CASTILLO PETRUZZI *ET AL.* CASE

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF NOVEMBER 17, 1999

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The May 30, 1999 Judgment of the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on the merits of the Castillo Petruzzi et al. Case, in which the Court:

> unanimously,
>
> 1. [held] that, in the instant case, the State did not violate Article 20 of the American Convention on Human Rights.
>
> unanimously,
>
> 2. [held] that the State violated Article 7(5) of the American Convention on Human rights.
>
> by seven votes to one,
>
> 3. [held] that the State violated Article 9 of the American Convention on Human Rights.
>
> Judge Vidal Ramirez dissenting.

unanimously,

4. [held] that the State violated Article 8(1) of the American Convention on Human Rights.

unanimously,

5. [held] that the State violated Article 8(2)(b), (c), (d) and (f)) of the American Convention on Human Rights.

by seven votes to one,

6. [held] that the State violated Article 8(2)(h) of the American Convention on Human Rights.

Judge Vidal Ramirez dissenting.

unanimously,

7. [held] that it was not proven in the instant case that the State violated Article 8(3) of the American Convention on Human Rights.

by seven votes to one,

8. [held] that the State violated Article 8(5) of the American Convention on Human Rights.

Judge Vidal Ramirez dissenting.

unanimously,

9. [held] that the State violated Articles 25 and 7(6) of the American Convention on Human Rights.

by seven votes to one,

10. [held] that the State violated Article 5 of the American Convention on Human Rights.

Judge Vidal Ramirez dissenting.

unanimously,

11. [held] that the State violated Articles 1(1) and 2 of the American Convention on Human Rights.

unanimously,

12. [held] that the violation of Article 51(2) of the American Convention on Human Rights alleged in the instant case need not be examined.

unanimously,

13. [held] that the proceedings conducted against Mr. Jaime Francisco Sebastián Castillo Petruzzi, Mrs. María Concepción Pincheira Sáez, Mr. Lautaro Enrique Mellado Saavedra and Mr. Alejandro Luis Astorga Valdés are invalid, as they were incompatible with the American Convention on Human Rights, and so orders that the persons in question be guaranteed a new trial in which the guarantees of due process of law are ensured.

unanimously,

14. order[ed] the State to adopt the appropriate measures to amend those laws that this judgment has declared to be in violation of the American Convention on Human Rights and to ensure the enjoyment and exercise of the rights recognized in the American Convention on Human Rights to all persons subject to its jurisdiction, without exception.

unanimously,

15. order[ed] the State to pay a sum totaling US$10,000 (ten thousand United States dollars), or its equivalent in Peruvian national currency, to those next of kin of Mr. Jaime Francisco Sebastián Castillo Petruzzi, Mrs. María Concepción Pincheira Sáez, Mr. Lautaro Enrique Mellado Saavedra and Mr. Alejandro Luis Astorga Valdés, who show proof of having incurred costs and expenses by reason of the instant case. The procedure followed shall be the one described in paragraph 224 of [...] Judgment..

unanimously,

16. decid[ed] to oversee compliance with the orders given in this Judgment.

2. The writing of the State of Peru (hereinafter "the State" or "Peru") of June 15, 1999, to which it attached the June 11, 1999 Order of the Plenary Court of the Supreme Council of Military Justice, which held that the May 30, 1999 Judgment of the Court "lacks impartiality and infringes on the Political Constitution of the State, being, therefore, impossible to execute."

3. The July 21, 1999 communication from Mr. Cézar Gaviria, Secretary General of the Organization of American States (hereinafter "the OAS"), to which he attached note number 7-5-M/276 of July 1, 1999 presented to him by Ms. Beatriz M. Ramacciotti, Permanent Representative of Peru to the OAS. This note expressed the position of Peru as follows:

a) that the judgment of the Court seeks to invalidate and to order the modification of the constitutional and legal norms, which is beyond its jurisdiction as established by Articles 63(1) and 64(2) of the American Convention on Human Rights, which only authorize the Tribunal to determine the compatibility of domestic law with the Convention, whenever the state requests it;

b) that as the Court can not order Peru to modify its norms, if the State initiates a new proceeding it must apply the norms in force, those which order trial in a military court. Consequently, the Inter-American Court could declare the nullity of the proceedings and the freedom of the accused;

c) that if it were to comply with the judgment of the Court, the possibility would be raised that other individuals would turn to the Inter-American system to lodge a petition before the Inter-American Commission on Human Rights, despite the passage of the period of six months established by Article 46(1)(b) of the American Convention on Human Rights;

d) that the "order" of the Court to modify the Political Constitution of Peru and its domestic law, affects the sovereignty of the State, since this "order" requires the legislators to vote in a certain manner;

e) that as the judgments of the Court are final and not subject to appeal, a request for their interpretation or clarification would not modify "their dangerous scope";

f) that the Judgment on the Merits rendered by the Court in the Castillo Petruzzi et al. Case is inconsistent with its earlier jurisprudence, issued in the Loayza Tamayo and Genie Lacayo Cases, and

g) that the Court did not accord the guarantee of due process, since it admitted that in the application there were matters not contained in the report provided for in Article 50 of the American Convention on Human Rights, and it ruled on matters not included in the application and on claims made by the Inter-American Commission on Human Rights in its final arguments, making the right of adequate defense impossible for the State.

4. The July 26, 1999 writing of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), in which it presented its observations to the June 11, 1999

Order of the Plenary Court of the Supreme Council of Military Justice. In said communication, the Commission stated that:

a) by having obligated itself to respect the norms of the American Convention on Human Rights and after having participated as a party in the Castillo Petruzzi et al. Case, Peru should fulfill its international obligations in good faith;

b) Article 67 of the American Convention on Human Rights establishes in an unequivocal form that the judgments rendered in a contentious proceeding before the Court are not subject to appeal;

c) the State's noncompliance constitutes defiance of Article 68(1) of the American Convention on Human Rights, which establishes the obligatory nature of the judgments of the Court and, in an unequivocal manner, the obligation of the States Parties to this Convention to comply with that which is ordered in its judgments;

d) it is the duty of the State to comply with its conventional obligations of good faith; a principle set forth in Article 31 of the 1969 Vienna Convention on the Law of Treaties;

e) on ratifying the American Convention on Human Rights, the States Parties undertake duties of protection to all persons subject to their jurisdiction. From there derives the duty to comply and to oblige to comply in good faith with the decisions of the judicial organ established by this Convention;

f) "the object and purpose of the Convention is to establish an Inter-American system of protection wherein the rights and freedoms enumerated are made fully effective, as suggests its preamble. Therefore, the organs of the State are obligated to respect them and ensure them according to Article 1(1) of the Convention";

g) the judgments of the Court should be observed in an immediate and integral manner; if they had to conform to the internal

legislation of the States Parties to be enforceable, the protection of the International Law of Human Rights would become illusory and would be left to the sole discretion of the State and not to the supranational organ whose judgments should be fulfilled in good faith by the States;

h) the supremacy of the international obligations of the State over internal law constitutes one of the pillars of international law, as set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, and

i) Law 23.506 on Habeas Corpus and Amparo and the Law of the Judicial Power, both in force in Peru, "suggest" that the judgments of the Court have complete legal validity and effectiveness in the internal jurisdiction of the State and are enforceable without the need to review their compatibility with domestic law.

For the above reasons, the Commission requested that the Court:

a) reject as inadmissible the Order of the State and demand the full, prompt, and unconditional execution of the operative paragraphs of the May 30, 1999 Judgment which have not been executed, and

b) without prejudice to that set forth in Articles 65 of the American Convention on Human Rights and 30 of the Statute of the Court, immediately proceed to inform the Secretary General of the OAS and the States Parties to said Convention of this matter.

5. The July 23, 1999 writing from Verónica Reyna and Nelson Caucoto, representatives of the victims in the Castillo Petruzzi et al. Case, in which they submitted their observations to the June 11, 1999 Order of the Plenary Court of the Supreme Council of Military Justice. In this regard, these persons stated that:

a) the State did not understand the judgment, the scope of its relationship to the American Convention on Human Rights, or the

role played by the Commission and the Court within the Inter-American system for the protection of human rights;

b) the judgment of the Court conforms to the procedures set forth in the American Convention on Human Rights and its Statute;

c) it is not possible to assert that in the case in question there was a trial in accordance with the rules provided for in the American Convention on Human Rights. It is a proven and unquestionable fact that those convicted did not enjoy the minimum judicial guarantees, and that they lacked a due and rational process;

d) to take into account that the justice of Peru "is not independent and impartial is a fact of the case, adequately proved";

e) that set forth in Article 2 of the American Convention on Human Rights (Domestic Legal Effects) is a strict norm, which does not permit repudiation;

f) in accordance with Article 33 of the American Convention on Human Rights it falls to the Commission and to the Court to hear matters concerning the fulfillment of obligations undertaken by the States Parties to this Convention.

g) it can not be regarded that the Court acted with control of the legality, and even of the constitutionality of the domestic law.

h) the American Convention on Human Rights does not set forth a prohibition to the existence of military justice in the subscribing States. It is "obvious that the actions and proceedings of this judicature or any other that exercises a jurisdictional function must abide by the principles embodied in the American Convention on Human Rights." Consequently, the Court questions the "military judicature" for not conforming to that prescribed in the Convention and not its existence;

i) not all means are permissible for a State to exercise its legitimate right to the defense of its integrity and society. To attack a wrong, one can not use another wrong as a cure;

j) the Court, by means of its Judgment, expects a trial in accordance with the American Convention on Human Rights.

k) Peru's argument that, in order to have a new trial, it would have to reform its Constitution and domestic laws is not worthy of consideration, since there should exist, in ordinary or civil justice, some criminal standard which includes the respective conduct of those charged

CONSIDERING:

1. That on June 11, 1999, the Plenary Court of the Supreme Council of Military Justice emitted an order that declared the judgment of this Tribunal could not be executed.

2. That Article 67 of the American Convention on Human Rights establishes that "[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment."

3. That Article 68(1) of the American Convention on Human Rights 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." The conventional obligations of the States Parties bind all of the authorities and organs of the State.

4. That this obligation corresponds to a basic principle of the law of international state responsibility, supported by international jurisprudence, according to which States must fulfill their conventional international obligations in good faith (*pacta sunt servanda*) and, as the Court has

already stated, can not for reasons of domestic law fail to assume already established international responsibility. (*cfr. 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).

5. That, in this respect, Article 27 of the 1969 Vienna Convention on the Law of Treaties codifies a basic principle of general international law in observing that

> [a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

6. That, by virtue of the definite and unappealable nature of the judgments of the Court, they should be promptly fulfilled by the State in an integral manner.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in accordance with Articles 67 and 68(1) of the American Convention on Human Rights, Article 25 of the Statute of the Court, and Article 29 of the Rules of Procedure of the Court,

DECIDES:

1. To hold that, in accordance with the principle of *pacta sunt servanda,* and in conformity with that provided for in Article 68(1) of the American Convention on Human Rights, the State has a duty to promptly comply with the May 30, 1999 Judgment rendered by the Inter-American Court of Human Rights in the Castillo Petruzzi et al. Case.

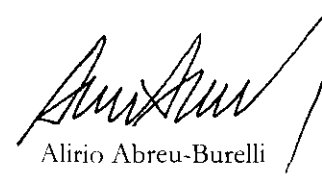
2. To notify the State, the Inter-American Commission on Human Rights, and the representatives of the victims of the present Order.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

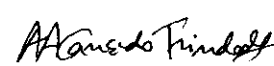


Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,



Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary