had only been partially fulfilled.

10. The Commission observed that there had been some "progress in the criminal proceedings and the delivery of judgment in first instance"; nevertheless, "it was [still] awaiting updated information on the outcome of the pending remedies, the culmination of both proceedings, and the execution of the judgments."

11. The Inter-American Court appreciates the different measures taken by the State to further the criminal proceedings in relation to the death of Damião Ximenes Lopes, so as to ensure that they are decided as quickly as possible. Similarly, it considers that the meeting held on October 7, 2009, between the State authorities and the representatives (*supra* considering paragraphs 8 and 9) in order to discuss, *inter alia*, the advance in the domestic proceedings to investigate and, if appropriate, punish those responsible for the facts, was a positive step.

12. Nevertheless, the Court observes that, despite the delivery of the said criminal judgment, this ruling is not final. According to the information provided by the State and confirmed by the representatives, the remedies filed are pending deliberation by the Court of Justice of the state of Ceará. In this regard, Brazil advised that one of them, the remedy, had already been included on the agenda of the said court and would be decided at the beginning of the year. Accordingly, in its next report, Brazil

judgment. Order of the Inter-American Court of Human Rights of November 24, 2009, seventh considering paragraph.

should present detailed updated information on the status of the said criminal action; in particular, on any progress in decisions concerning the said remedies.

*
* *
*

13. Regarding the obligation to continue implementing an education and training program for all those who provide mental health care; particularly on the principles that should govern the treatment of individuals suffering from mental disabilities in accordance with the relevant international standards and those established in the judgment (*eighth operative paragraph of the judgment*), the State reiterated information presented in previous briefs and submitted a chronological account of the measures it has taken since 2002 to train mental health professionals. In this regard, among other measures, it referred again to the National Policy of Permanent Health Care Education (PNEPS), to the *Universidad Abierta del Sistema Único de Salud* [Open University of the Single Health Care System] and to the Emergency Plan to Expand Access to Prevention of and Attention to problems arising from Alcohol and other Drugs. It added that the Ministry of Health is seeking to stimulate the measures it considers priority by means of norms and financial resources, and is working to expand the offer of mental health care training under the Ministry's permanent education policy. Accordingly, the State had prepared a list of the universities that offer courses in the area of mental health care and that could offer distance courses; defined the content required to train professionals who work in the area of public health; provided technical support and incentives for the authorities of the federated states and the municipalities to prioritize training in mental health in their respective permanent education plans, and proceeded to analyze the offer and the need to expand medical residency programs, selecting psychiatry as a priority area. Furthermore, it indicated that, during 2009, it had implemented the Pro *Residencia* program and launched an invitation to support medical residency programs, above all in the North, Northeast and West Central regions of the country; it had defined and delivered to the federated states the financial resources for the PNEPS, regulated and supported other courses of Multi-professional Residency in the health sector (RMS) and created the National Program of RMS Grants, among other actions.

14. Regarding "the length, frequency, and number of participants in the said activities," the State indicated that, in general, "the training courses and events are offered on an annual basis and their minimum length responds to the method employed." The length of specialization courses is 360 hours; advanced training courses, 120 hours, and refresher courses, 40 hours. In addition, it advised that "20 specialization courses on mental health care had been held for 838 professionals, corresponding to an investment of R\$15,320,379.47 (fifteen million three hundred and twenty thousand three hundred and seventy-nine reales and forty-seven cents)." It also indicated that, from 2002 to 2008, the permanent training program related to reform of the area of psychiatry trained 9,112 professionals from different Brazilian states. Regarding the obligatory nature of training, it underscored that decentralization is one of the guiding principles of the Single Health Care System (SUS); on this basis, the states and municipalities have autonomy to define measures relating to health care, in line with their needs and particularities, and this includes the implementation of training courses for professionals who are part of the psycho-social attention network. Based on the foregoing, the State asked the Court to declare that the obligation to continue implementing education and training programs for professionals working in the area of mental health care had been fulfilled.

15. The representatives appreciated the mental health care training policies incorporated into the actions of the program to reform of the area of psychiatry. Nevertheless, they stated that these actions were insufficient and did not prevent the repetition of human rights violations in institutions providing attention to people with mental disorders; particularly, in private institutions attached to the SUS. In addition, they indicated that the State: (i) had repeated information that was prior to the judgment, which is not the purpose of the obligation established in the eighth operative paragraph, and (ii) had not provided detailed information on the training courses relating to the purpose of the said operative paragraph. In this regard, they stated that it was essential to know the profession, place of work, and function performed by those who had received the training. They also argued that much of the training mentioned by the State referred to employees working in the extra-hospital network, in the Psycho-social Attention Centers (CAPS) and in other services available in the country. However, they indicated that, according to data from the Health Ministry, there are still 35,426 posts in psychiatric hospitals attached to the SUS.

16. The Inter-American Commission observed that, despite "its acknowledgement regarding the State policy concerning the public policies and programs required to ensure respect for the human rights of those with mental disabilities," the State has still not forwarded the information it was asked to provide in the twentieth considering paragraph of the Order of the Court of September 21, 2009. Specifically, the Commission reiterated that it "considers it necessary to have sufficient information on the education and training programs for the medical, psychiatric, psychological, nursing, nursing auxiliary and all other persons connected with mental health care, the progress made in its implementation, and its relationship with the reparations ordered in the judgment."

17. The Court considered it appropriate to recall that this stage of monitoring compliance concerns the State's obligation, following notification of the judgment, to continue implementing an education and training program for all those person connect to mental health care; in particular, on the principles that should govern the treatment of those who suffer from mental disabilities according to the relevant international standards and those established in the judgment.⁶

18. In its Orders on monitoring compliance of May 2, 2008, and September 21, 2009, the Court asked the State that, of all the existing training activities in the area of mental health care, it restrict itself to providing information on those specific training initiatives whose content related to the matter determined in the judgment, and on the implications of the said initiatives for the beneficiary personnel.⁷ Furthermore, the Court also asked that the information should refer, in particular, to the training of personnel working in the area of mental health care in institutions of the same nature as the one in which the violation occurred in this case; namely, in psychiatric hospitals.⁸

19. The Inter-American Court takes note of the different general initiatives relating to mental health care that the State has implemented, and also of the more specific

⁶ Cf. *Ximenes Lopes v. Brazil. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 21, 2009, eighteenth considering paragraph.

⁷ Cf. *Ximenes Lopes v. Brazil. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 2, 2008, twentieth considering paragraph, and Case of *Ximenes Lopes v. Brazil*, *supra* note 6, twentieth considering paragraph.

⁸ Cf. *Case of Ximenes Lopes*, *supra* note 7, nineteenth considering paragraph, and *Case of Ximenes Lopes*, *supra* note 6, twentieth considering paragraph.

information provided by the State in its latest report. Nevertheless, the State has not forwarded the requested information which would allow the Court to evaluate how “the principles, which should regulate the treatment of those who suffer from mental disabilities according to the relevant international standards and those established in the [...] judgment,” have been included in the program of courses and other training activities on mental health care that have been implemented. Furthermore, even though Brazil mentioned, in general, that different specialization courses in mental health care had been offered that had benefited more than 800 professionals, the State did not specify the content or when the said courses were given; it did not detail the number of advanced and refresher courses offered following the judgment, or the content or the number of professionals who had benefited from them; in addition, it did not specify how many of them work in psychiatric institution with characteristics similar to those of the Guararapes Rest Home (*Casa de Reposo*).

20. Consequently, in order to evaluate how these or other activities are adapted to the measure of reparation ordered in the judgment, the Court reiterates that, in its next report, the State must refer only and specifically to: (i) the training activities, of different levels, implemented following the judgment, and addressed at personnel connected to mental health care in institutions of the same nature as the Guararapes Rest Home (*supra* considering paragraph 18), whose the content refers to the principles that should regulate the treatment of those who suffer from mental disabilities, in accordance with the relevant international standards and those established in the [...] judgment,”⁹ and (ii) the number of participants in these activities.

THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its judgments and in accordance with Articles 33, 62(1), 62(3), 65 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 69 of its Rules of Procedure,¹⁰

DECLARES THAT:

1. As indicated in the twelfth and twentieth considering paragraphs of this Order, the Court will keep open the procedure of monitoring compliance with the points that establish the obligation of the State to:

(a) Guarantee, within a reasonable time, that the domestic proceedings to investigate and, if appropriate, punish those responsible for the facts of this case are effective (*sixth operative paragraph of the judgment*), and

(b) Continue implementing an education and training program for the medical, psychiatric, psychological, nursing, and nursing auxiliary personnel and for all those connected with providing mental health care, in particular, with regard to the principles that should govern the treatment of individuals with mental disabilities, according to the international standards in this regard and

⁹ Cf. *Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, eighth operative paragraph.

¹⁰ The Court's Rules of Procedure approved at its eighty-fifth regular session held from November 16 to 28, 2009.

those established in the judgment (*eighth operative paragraph of the judgment*).

AND DECIDES:

1. To require the State to adopt all necessary measures to comply promptly and effectively with the reparations ordered in the judgment on merits, reparations and costs of July 4, 2006, that are pending, in accordance with the twelfth and twentieth considering paragraphs, and the declaratory paragraph of this Order.
2. To request the State to present to the Inter-American Court of Human Rights, by August 6, 2010, at the latest, a report indicating the measures adopted to comply with the reparations ordered by this Court that are pending, in the terms of the twelfth and twentieth considering paragraphs of this Order.
3. To request the representatives of the victim and his next of kin and the Inter-American Commission on Human Rights to present any observations they deem pertinent on the report of the State mentioned in the preceding operative paragraph, within two and four weeks, respectively, of receiving the State's report.
4. To continue monitoring the aspects pending compliance of the judgment on merits, reparations and costs of July 4, 2006.
5. To require the Secretariat to notify this order to the State, the representatives of the victim and his next of kin, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary