

## **Rulings from the Inter-American Court of Human Rights:**

### **Failure to Comply<sup>1</sup>**

As part of its judicial and contentious function, the Inter-American Court of Human Rights (hereinafter IACHR) may declare a State's international responsibility for the infringement of one or more rights and freedoms recognized in the American Convention on Human Rights (ACHR). The State responsibility derives from the explicit recognition of IACHR's jurisdiction: this recognition can be done on an unconditional basis or on condition of reciprocity for a specified period or only for specific cases (Art. 61, para. 1 and 2 of the ACHR).

If the violation of the ACHR is established, the aim of the IACHR's decision is restore the infringed enjoyment of the violated right. Moreover, if appropriate, the decision will provide the corresponding reparation (as required by Art. 63, para 1 of the ACHR). As part of this contentious competence, the Court may adopt *ad interim* measures aimed at avoiding irreversible injury to people in cases of utmost seriousness and urgency, either before a violation of a right is declared or even when the case has not been brought to the knowledge of the Court.

Decisions from the Court for those States that have recognized its jurisdiction –albeit conditional– are binding in all aspects. However, the reception of the Court's rulings in some national systems has been challenging. The following cases can be identified:

#### **1. Temporary withdrawal from the IACHR's jurisdiction.**

In its resolution adopted on June 11, 1999, the Plenary Chamber of the Supreme Council of Military Justice declared that the IACHR's ruling in the *Castillo Petruzzi vs. Peru* case (30 May 1999), which declared the Peru's responsibility for violating due process provisions, was unenforceable. The IACHR's decision dealt with the sentencing to life imprisonment against four Chilean citizens convicted by a *faceless* military court, who were accused of committing treason under Decree-Law No. 25659 (which the IACHR had already dismissed in the *Loayza Tamayo vs. Perú* decision, 27 November 1998). The argument used by the Military Tribunal to justify the unenforceability of the IACHR decision was the subordination of the ACHR to the Peruvian Constitution. This approach led the Peruvian judge to state that the IACHR exceeded its functional jurisdiction when assessing the compatibility of Peruvian laws with the ACHR, together with a lack of impartiality.

Three days after the decision issued by the Supreme Council of Military Justice, the Second Transitional Criminal Chamber of the Peruvian Supreme Court also declared that the ruling regarding compensations and reparations in the *Loayza Tamayo's* case was not enforceable, since the petitioners did not exhaust domestic legal remedies.

On July 5, 1999, following these decisions, the Council of Ministers agreed to not recognize the IACHR's contentious jurisdiction and submitted the issue before the Congress. Three days after, the Legislative Branch passed the Legislative Resolution No. 27152, which decreed the withdrawal of the IACHR's jurisdiction, effective immediately and with effect to all the cases in which Peru had not replied to the lawsuit filed before the Court.

Later, on January 12, 2001, the Peruvian Parliament adopted Legislative Resolution No. 27401, which repealed the above-mentioned Legislative Resolution 27152 and ordered the Executive Branch to take all necessary actions "to render null the outcomes resulting from said Legislative Resolution, fully restoring the contentious jurisdiction by the Inter-American Court of Human Rights over the Peruvian State."

Act 27775 of 2001 declared as of national interest "the compliance with the rulings issued in the cases filed against the Peruvian State by international tribunals established by treaties that have been ratified by Peru in accordance with its Political Constitution". Title X of the Code of Constitutional Proceedings concerning "International Jurisdiction" (approved in 2004) provides that the rulings issued by international organizations, whose jurisdiction Peru has recognized, do not require, to be valid and effective, any prior recognition, review or assessment.

## **2. Denouncing the ACHR**

The Constitutional Chamber of the Supreme Court of Justice of Venezuela, in a decision issued on December 9, 2008, declared the ruling by which the IACHR held Venezuela to be responsible for the violation of the rights to be heard within a reasonable period of time and to a simple, prompt and effective legal remedy (*Apitz Barbera vs. Venezuela*, 5 August 2008), to be unenforceable. This decision was rendered regarding the removal of several judges for having committed a judicial miscarriage defined by Venezuela as "inexcusable". The Supreme Court, in addition to declare the IACHR decision unenforceable, requested the Executive Branch to denounce the ACHR.

Such request was founded on the understanding that the provisions from Article 23 of the Venezuelan Constitution conferred constitutional position to

human rights treaties, but its prevalence in the domestic order was subject to the condition that its rules were more favorable than those established by the Constitution and national laws.

Based on this provision, the tribunal ruled that it must be the Venezuelan Judicial Branch who decides a case of normative contradiction between a constitutional provision and a norm of the ACHR. Also, the Constitutional Chamber alleged that the IACHR had intervened “unacceptably in the government and judicial administration, areas that belonged exclusively to the Supreme Court of Justice, in accordance with the 1999 Constitution”. This is because human rights norms enjoy a Constitutional position in the Venezuelan domestic legal order, but the judgments from international organizations adopted in accordance with their interpretations do not. Therefore, the Constitutional Chamber proclaimed itself as the only interpreter of these rules in accordance Article 335 of the 1999 Venezuelan Constitution.

The State of Trinidad and Tobago denounced the ACHR for the IACHR ruling in the *James vs. Trinidad y Tobago* case (3 April 2009) which requested to suspend the execution of death sentences of some citizens and to take all necessary measures to preserve their life and physical integrity. In a first moment, the Trinidad and Tobago State requested the IACHR to implement the ruling one year later. Besides, from that moment onwards, Trinidad and Tobago has alleged “domestic reasons” to disregard the orders relating to the provisional measures indicated by the IACHR. In addition, the State did not even appear at any of the hearings that the IACHR convened with the Commission.

### **3. Explicit rejection to comply with the IACHR's directions.**

Argentina's Supreme Court of Justice refused to comply with the IACHR's decision in the *Cantos vs. Argentina* case (28 November 2002). In this case, the IACHR declared Argentina's international responsibility for violating the right of access to justice for the seizure, without inventory, of all accounting documentation, vouchers and receipts of payment, as well as numerous securities and commercial actions for an alleged violation of the Stamps Act. Such behavior inflicted serious economic damage on the victim, given that the lack of the appropriate documents prevented his companies from operating and opposing legal proceedings against third parties that demanded the payment of debts already cancelled. In this regard, the Argentinian Supreme Court claimed that what the IACHR ordered implied a violation to the domestic legal order.

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