

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF NOVEMBER 27, 2003**

BENAVIDES CEVALLOS CASE

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment in *Benavides Cevallos v. Ecuador* delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on June 19, 1998, in which it considered that:

[...] to determine reparations, the Court took cognizance of the pertinent aspects of the February 20, 1998 agreement. In the document in question, the State made the following commitments and the following statements:

1.- In accordance with Articles 1045 and 1052 of the Civil Code, a lump-sum compensation of US\$1,000,000.00 (one million United States dollars) or its equivalent in national currency shall be delivered to Luis Darío Benavides Enríquez and Sofía Rosa María Cevallos, the parents of Consuelo Benavides Cevallos and, in the absence of spouse and children, her sole heirs. Although there are no conditions to this payment, they have offered to invest the bulk of it in a manner that memorializes the deceased's name.

This compensation covers expenses and fees, lost income, and moral damages; it shall be paid to Mr. and Mrs. Benavides Cevallos, in accordance with domestic law, against the State's general budget; the Procurator shall notify the Ministry of Finance and Public Credit that this obligation is to be discharged within 90 days from the day on which this document is signed.

2. The compensation in question is independent of the compensation awarded by the National Congress under Decree No. 29, published in the Official Gazette No. 993 of July 22, 1996, and which Mr. and Mrs. Benavides declined.

3. Nor does it include any compensation that the parents of Consuelo Benavides are entitled to claim from those responsible for her unlawful and arbitrary arrest, torture and murder, and who were convicted under Articles 52 and 67 of the Ecuadorian Penal Code.

4. The Ecuadorian State pledges to continue and conclude the judicial proceedings that were suspended when the suspects in the crime committed against Professor Benavides escaped; to take the judicial action that the law prescribes against persons who, although responsible for related crimes, were never punished. It will, either directly or through the competent authorities, exhaust every effort and measure required under domestic law so that the crime committed against Professor Benavides does not go unpunished.

5. The Ecuadorian State, through the Office of the State Attorney will instruct the Ministry of Education and Culture and the municipalities in the country, in exercise of their legal authorities, to memorialize the name of Ms. Consuelo Benavides Cevallos on streets, squares or schools, as her parents requested.

Likewise, in the operative paragraphs of this judgment the Court:

[...]

* Judge Hernán Salgado Pesantes advised the Court that, owing to circumstances beyond his control, he would be unable to take part in the deliberation and signature of this Order.

1. Resolves that the acquiescence of the State of Ecuador in the claims made by the Inter-American Commission on Human Rights is proper and, consequently, the facts that motivated the instant case are no longer in dispute;
 2. Takes note of the Ecuadorian State's acknowledgment of its international responsibility and declares, in keeping with the terms of that acknowledgement, that in the case of Ms. Consuelo Benavides Cevallos, the State violated the rights protected by Articles 3, 4, 5, 7, 8 and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof;
 3. In the matter of reparations, approves the agreement between the State of Ecuador and the victim's next of kin regarding the nature and amount of said reparations;
 4. Requires the State of Ecuador to continue to investigate and punish those responsible for the human rights violations to which this judgment refers;
 5. Reserves the right to monitor compliance with the obligations established in this judgment.
2. The request of the Secretariat of the Court (hereinafter "the Secretariat") of February 19, 1999, in which, on the instructions of the President of the Court (hereinafter "the President"), it called upon the State of Ecuador (hereinafter "the State" or "Ecuador") to submit a report on compliance with the judgment delivered by the Court on June 19, 1998, which "should contain a detailed account of the measures taken to comply with the terms of the agreement approved by the Court [...] and with the obligation to 'continue the investigations in order to punish those responsible for the human rights violations referred to in [the] judgment' [...]."
3. The brief of the State of April 16, 1999, in which it advised that the "Ministry of Finance and Public Credit ha[d] paid the amount [...] of the compensation granted to the next of kin of Professor Consuelo Benavides Cevallos, as ordered by the Court." It also stated that the "Supreme Court of Justice, in a reasoned decision of August 7, 1998, had declared the criminal proceeding against the accused, Fausto Morales Villota, statute-barred, because the crime of which he was accused is punishable by imprisonment and therefore becomes statute-barred ten years after the issue of the court order to investigate the alleged crime," among other reasons.
4. The communication of the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") of June 22, 1999, submitting its comments on the State's report on compliance with the judgment in this case. It indicated that Ecuador had complied with payment of the compensation stipulated in the Court's judgment. With regard to the investigations in order to punish those responsible for the human rights violations, "[t]he State ha[d] not provided any information about measures taken to continue the investigations aimed at punishing those responsible." In addition, the Commission stated that, concerning the commitment made by the State, which "through the Office of the State Attorney w[ould] instruct the Ministry of Education and Culture and the municipalities in the country, in exercise of their legal authorities, to commemorate the name of Ms. Consuelo Benavides Cevallos in streets, squares or schools," there is no information about the steps taken by the competent authorities in this respect.
5. The note of the Secretariat of November 30, 1999, in which, on the instructions of the Court in plenary, it requested the State "to provide detailed information on the measures taken to continue the investigations in order to find and file proceedings with regard to Jorge Gracián Villota and on the status of the results

of the appeal filed by Nelly Benavides on August 12, 1998, in the criminal action against Fausto Morales." The communication of the Secretariat of January 19, 2000, addressed to the State, in which it repeated this request.

6. The brief of Ecuador of May 10, 2000, reiterating the information contained in its report of April 16, 1999, on compliance with the payment of compensation and the fact that the criminal proceeding was statute-barred (*supra* third having seen paragraph) and adding that "the Ecuadorian State, through the Procurator General, [had] initiated the necessary measures with the [...] Municipality of Esmeraldas, so that a street or square in that city [would] bear the name of Consuelo Benavides Cevallos [...]."

7. The comments of the Inter-American Commission of August 4, 2000, indicating that "concerning the compensation established in the agreement between the victim's next of kin and the [...] State and approved in the third operative paragraph of the judgment of the [...] Court," the State has complied fully, and "regarding the fourth operative paragraph of the judgment of the [...] Court, which requires the State of Ecuador 'to continue to investigate and to punish those responsible for the human rights violations [...]', the Commission had to reiterate its previous comments to the effect that the State ha[d] not provided information on any initiative to continue the investigations or to proceed with the prosecution and punishment of the individuals who had already been accused." The Commission also repeated its request that the State submit information on the measures taken to comply with the commitment to commemorate the name of the victim in streets, squares or schools. Lastly, regarding the measures adopted by the State to ratify the Inter-American Convention on Forced Disappearance of Persons, the Commission reported that the State had acceded to the Convention on February 8, 2000, and that ratification was pending.

8. The note of the Secretariat of August 23, 2000, in which, on the instructions of the whole Court, it requested the State to provide information on "a) whether any criminal, administrative or civil proceedings [was] pending before the Ecuadorian courts with regard to this case; b) the specific measures taken by the State to investigate and punish those responsible for the human rights violations referred to in the judgment, and the results of such measures; and c) the specific measures adopted to commemorate the name of Consuelo Benavides Cevallos in 'streets, squares or schools' and the results of such measures." The note of the Secretariat of October 25, 2000, and the note of the Secretariat of November 24, 2000, on the instructions of the whole Court, in both of which it repeated the request that the State present detailed information on the status of compliance with judgment in this case.

9. The brief of the State of February 15, 2001, in which it repeated that "[t]he Supreme Court of Justice, in a reasoned decision of August 7, 1998, had declared the criminal proceeding against the accused, Fausto Morales Villota, statute-barred," and that "by a judicial decision of July 27, 2000, the President of the Supreme Court of Justice had ordered the lifting of the precautionary measures on the property and accounts of the accused, in whose favor the stay of proceedings and the statute-barred nature of the proceedings was declared." The State also repeated that it had initiated the necessary measures so that a street or square in that city [Esmeraldas] or any other in the country would bear the name of the victim (*supra* third and sixth having seen paragraphs).

10. The comments of the Inter-American Commission of April 12, 2001, stating that “[n]either [the last] report of the State, nor is previous reports [had mentioned] the least effort or measure initiated since delivery of the [...] Court’s judgment to clarify individual responsibility for the abduction, clandestine detention, torture and extrajudicial execution of Professor Consuelo Benavides.” The Commission added that “the domestic judicial mechanisms ha[d] served to obstruct justice to the point of declaring the stay of proceedings and/or the statute-barred nature of any action filed by the Benavides family” and that the State had not provided information on the measures taken to commemorate the name of Professor Benavides, which was an essential element of the agreement, “partly because the victim’s parent died before seeing compliance with this commitment.”

11. The note of the Secretariat of December 6, 2001, in which, on the instruction of the Court, it requested the State to present a report on compliance by January 7, 2002, at the latest, which should include “a detailed account of the measures taken to comply with the judgment and, particularly the elements relating to the specific measures taken by the State to investigate and to punish those responsible for the human rights violations referred to in the judgment on merits, and the results of such measures.”

12. The note of the Secretariat of March 1, 2002, in which, on the instructions of the Court, it reiterated to the State that it should present a report on the status of compliance with the judgment of June 19, 1998, and indicated that “when it has received the reply, the Court w[ould] assess the degree of compliance with judgment and, in light of the information provided, w[ould] decide whether to transmit a report to the OAS General Assembly, on the State’s failure to comply with the judgment of the Court, pursuant to Article 65 of the American Convention on Human Rights.

13. The note of the Commission of June 6, 2002, in which it forwarded to the Court the information submitted by Ecuador, to the effect that “[i]t had paid the amount [...] of the compensation granted to the next of kin of Professor Consuelo Benavides Cevallos, as ordered by the Court”; that the “Supreme Court of Justice, in a reasoned decision of August 7, 1998, had declared the criminal proceeding against the accused, Fausto Morales Villota, statute-barred, because the crime of which he was accused is punishable by imprisonment and therefore becomes statute-barred ten years after the issue of the court order to investigate the alleged crime,” and that “as a result of this reasoned decision issued by the Supreme Court of Justice, pursuant to the legislation in force at that time, the criminal action against the Navy personnel [...] ha[d] been terminated and, therefore, it [was not possible] to file a new action for the same facts.” Lastly, it stated that the “Procurator General of the State [had been] informed that there [were] two streets in Ecuador with the name of Consuelo Benavides Cevallos”.

14. The Order of the Inter-American Court of November 27, 2002, in which it decided:

1. That the State had the obligation to take all necessary measures to comply fully and promptly with the judgment of June 19, 1998, delivered by the Inter-American Court of Human Rights in the Benavides Cevallos case, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. That the State must present to the Court, by March 30, 2003, at the latest, a detailed report on the measures taken to comply with the decision of the Court in the seventh considering paragraph of this Order.

3. That the representatives of the victim and her next of kin, and also the Inter-American Commission on Human Rights, must submit their comments on the report of the State mentioned in the preceding operative paragraph within two months of receiving it.

[...]

15. The note of the State of April 23, 2003, in which it requested a 60-day extension of the period granted by the Court to present a report on the status of compliance with judgment in this case. The note of the Secretariat of May 8, 2003, informing the State that an extension had been granted until June 30, 2003.

16. The note of the State of June 24, 2003, received on August 4, 2003, to which it attached some "copies of the pertinent procedural documents from the proceeding filed on the disappearance and death of Professor Benavides".

17. The note of the Secretariat of August 19, 2003, requesting the State to forward as soon as possible, a report with a detailed account of the measures taken and their results relating to the status of compliance with the provisions of the fourth operative paragraph of the judgment of June 19, 1998, (*supra* first having seen paragraph).

18. The Order of the Inter-American Court of September 9, 2003, which established in its sixth and seventh considering paragraphs:

6. That the Court has established in its constant case law that it is inadmissible to invoke any provisions of internal law, which include declaring an action statute-barred, with the intention of preventing compliance with the decisions of the Court in relating to the investigation and punishment of those responsible for grave human rights violations,¹ owing to the treaty obligations assumed by States. Otherwise, the *effet util* of the provisions of the American Convention in the domestic law of the States Parties would be denied, and the international proceeding would be deprived of its basic purpose, since, instead of promoting justice, it would entail the impunity of those responsible for the violation.

7. That, from what the State has declared regarding the statute-barred nature of the criminal proceeding against those allegedly responsible for the human rights violations against Consuelo Benavides Cevallos, this Court considers that the State cannot invoke the statute of limitations period established in its domestic law in order not to comply with its obligation under the fourth operative paragraph of the judgment of June 19, 1998.

And decided:

1. That the State had the obligation to take all necessary measures to comply fully and promptly with the judgment of June 19, 1998, delivered by the Inter-American Court of Human Rights in the Benavides Cevallos case, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights.

2. That the State must present to the Court, by October 18, 2003, at the latest, a detailed report on the measures taken, following the delivery of the Court's judgment, to comply with the provisions of its fourth operative paragraph.

¹ *Cfr. Bulacio case.* Judgment of September 18, 2003. Series C No. 100, para. 116; *Trujillo Oroza case. Reparations* (Art. 63.1 of the American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92., para. 106; *Barrios Altos case.* Judgment of March 14, 2001. Series C No. 75, para. 41.

3. That the representatives of the victim and her next of kin, and also the Inter-American Commission on Human Rights, must submit their comments on the report of the State mentioned in the preceding operative paragraph within 15 days of receiving it.

[...]

19. The note of the Secretariat of October 27, 2003, in which it reiterated to the State that it must present the report on the status of compliance with judgment in this case, in accordance with the Court's Order of September 9, 2003, the time limit for which had expired on October 18, 2003. It also requested the State, the Commission and the representatives of the victim's next of kin to advise whether there were any streets in Ecuador that bore the name of Consuelo Benavides Cevallos, as decided by the Court in its judgment of June 19, 1998.

20. The brief of the Inter-American Commission of November 14, 2003, in which it advised that "by a decision of the Municipal Council of Cuenca, province of Azuay, one of the streets of that city was named for the victim; that in the city of Tulcán, province of Carchi, a park had been created with the name of 'Consuelo Benavides Cevallos'; and that the Ministry of Education and Culture had adopted a ministerial agreement for a school in the province of Los Ríos to be named in commemoration of the victim." It added that "the Municipal Council of the Metropolitan District of Quito had adopted a resolution approximately two years previously, by which one of the streets of the city would be named 'Consuelo Benavides Cevallos', although this is still pending execution." Lastly, the Commission reiterated its concern about the State's failure to comply with the fourth operative paragraph of the judgment in relation to its obligation to investigate, prosecute and punish those responsible for the violations committed in this case.

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That the State of Ecuador has been a State Party to the American Convention since December 28, 1977, and accepted the obligatory jurisdiction of the Court on August 13, 1984.

3. That, in view of the final and non-appealable character of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly.

4. That 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." The treaty obligations of the States Parties are binding for all the powers and organs of the States.

5. That Article 1(1) of the Convention established the obligation of the States Parties to respect the rights and freedoms recognized in that instrument and to ensure their free and full exercise to all persons subject to their jurisdiction.

6. That the obligation to comply with the decisions of the Court's judgments corresponds to a basic principle of the law of 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

7. That the State has reiterated that the “Supreme Court of Justice, in a reasoned decision of August 7, 1998, had declared the criminal proceeding against the accused, Fausto Morales Villota, statute-barred, because the crime of which he [Mr. Morales] was accused is punishable by imprisonment and therefore becomes statute-barred ten years after the issue of the court order to investigate the alleged crime,” and that “as a result of this reasoned decision issued by the Supreme Court of Justice, pursuant to the legislation in force at that time, the criminal action against the Navy personnel [...] ha[d] been terminated and, therefore, it [was not possible] to file a new action for the same facts” (*supra* third, sixth and ninth having seen paragraphs).

8. That, although the Order of the Court of September 9, 2003, urged the State not to invoke the statute of limitations so as not to continue with the investigation, identification and punishment of those responsible in this case, the State has not taken any effective measures to comply with the fourth operative paragraph of the judgment of June 19, 1998, (*supra* first having seen paragraph). The Order also requested that a report should be submitted before October 18, 2003 (*supra* eighteenth having seen paragraph), and this has not been received by the Court.

9. That, after examining the information provided by the State and the Inter-American Commission, the Court has verified that the State has complied with:

- a) The payment ordered in favor of the next of kin of Consuelo Benavides Cevallos (*third operative paragraph on reparations of the judgment of June 19, 1998*); and
- b) The commemoration of the name of Consuelo Benavides Cevallos (*third operative paragraph on reparations of the judgment of June 19, 1998*).

10. That, after examining the information provided by the State and the Inter-American Commission, the Court has verified that the State has not complied with the obligation to investigate, prosecute and punish those responsible for the human rights violations declared by the Court, because it had indicated that the criminal proceeding was statute-barred (*fourth operative paragraph of the judgment on merits of June 19, 1998*).

11. That the Court, in its constant case law, has indicated that statute of limitations provisions or any other obstacle of domestic law intended to prevent the investigation and punishment of those responsible for human rights violations are

² Cfr. *Benavides Cevallos case. Compliance with judgment*. Order of the Inter-American Court of Human Rights of September 9, 2003, third considering paragraph; *Baena Ricardo et al. case. Compliance with judgment*. Order of the Inter-American Court of Human Rights of June 6, 2003, fourth considering paragraph; “*The Last Temptation of Christ*” case (*Olmedo Bustos et al.*). *Compliance with judgment*. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph; *El Amparo case. Compliance with judgment*. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph; and *International Responsibility for the Promulgation and Application 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.

inadmissible.³ The Court has stated that the general obligations embodied in Article 1(1) and 2 of the American Convention require the States Parties to adopt promptly any type of judicial decisions to ensure that no one may be withheld the right to judicial protection⁴ embodied in Article 25 of the American Convention.

12. That, pursuant to the treaty obligations assumed by the States, no provision of domestic law, including the statute of limitations, may be invoked to fail to comply with the decisions of the Court concerning the investigation and punishment of those responsible for human rights violations. Otherwise, the rights embodied in the American Convention would be deprived of effective protection. This understanding of the Court is in accordance with the letter and the spirit of the Convention and also general principles of law; one of these principles is that of *pacta sunt servanda*, which requires that the provisions of a treaty should be ensured *effet util* at the level of the domestic law of the States Parties.⁵

13. That, in the terms of Article 65 of the American Convention,

[t]o each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

14. That Article 30 of the Statute of the Court establishes that:

[t]he Court shall submit a report on its work of the previous year to each regular session of the OAS General Assembly. It shall indicate those cases in which a State has failed to comply with the Court's ruling. It may also submit to the OAS General Assembly proposals or recommendations on ways to improve the inter-American system of human rights, insofar as they concern the work of the Court.

15. That, since the Court has not complied with the obligation to investigate, prosecute and punish those responsible for the human rights violations declared by this Court to the detriment of Consuelo Benavides Cevallos and her next of kin, the Court, in application of Article 65 of the American Convention and Article 30 of its Statute, may include this Order in its 2003 Annual Report, so that it will be submitted to the consideration of the General Assembly of the Organization of American States.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 65, 67 and 68(1) of the American Convention sobre Derechos Humanos, Article 30 of its Statute and Articles 25 and 29(2) of its Rules of Procedure.

DECLARES:

³ Cfr. *Bulacio case*, *supra* note 1, para. 116; *Trujillo Oroza case*, *Reparations*, *supra* note 1, para. 106; *Barrios Altos case*, *supra* note 1, para. 41.

⁴ Cfr. *Bulacio case*, *supra* note 3; and *Caso Barrios Altos*, *supra* note 1, para. 43.

⁵ Cfr. *Bulacio case*, *supra* note 1, para. 117; *"Five Pensioners" case*. Judgment of February 28, 2003. Series C No. 98, para. 164; and *Hilaire, Constantine y Benjamin et al. case*. Judgment of June 21, 2002. Series C. No. 94, para. 112.

1. That the State has complied with the payment order in favor of the next of kin of Consuelo Benavides Cevallos and commemoration of the name of Consuelo Benavides Cevallos, in accordance with the third operative paragraph of the judgment of the Court of June 19, 1998.

2. That the State has not yet complied with the obligation to investigate, prosecute and punish those responsible for the human rights violations to the detriment of Consuelo Benavides Cevallos, in accordance with the fourth operative paragraph of the judgment of the Court of June 19, 1998.

AND DECIDES:

3. To inform the General Assembly of the Organization of American States, in application of Article 65 of the American Convention on Human Rights, about the failure of the State of Ecuador to comply with its obligation to investigate, prosecute and punish all those responsible for the human rights violations committed to the detriment of Consuelo Benavides Cevallos, in the terms of the judgment of the Court of June 19, 1998.

4. To notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victim's next of kin.

Antônio A. Cançado Trindade
President

Sergio García-Ramírez

Máximo Pacheco-Gómez

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