

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

CASE OF CESTI-HURTADO V. PERÚ

COMPLIANCE WITH JUDGMENT*

HAVING SEEN:

1. The Judgment on the merits rendered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on September 29, 1999.
2. The Judgment delivered by the Court on January 29, 2000 regarding the interpretation of the judgment on the merits.
3. The Judgment on reparations rendered by the Court on May 31, 2001.
4. The Judgment delivered by the Inter-American Court on November 27, 2001 regarding the interpretation of the judgment on reparations.
5. The order on compliance with judgment of November 17, 2004, whereby the Court stated:

1. That it will keep the proceedings open to monitor compliance with the following obligations that remain unfulfilled in the instant [case], to wit:
 - a) payment of interest on the amount of compensation for moral damage (*Operative Paragraphs number 2, 3, 4, and 6 of the Judgment of May 31, 2001*);
 - b) investigation of the facts surrounding this case and punishment of the perpetrators (*Operative Paragraph number 5 of the Judgment of May 31, 2001*);
 - c) payment of pecuniary damages (*Operative Paragraph number 1 of the Judgment of May 31, 2001*); and
 - d) annulment of the military proceedings and all effects resulting therefrom (*Operative Paragraph number 8 of the Judgment of September 29, 1999*).

And Decide(ed):

1. To order the State to adopt all such measures as may be necessary to promptly and duly comply with all the requirements ordered by the Court in the Judgment on the merits (September 29, 1999) and in the Judgment on reparations (May 31, 2001), in

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Judge Oliver Jackman did not participate in the deliberation and signing of this Order as he was unable to attend the 72nd Regular Session of the Court for reasons beyond his control.

accordance with the provisions set out in Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, not later than January 31, 2005, a detailed report on the measures adopted in order to comply with the obligation to investigate the facts for the purpose of identifying and punishing those responsible for the human rights violations referred to in the judgment on the merits, and with other reparations ordered by [the] Court that have not been complied with [...].

3. To request the victim, or his representative, if any, and the Inter-American Commission on Human Rights to submit comments on the State report mentioned in the foregoing operative paragraph within a period of four and six weeks respectively, following receipt thereof.

4. To continue monitoring compliance with the orders of the Court pursuant to the Judgments of September 29, 1999 (merits) and May 31 (reparations).

[...]

6. The report submitted by the State of Peru (hereinafter "the State" or "Peru") on February 1, 2005, whereby, after having been granted an extension, it informed that: **(f. 463)**

a) the State requested the General Director of the *Administración del Ministerio de Justicia* (the Administration Office of the Ministry of Justice) to calculate interest accrued "six months after notice" of the Judgment on reparations and to proceed to secure the provision of adequate funds for the payment of default interest on the amount of compensation for moral damage;

b) by means of Order No. 17 A.V 15-2001 of January 30, 2004, the *Sala Penal de la Corte Suprema de Justicia del Perú* (Criminal Chamber of the Peruvian Supreme Court of Justice) upheld the decision rendered by the *Vocal Supremo Instructor* (Investigative Chief Justice) that convicted Mr. Raúl Aurelio Talledo-Valdivieso of abuse of power against Mr. Cesti-Hurtado and sentenced him to a four-year term in prison, the execution of which was suspended for a period of three years, conditioned upon compliance with rules of conduct;

c) *the Secretaría Ejecutiva de la Comisión Nacional de Derechos Humanos* (Office of the Executive Secretary of the National Commission on Human Rights) sent official letters to the *Ministerio de Justicia* (Ministry of Justice) (November 4, 2004), *Ministerio de Economía* (Ministry of Economy) (November 11, 2004), President of the *Fondo Especial de Administración del Dinero Obtenido Ilícitamente en Perjuicio del Estado* (Special Fund for the Administration of Illegally Obtained Money to the Detriment of the State) (hereinafter, "the FEDADOI") (November 17, 2004), the General Director of the *Oficina General de Economía y Desarrollo* (General Office of Economy and Development) (December 10, 2004) and the General Director of the *Administración del Ministerio de Justicia* (Administration Office of the Ministry of Justice) (December 10, 2004) in reference to the payment of the compensation ordered by the Inter-American Court in the instant case, which has not been complied with.

d) On January 18, 2005 the Judiciary informed that the criminal proceedings brought against Mr. Cesti-Hurtado for crimes against the judicial function were closed. In addition, by means of Final Judgment of September 14, 2000 the pre-trial investigation proceedings No. 5296-0117 against Mr. Cesti-Hurtado for the crimes of disobedience, violating the duty and dignity of the

office, neglect and fraud were declared null and the Investigative Judge was ordered to suspend the order limiting freedom of movement and the writ of attachment issued against Mr. Cesti-Hurtado. By means of the Order of October 20, 2004, the *Décimo Tercer Juzgado Penal de Lima* (Thirteenth Criminal Court in and for Lima) dismissed a criminal action brought against Mr. Cesti-Hurtado for his alleged involvement in crimes against the Public Administration committed by public officials, collusion and peculation to the detriment of the State.

7. The comments on the State report submitted by Mr. Cesti-Hurtado on February 21, 2005, and its Appendixes, in which he stated that:

a) to date, the State has not paid default interest on the amount awarded for pecuniary damages;

b) Messrs. Raúl Talledo-Valdivieso and Guido Guevara-Guerra were only convicted for failing to comply with the writ of habeas corpus in favor of Mr. Cesti-Hurtado. No person has been investigated in relation to his irregular detention and deprivation of liberty. In addition, on account of having been regarded as a witness and not as an aggrieved party in the criminal action brought against some of the former members of the *Consejo Supremo de Justicia Militar* (Supreme Council of Military Justice) he has not been notified of the progress of said criminal proceedings; nor has he been able to avail himself of the remedies afforded by law to the parties to a proceeding;

c) the amount payable under the arbitration award must be paid out of FEDADOI's funds. Payment of any compensation awarded by the Inter-American Court has always been made out of FEDADOI's funds, as was the case with the compensation for moral damage in the instant case; however, the procedure for the payment of the compensation for pecuniary damages has been altered by Law No. 27,775. As a result, he has been discriminated against, as a victim, in the instant case in comparison to the treatment accorded to other victims in other cases decided by the Inter-American Court who received payments in timely fashion, and

d) to date, no ruling has been entered to assure Mr. Cesti-Hurtado that "no uncertainty remains about his rights." The criminal record certificate issued by the Judiciary included proceedings pending against him, which adversely affects his employment opportunities. The State report includes information about a fourth proceeding brought against him, of which he has not been notified yet.

8. The State report of March 11, 2005, stating that, by means of Official Letter No. 316-2005-JUS/DM of February 25, 2005, the Ministry of Justice requested the Minister of Economy and Finance to take all necessary steps to process, pursuant to Law No. 27,775, a budget modification to allocate additional funds to enable settlement of all outstanding payments ordered by the Inter-American Court on the part of Peru. The State indicated that the case of Mr. Cesti-Hurtado is among these cases.

9. The brief of May 3, 2005, containing the comments of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on the State report of February 1, 2005 (*supra* Having Seen clause No. 6), in which it stated that:

- a) the victim has not received payment of interest on the compensation awarded for moral damage;
- b) the State has made no reference to Mr. Cesti-Hurtado's statement regarding the fact that he is not considered a victim but a witness in the investigation proceedings relating to the case. Furthermore, the Commission expressed regret over the lack of up-to-date information about the effective and tangible results of the measures adopted to investigate the facts of the instant case;
- c) the State must adopt all such measures as may be necessary to expedite compliance with the arbitration award in accordance with domestic law and the Arbitration Agreement of June 26, 2003; and
- d) the State is under the obligation to immediately and completely resolve the issue of the annulment of the military proceedings and the effects resulting therefrom.

10. The comments of Mr. Cesti-Hurtado of May 24, 2005 on the State report of March 11, 2005 (*supra* Having Seen clause No. 8), in which he stated that:

- a) although the Minister of Justice has sent an official letter to the Ministry of Economy to procure the funds necessary to pay the compensation owed by the State, there has not been any follow-up on said letter;
- b) the default interest payable by the State to the victim and his next of kin was not included in the State report;
- c) a new law on the FEDADOI has been passed that gives priority to the payment of compensation ordered in cases of human rights violations; however, his case has not been resolved despite repeated claim letters and a request for review;
- d) the State continues to protect those responsible for human rights violations committed against him. The duty to investigate, prosecute and punish those responsible for such human rights violations rests with the *ad hoc* Prosecutor's Office for the case of Fujimori-Montesinos; however, the State has not adopted any measures regarding this matter; and
- e) he is awaiting confirmation of the results of the measures taken to have all criminal charges and proceedings regarding this case expunged from his record.

11. The communication of Mr. Cesti-Hurtado of August 10, 2005, whereby he informed the Court that on March 29, 2005 he filed a complaint with a Peruvian court against the State to enforce compliance with the judgments rendered by the Inter-American Court in the instant case and with the Arbitration Award. Moreover, Mr. Cesti-Hurtado informed that the *37º Juzgado Civil de Lima* (Thirty-seventh Civil Court in and for Lima) accepted the complaint and issued a writ of execution on State funds, which were at the Court's disposal. Mr. Cesti-Hurtado also indicated that, as a result, the State launched a major press campaign against him and against the Thirty-seventh Judge.

12. The State report of October 7, 2005 and its Appendixes, in which the State, after having been granted an extension, indicated that:

a) on January 31, 2005, the Director of the Finance Office of the Ministry of Justice provided information on the computation of default interest on the amount of compensation for moral damage owed to Mr. Cesti-Hurtado. Given the time elapsed, this amount should be recalculated at the time of payment;

b) the judgment of January 12, 2005, sentencing Mr. Raúl Aurelio Talledo-Valdivieso to four years in prison and holding the criminal proceedings against Guido Eduardo Guevara-Guerra in abeyance upon defendant's failure to appear, was appealed on the date of entry by the representative of the Attorney General's Office and was, therefore, remitted to the *Sala Penal Especial de la Corte Suprema de Justicia* (Special Criminal Chamber of the Supreme Court of Justice) and then sent to the *Fiscalía Suprema* (Prosecutor's Office). The aforesaid Prosecutor's Office held that the judgment should be vacated and a new judgment rendered;

c) regarding to the payment of the compensation for moral damage sustained by Mr. Cesti-Hurtado, on March 7, 2005, the *Secretario Técnico de la Presidencia del Consejo de Ministros* (Technical Secretary of the Presidency of the Cabinet) sent an official letter to the Vice-Minister of Justice, stating that, pursuant to Law No. 27,775, unpaid pecuniary reparations awarded by the Inter-American Court shall be borne by the Ministry and not by the FEDADOI. On May 24, 2005, the General Secretary's Office of the Ministry of Justice sent an official letter to the General Director of the *Dirección Nacional de Presupuesto Público* (National Office of Public Budget), requesting that the budget modification for additional funds to settle any unpaid compensation awarded by the Inter-American Court be made for that fiscal year. On June 13, 2005, the *Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos* (Office of the Executive Secretary of the National Council on Human Rights) requested the Director of the *Oficina General de Administración del Ministerio de Justicia* (General Administration Office of the Ministry of Justice) to take appropriate action to prepare a report on the computation of interest owed to Mr. Cesti-Hurtado for the delay in payment of pecuniary damages. The *Oficina General de Administración* (General Administration Office) submitted the computation of statutory interest payable on said amount. On June 13, 2005, the *Banco de la Nación* (National Bank) informed the FEDADOI that its account had been seized under a writ of execution issued by the Thirty-seventh Specialized Civil Court for the benefit of Mr. Cesti-Hurtado. By means of official letter of July 19, 2005, The Executive Secretary of the National Council on Human Rights) informed that, in the absence of specific regulation setting the order of priority of the payments to be met by the FEDADOI pursuant to the Judgments of the Inter-American Court, the "first in time, first in right" rule should be applied. On August 15, 2005, the *Dirección Nacional de Presupuesto Público* (National Office of Public Budget) requested the Ministry of Justice to provide information on additional funds to comply with the payment obligations imposed by the Inter-American Court. On September 9, 2005, the *Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos* (Office of the Executive Secretary of the National Council on Human Rights) sent a communication to the President of the FEDADOI, expressing concern over the State's failure to comply with the payment of the compensation ordered by the Inter-American Court insofar as it adversely affects the international reputation and interests of

the State. On September 19, 2005, the Technical Secretary of the FEDADOI informed the *Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos* (Office of the Executive Secretary of the National Council on Human Rights) that there were no funds available to meet the request regarding the outstanding payments due to the writ of execution issued by the Thirty-seventh Specialized Civil Court as a result of the action filed by Mr. Cesti-Hurtado to enforce the Arbitration Award.

13. The comments of the victim of November 21, 2005, and its Appendixes, whereby he informed that:

a) the State has failed to comply with the obligation to pay default interest. Moreover, the State expects to pay the statutory interest despite the Court's order that bank default interest rates be applied.

b) regarding to the investigation of the facts of the instant case, Mr. Cesti-Hurtado stated that proceedings have never been instituted against those responsible for violating his human rights. The offenses and the facts underlying the proceedings to which the State referred were different from those relating to his case. In the aforesaid proceedings, he was regarded as a witness and not as an aggrieved party. The trial ended in acquittal; therefore, the State cannot claim to have punished the perpetrators;

c) in relation to the payment of pecuniary damages, in light of the complete lack of willingness by the State to comply with this obligation, the victim resorted to the courts to enforce the arbitration award. the Thirty-seventh Civil Court in and for Lima heard the case and issued a writ of execution on Peruvian State's funds, which were placed at its disposal by means of two deposits in court. Several State officials have put pressure on the Thirty-seventh Court to reverse its decision. Two lawsuits have been filed against Mr. Cesti-Hurtado that, in addition to putting his personal assets at risk, imply greater court costs; and

d) regarding to the annulment of the military proceedings and the effects resulting therefrom, although the third lawsuit brought against him has come to an end, the freezing orders on his accounts have not been lifted yet and there is still some uncertainty about his rights.

14. The brief of the State of November 29, 2005 and its Appendixes, whereby the State indicated that, on September 28, 2005, Mr. Cesti-Hurtado collected on the certificate of deposit in court of the FEDADOI's funds seized pursuant to the writ of execution issued by the *37º Juzgado Judicial de Lima* (Thirty-seventh Court in and for Lima).

15. The comments of the Inter-American Commission of December 5, 2005 on the State report of October 7, 2005 (*supra* Having Seen clause No. 12), to wit:

a) the State has failed to fully comply with the payment of default interest on the amount of compensation for moral damage;

b) the Commission condemns that instead of revealing significant progress in the investigation of the facts and punishment of the perpetrators, the information provided by the State suggests that there has been regression.

Furthermore, the Commission is concerned that, according to the victim's statements, the criminal proceedings were not aimed at punishing those responsible for the violation of Mr. Cesti-Hurtado's human rights, but at prosecuting misdemeanors, and they bears no relation to the facts and offenses established by the Court in this case;

c) regarding payment of pecuniary damages, the Commission appreciates the efforts made by several government agencies and considers the process to comply with the arbitration award must be expedited. Furthermore, it stated that "court decisions to enforce compliance with these obligations must be observed, and so must any other efforts made by government authorities to guarantee the rights of Mr. Cesti-Hurtado," and

d) although the military proceedings have been held to be null and void, its effects continue to affect the victim.

16. The comments filed by the victim's representative on December 28, 2005 regarding the State report of November 21, 2005, in which it indicated that:

a) the following points have not been complied with: payment of interest on the amount of compensation for moral damage; investigation of the facts of this case and punishment of the perpetrators, and annulment of the military proceedings together with the effects resulting therefrom.

b) regarding the payment of pecuniary damages, although the State has complied with payment thereof, it has lodged an appeal to have the court decision granting said compensation reversed and the payment revoked, and

c) the dilatory and evasive attitude of the State became apparent when "high-ranking State officials" put pressure on the Thirty-seventh Judge, who ordered payment of compensation for moral damage, to reverse his decision. Subsequently, on October 17, 2005, the State filed a complaint with the *Oficina Descentralizada de Control Interno del Ministerio Público* (Internal Audit Decentralized Bureau of the Attorney General's Office) against the aforesaid Judge for perversion of justice.

17. The brief filed by the Commission on January 13, 2006, requesting an extension to file the brief with comments. In addition, the Commission requested the Court to order the State to submit certain documentation.

18. The note of the Secretariat of January 18, 2006, whereby, following the instructions of the President of the Court, the Commission was granted the requested extension and the State was ordered to submit the information required by the Commission.

19. The brief filed by the State on January 30, 2006, whereby it submitted the documentation requested by the Secretariat (*supra* Having Seen clause No. 18).

20. The brief filed by the Commission on February 6, 2006, in which it expressed concern over the numerous obligations of the State that remain unfulfilled and restated the comments submitted to the Court on December 5, 2005 (*supra* Having Seen clause No. 15). As regards the payment of the compensation for moral damage, it stated that:

- a) both the State and the victim have informed the Court that payment has been collected through a deposit certificate issued as a result of the execution proceedings instituted by the latter. However, Mr. Cesti-Hurtado has also informed that the State has appealed the Decision that ordered the writ of execution and the subsequent payment of a portion of the obligation. Therefore, the controversy in this regard would seem to be related to whether the decision ordering payment is final or not;
- b) court decisions intended to enforce compliance with the obligations arising out of the Judgments of the Court must be observed, and so must any other efforts made by government authorities to guarantee the rights of Mr. Cesti-Hurtado;
- c) during the process to collect the amounts awarded for pecuniary damages Mr. Cesti-Hurtado has faced many obstacles and difficulties. regarding the principle of good faith and the implication this principle has in compliance proceedings, the Commission hopes that there will not be any more delays to comply with the orders of the Inter-American Court, and
- d) interest accrued as from the arbitration award has not been paid.

21. The brief filed by the victim's representative on February 25, 2006 and its Appendixes, whereby the Court was informed that on December 14, 2005 an order was issued holding the proceedings to enforce the arbitration award null and void, thus bringing the proceedings back to square one and reversing the progress achieved with regard to compliance with payment, as if it had never been made. Furthermore, even when funds had been made available to meet the payments ordered in the Judgments of the Inter-American Court, amicable settlements and arbitration awards, the Ministry of Justice failed to settle its debt to Mr. Cesti-Hurtado.

22. The State report of April 27, 2006 and its Appendixes, in which the State, after having been granted an extension, indicated that:

- a) interest on the amount of compensation for moral damage was recalculated at US\$3,992.95 (three thousand nine hundred ninety-two US Dollars and ninety-five cents), and
- b) the order of the Thirty-seventh Civil Court granted a precautionary measure that could not be executed insofar as the banks had to determine which State accounts were used for the deposit of revenue directly collected. Nevertheless, the Court decided to issue a writ of execution on the State's checking accounts and deposits in the domestic financial system without notifying the banks so that they could determine the accounts subject to execution. The court order was issued in error and was, therefore, null and void. In addition, the court made no reference to the application of domestic laws, and by failing to consider applicable law, the court lacked sufficient grounds to issue the order, thus rendering it null and void.

23. The brief of the victim's representative of May 31, 2006, referring to the State report of April 27, 2006 (*supra* Having Seen clause No. 22), whereby he informed, *inter alia*, that the State only referred to the status of the execution proceedings instituted by Mr. Cesti-Hurtado on March 29, 2005, but made no reference to the steps

taken to comply with the payment of pecuniary damages. Furthermore, he stated that there has been no progress regarding all other reparations that remain unsettled.

24. The comments filed by the Commission on June 22, 2006, after having been granted an extension, namely:

a) regarding to the payment of interest due to the delay in payment of the compensation for moral damages, the Commission expressed concern about the fact that over two months have elapsed after the State received the computation made by the Ministry of Justice and there is still no information available to verify that payment has been made. This becomes even worse if we consider that the period of time originally granted by the Court has long expired, the methods of compliance specified and the pressing need to redress the violations against the aggrieved party;

b) regarding to the investigation of the facts and punishment of the perpetrators, the Commission considers that the State must provide adequate information in a manner such that the Court may follow up the investigation conducted to punish the perpetrators as well as the efficiency and efficacy of the measures adopted to that end by the State;

c) regarding to the payment of pecuniary damages, the Commission is concerned over the obstacles and difficulties faced by Mr. Cesti to collect the amount ordered in the arbitration award, and

d) regarding to the annulment of the military proceedings and the effects resulting therefrom, the Commission noted the lack of information regarding the steps taken to comply with this obligation.

25. The note of the Secretariat of June 29, 2006, whereby, following the President's instructions, it requested the State to submit, by August 1, 2006, information on the progress made regarding compliance with the judgments of the Court in the instant case, specifically on: a) the measures adopted to comply with the payment of interest on the amount of compensation for moral damage; b) the investigation of the facts of the instant case and punishment of the perpetrators, making specific reference to the allegations of the victim's representative and the Commission that "not all persons involved are being prosecuted[,] and the crimes for which they are being prosecuted as well as the facts surrounding the case are different from those which should be included in the State report;" c) the measures adopted to make payment of pecuniary damages, and d) any progress made in the annulment of the military proceedings and the effects resulting therefrom.

26. The briefs filed by the State on June 13 and 18, 2006 whereby it requested an extension to meet the request made by the Secretariat.

27. The note of the Secretariat of July 19, 2006, whereby, following the President's instructions, the State was granted the requested extension until August 31, 2006.

28. The brief filed by the victim on August 29, 2006, requesting the Court to allow his representative to come before the Court to present the issues that are hindering compliance with the Judgments ordered in this case.

29. The note of the Secretariat of September 1, 2006, whereby, following the President's instructions, the victim and the representative were informed that a

hearing may not be held in relation to the compliance with the Judgments ordered in the instant case insofar as, pursuant to the practice of the Court, monitoring proceedings regarding compliance with the judgments delivered by the Court are conducted in writing.

30. The brief filed by the Commission on September 15, 2006, in which it indicated that the situation of the victim is "unacceptable" and stated once more that it is essential that, pursuant to the principle of *pacta sunt servanta*, the State ensure all such measures as may be necessary to fully comply with the Judgments of the Court.

31. The brief filed by the victim's representative on September 19, 2006, and its Appendixes, whereby he informed the Court of the legal proceedings instituted in Peru "to have the payment made to Mr. Cesti-Hurtado revoked and returned, thus reversing the progress achieved so far."

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 on Human Rights (hereinafter the "American Convention") since July 28, 1978 and that, in accordance with Article 62 thereof, it accepted the contentious jurisdiction of the Court on January 21, 1981.

3. 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

4. That, given that the Court's judgments are final and not subject to appeal, as set out in Article 67 of the American Convention, said judgments are to be promptly and fully complied with by the State.

5. The provisions of Article 65 of the American Convention regarding "the cases in which a state has not complied with its judgments."

6. That the General Assembly of the OAS restated in its Resolution AG/RES. 2223 (XXXVI-O/06)²

¹ 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; *Case of the "Juvenile Reeducation Institute"*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 3.

² Resolution adopted at the fourth plenary session, held on June 6, 2006, entitled "Observations and Recommendations on The Annual Report of The Inter-American Court of Human Rights", Operative Paragraph No. 4.

8. [...] the need for states parties to provide, in a timely fashion, the information requested by the Court in order to enable it to fully meet its obligation to report to the General Assembly on compliance with its judgments.

7. That the obligation to comply with the judgments of the Court conforms to a basic principle of the law of the international responsibility of States, as supported by international case law, under which States are required to comply with their 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 may not invoke the provisions of its internal law to escape their pre-established international responsibility.³ The treaty obligations of States Parties are binding on all State powers and organs.

8. That the States Parties to the Convention are required to guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic level. This principle is applicable not only with regard to the substantive provisions of human rights treaties (*i.e.* those dealing with the protected rights) but also with regard to procedural rules, such as those concerning compliance with the decisions of the Court. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

9. That the State's reports point out that a number of official letters have been sent to various domestic authorities in order to advance compliance with the Judgments of the court in this case. That the Court acknowledges that in every judgment compliance process several state authorities are involved, each having its own procedures, laws and rules; however, this international Court examines and assesses compliance with its orders, rather than the steps taken by one agency or official or those that must yet be taken by another. Taking into account the foregoing and weighing up the procedures undertaken by certain domestic government agencies, this Court notes that, in spite of the time elapsed (over five years), the Judgment ordering reparations in the instant case has not yet been fully complied with.

10. That the State has reported on several occasions (*supra* Having Seen clauses No. 6 and 12) that it has requested the computation of the interest on the compensation for moral damage, and that such calculation has been made and referred to the Court by the State itself. In spite of that, the debt has not yet been paid off and the victim and his next of kin are still awaiting payment.

11. That pursuant to paragraph 78 of the Judgment on reparations in the instant case (*supra* Having Seen clause No. 3), if a State falls in arrears, as it is the case here, it shall pay "interest on the sum owed at a rate equal to bank default interest rates in Peru."

³ 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. 7; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 5; *Case of the "Juvenile Reeducation Institute"*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 5.

⁴ 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. 8; *Case of Bámaca-Velásquez*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 6; *Case of the "Juvenile Reeducation Institute"*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause No. 6.

12. That the victim and his representative have pointed out that the State has failed to fulfill its obligation to investigate the events that led to the Court's Judgments and punish those responsible for the violations committed against the victim, since the criminal proceedings the State has mentioned in this judgment compliance monitoring process are not aimed at punishing the perpetrators of the human rights violations committed against Mr. Cesti-Hurtado, nor are they concerned with the crimes and facts established by this Court. Moreover, the victim and his representative reported that in these proceedings the victim has been allowed to take part as a witness only rather than as an aggrieved party. The Commission has made similar remarks. Moreover, the State has not disproved the foregoing, nor has it presented detailed information from which the Court can appreciate any progress in the compliance with the Judgment in this regard.

13. That both the victim and his representative, as well as the Inter-American Commission, agree that the State has not yet annulled all the effects of the military court proceedings instituted against Mr. Cesti-Hurtado, which still cause him much trouble. The State has failed to satisfy the Court not only that the military court proceedings have been annulled but also that the ensuing effects will cease to prejudice the victim.

14. That Mr. Cesti-Hurtado, faced with the State's failure to comply with the Judgments of this Court and the arbitration award delivered in the instant case, filed an action with the Thirty-seventh Civil Court in and for Lima to enforce said award, which led to the seizure of the State's funds and the subsequent court order compelling payment of US\$ 3,065,085.00 (three million, sixty-five thousand and eighty-five US Dollars) to the victim. However, the judgment of the Thirty-seventh Court was appealed and the higher court annulled the proceedings.

15. That, in light of the foregoing, the victim considers that the State has no intention to comply in good faith with the Court's orders and that, on the contrary, it has chosen to delay and hinder payment. That the Commission has taken the view that court decisions intended to enforce compliance with the obligations arising out of the Judgments of the Court must be observed, and so must any other efforts made by government authorities to guarantee the rights of Mr. Cesti-Hurtado.

16. That the State has justified the declaration of nullity on the grounds that certain requirements set forth in the domestic law have not been met.

17. That it follows from the documents submitted by the victim that the Thirty-seventh Civil Court in and for Lima has been requested to compel Mr. Cesti-Hurtado to return the money received (*supra* Considering clause No. 14). In other words, according to the State, Mr. Cesti-Hurtado is not legally authorized to keep the money collected under the relevant court order. Therefore, the obligation to pay pecuniary damages ordered by this Court has not been fully complied with.

18. That it is not within the purview of this Court purview to determine whether the payment made to Mr. Cesti-Hurtado conforms to the Peruvian laws. What the Court must determine at this stage of the proceedings is whether or not the State has fulfilled the obligations arising from its Judgments.

19. That the State has not satisfied this Court that it has adopted the necessary steps to pay Mr. Cesti-Hurtado the total amount owed to him in full and complete satisfaction of pecuniary damages and interest thereon.

20. That upon monitoring full compliance with the Judgments on the merits and on reparations delivered in the instant case, and after examining the information provided by the State (*supra* Having Seen clauses No. 6, 8, 12, 14, 19 and 22) by the victim and his representative (*supra* Having Seen clauses No. 7, 10, 11, 13, 16, 21, 23, 28 and 31) and by the Inter-American Commission (*supra* Having Seen clauses No. 9, 15, 17, 20, 24 and 30), the Court notes that, after two years from the Court's Order of November 17, 2004 (*supra* Having Seen No. 5), the State has not reported any concrete and significant progress in the performance of the obligations identified in said Order as unfulfilled. Thus, the Inter-American Court still has no information about the effective compliance with the following obligations:

- a) payment of interest on the compensation for moral damage (*Operative Paragraphs number 2, 3, 4, and 6 of the Judgment on reparations of May 31, 2001*);
- b) investigation of the facts surrounding this case and punishment of the perpetrators (*Operative Paragraph number 5 of the Judgment on reparations of May 31, 2001*);
- c) payment of pecuniary damages (*Operative paragraph number 1 of the Judgment on reparations of May 31, 2001*), and
- d) annulment of the military proceedings and all legal effects resulting therefrom (*Operative Paragraph number 8 of the Judgment of September 29, 1999*).

21. That the obligations remaining unfulfilled must be complied with by the State as soon as possible. Therefore, it is necessary that Peru submit a report on the obligations remaining unfulfilled, as specified by the Court, and that afterwards, the victim or his representative as well as the Inter-American Commission submit their comments to the State's report.

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, and Articles 25(1) and 30 of its Statute and 29(2) of its Rules of Procedure,

DECLARES:

1. That it will keep the proceedings open to monitor compliance with the following points, namely:

- a) payment of interest on the amount of compensation for moral damage;

- b) investigation of the facts surrounding this case and punishment of the perpetrators;
- c) payment of pecuniary damages, and
- d) annulment of the military proceedings and the effects resulting therefrom.

AND DECIDES:

1. To order the State to adopt all such measures as may be necessary to promptly and duly comply with the orders of the Court in the Judgment on the merits of September 29, 1999 and in the Judgment on reparations of May 31, 2001, in accordance with the provisions set out in Article 68(1) of the American Convention on Human Rights.
2. To request the State to submit to the Inter-American Court of Human Rights, by January 19, 2007, a detailed report specifying such measures as may have been adopted to comply with the reparations set out in declarative paragraph number one of this Order, specifically: a) the measures adopted to comply with the payment of interest on the amount of compensation for moral damage; b) the investigation of the facts of the instant case and punishment of the perpetrators, making specific reference to the allegations of the victim's representative and the Commission that "not all persons involved are being prosecuted[,] and the crimes for which they are being prosecuted as well as the facts surrounding the case are different from those which should be included in the State report;" c) the measures adopted to make payment of pecuniary damages, and d) any progress made in the annulment of the military proceedings and the effects resulting therefrom.
3. To request the victim, or his representative, and the Inter-American Commission on Human Rights to submit comments on the State report mentioned in the foregoing operative paragraph within a period of four and six weeks respectively, following receipt thereof.
4. To continue monitoring compliance with the provisions of the Judgment on the merits of September 29, 1999 and the Judgment on reparations of May 31, 2001 that have not been complied with.
5. To request the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the victim.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary