

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

CABALLERO DELGADO AND SANTANA CASE

COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgment on merits delivered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") in the Caballero Delgado and Santana case on December 8, 1995, in which, *inter alia*, it:

Unanimously

5. Decides that the Republic of Colombia is obligated to continue judicial proceedings into the disappearance and presumed death of the persons named and to extend punishment in accordance with internal law.

By four votes to one

6. Decides that the Republic of Colombia is obligated to pay fair compensation to the relatives of the victims and to reimburse the expenses they have incurred in their actions before the Colombian authorities in relation to these proceedings.

Judge Nieto-Navia dissenting.

By four votes to one

7. Decides that the manner and amount of the compensation and reimbursement of the expenses will be fixed by this Court and for that purpose the corresponding proceeding remains open.

Judge Nieto-Navia dissenting.

2. The judgment on reparations delivered by the Court on January 29, 1997, in which it decided:

Unanimously

1) To set at US\$ 89,500.00 (eighty-nine thousand five hundred dollars of the United States of America) or its equivalent in the national currency the amount that the Colombian State must pay to the relatives of Isidro Caballero-Delgado and María del Carmen Santana by July 31, 1997. These payments shall be made by the State of Colombia in the proportion and conditions set forth in the consideranda of this judgment.

Unanimously,

2) To set at US\$ 2,000.00 (two thousand dollars of the United States of America) the amount that the State must pay directly to María Nodelia Parra-Rodríguez as reimbursement of the expenses incurred in her representations before the Colombian authorities.

[...]

4) That the Colombian State is obliged to continue its efforts to locate and identify

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

the remains of the victims and deliver them to their next of kin.

5) To supervise compliance with this judgment and that only after verification of such compliance shall the case be closed.

3. The first report of the State of Colombia (hereinafter "the State" or "Colombia") of August 1, 1997, and its attachment, in which it referred to compliance with the judgment on reparations. In this respect, it advised that the Ministry of Defense had issued a resolution to "order the payment of the sum of U\$28,500 dollars to María Nodelia Parra Rodríguez, to order the setting up of a trust fund in favor of the children of Isidro Caballero Delgado, with the equivalent of U\$26,500 dollars each, and also to order the payment of U\$10,000 dollars to the closest next of kin of María del Carmen Santana, when her identity and that of her beneficiaries has been determined." The State also indicated that it had begun the process of setting up the trust funds ordered in favor of the minors, Iván Andrés and Ingrid Carolina Caballero, which consisted in a bidding or competition process in order to choose the trust company. Regarding the trust fund ordered in favor of the next of kin of María del Carmen Santana, the State indicated that it had not been able to set this up because, at the domestic level, the "question of the victim's identity" had not been resolved.

4. Note CDH-10,319/588 of September 25, 1997, in which the President of the Court (hereinafter "the President") on the instructions of the whole Court, requested the State to present specific information with regard to the documents that showed that María Nodelia Parra had received compensation; progress in determining the identity of María del Carmen Santana or her next of kin; efforts to locate the remains of the victims in this case, and the setting up of the trust funds in favor of the minors, Iván Andrés and Ingrid Carolina Caballero.

5. The brief of October 8, 1997, in which Luis Carlos Domínguez Prada, representing the minor, Ingrid Carolina Caballero Martínez, indicated that, although the time limit stipulated in the judgment for complying with the payments of compensation had expired, neither the amount owed nor the interest on it had been paid.

6. The second report of the State of October 28, 1997, and its attachment, in which it indicated that:

a. Regarding payment of the amount corresponding to María Nodelia Parra, the "cheque [... had been] waiting at the Ministry of National Defense since July 9, 1997," and had not been collected;

b. Regarding determination of the identity of María del Carmen Santana, "no progress ha[d] been made in this respect and, in brief, the identity of [Ms.] Santana ha[d] still not been determined";

c. Regarding "the obligation to continue efforts to locate the remains of the victims, the Human Rights Monitoring Unit, which was conducting the criminal investigation [had indicated that] it ha[d] inspected three different sites where [the victims] may have been buried," but the results "ha[d] been negative";

d. Regarding the criminal investigation, "the Superior Council of the Judiciary, in a judgment of May 8, 1997[,...] declared [that the military

criminal courts] were competent to hear the investigation against Major General (ret.) Alfonso Vacca Perilla, and [that] the Human Rights Monitoring Unit had competence to investigate 'the members of the armed forces, Major Pinzón, Captain Héctor Alirio Forero Quintero, Jorge Enrique García García, Second Lieutenant Norberto Baez Baez, First Lieutenant Romero Dumar, Second Lieutenant Jimy Cortés García, Laureano León Peña and professional soldier Gonzalo Arias Alturo.' Consequently[,] procedural unity had been interrupted." Arias Alturo had been "remanded in custody" and, "investigations continue[d]. The latest resolution [was that] of October 14, [1997]"; and

e. Regarding the "setting up of the trust funds in favor of the minors and the payment of the interest due since July 31 [1997], [...]by mid-December [1997] the trust fund w[ould] be set up with the capital plus the interest earned until it was effectively constituted."

7. The brief of November 11, 1997, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented its comments on the first and second reports of the State (*supra* third and sixth having seen paragraphs) and, among other matters, indicated that:

a. Regarding tracing the next of kin of María del Carmen Santana, the State should expedite the necessary State resources, because "the judicial proceedings to [...] determine the identity of the victim under domestic law, ha[d not] been initiated";

b. Regarding the State's obligation "to return the bodies" of Isidro Caballero and María del Carmen Santana, it had not taken any steps to locate the remains of the victims;

c. Regarding the criminal investigation that was underway, "the military criminal courts continue[d] to investigate the acts committed by law enforcement personnel, who had nothing to do with the Services, despite the ruling of the Constitutional Court, delimiting the scope of the military jurisdiction." "Even though [...] Colombia ha[d] expressed its willingness to punish those responsible [...] within the country [...] it ha[d] not taken any measure whatever[,...] so that impunity continued in [the case]";

d. Regarding the compensation in favor of María Nodelia Parra, the petitioners, on her behalf, received *Banco Ganadero* cheque No. A2136596 for thirty-one million seven hundred and sixty-eight thousand six hundred and sixty-five Colombian pesos; and

e. Regarding the trust funds ordered in favor of the minors, to date they had not been set up and "it [was] hoped that [the Court's ruling] w[ould] be complied with in December 1997."

8. The third report of the State of January 13, 1998, in which it indicated that it had taken all the "measures within its means" to identify María del Carmen Santana and, therefore, her next of kin. With regard to the criminal investigation, it stated that "it [was] in contact with the competent authorities, in order to evaluate whether the investigation that was referred to the military criminal justice system should be transferred once again." In relation to the obligation to return the bodies of the

victims to their next of kin, it stated that it had taken viable measures and continued all possible efforts to locate the bodies. Lastly, it indicated that owing to "obstacles of a domestic nature, which d[id] not depend on the [State] authorities," it had not been possible to set up the trust funds, since the bid had been declared void.

9. Note CDH-10,319-607 of February 6, 1998, in which the Secretariat of the Court (hereinafter "the Secretariat"), on the instructions of the Court, requested the State to provide information on the possibility of finding alternatives that would facilitate setting up the trust funds ordered in favor of the minor children of Isidro Caballero Delgado.

10. The fourth report of the State of March 24, 1998, in which it indicated that the setting up of the trust fund had been opened to tender and that this had been declared void, so that it was awaiting authorization so as to be able to sign a contract directly with the banking service.

11. The brief of Luis Carlos Domínguez Prada of April 24, 1998, and its attachment, in which he advised that the Minister of National Defense had issued "Resolution No. 14,818 of November 28, 1997, derogating paragraph number 65 of Chapter XVIII of the judgment that order[ed] the payment of interest should payments fall in arrears [and ordering], in its first article, that interest should not be paid to the minor [Ingrid Carolina Caballero Martínez], but should accumulate to the capital of the trust fund."

12. The brief of the State of June 12, 1998, in which it indicated that on June 10, 1998, it had forwarded "to the *Sociedad Fiduciaria Cooperativa de Colombia* (FIDUBANCOOP), for signature, the contract document authorizing it to set up a trust fund in favor of the minors [Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez]."

13. The report of the State of September 30, 1998, in which it indicated that the contract authorizing the setting up of a trust fund in which the minors, Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez, were named as beneficiaries, had been signed "by the Ministry of National Defense [...] and FIDUBANCOOP on June 23, 1998." In this respect, this financial institution objected to the guarantee clause, on the basis that the premium to be paid for constituting this guarantee was higher than the total commission perceived by the trust company, which reflected a financial discrepancy in the contract. It therefore requested the Court to approve the following modification in the trust contract: 1) To eliminate the requirement to have to pay each of the minors, on attaining their majority, the equivalent [of] US\$26,500.00, taking into account that should the investment be made in that currency, the requirements in Colombian pesos would be approximately \$175,000 monthly for each one [...], and 2) To substitute the obligation to set up a trust fund "by the investment in term deposit certificates [hereinafter "TDCs"] in the name of the Ministry of National Defense and of each of the minors."

14. Note CDH/10,319-640 of December 22, 1998, in which the Secretariat, on the instructions of the whole Court, *supra* requested the State to clarify its first request in the brief of September 30, 1998 (*supra* thirteenth having seen paragraph).

15. The communication submitted on January 15, 1999, in which the State presented the clarification requested by the Court (*supra* fourteenth having seen paragraph) and asked for authorization to set up an investment in term deposit

certificates (TDCs) in Colombian pesos, instead of dollars, in favor of the minors indicated in the judgment on reparations, because the interest rate on dollars was lower.

16. Note CDH/10,319-643 of January 20, 1999, in which the President, so authorized by the Court, advised the State "that the Court ha[d] authorized that an investment in term deposit certificates in Colombian pesos [could] be made in favor of the minors, provided this investment [were] the most favorable for the minors." The Court also requested the State, "when carrying out this measure, to take all necessary measures to ensure that, in the future, the interests of the minors w[ould] not be affected by inflation."

17. The brief of February 8, 1999, in which the Commission presented its comments on the communication of the State (*supra* fifteenth having seen paragraph) and on the Court's authorization to invest in TDCs in Colombian pesos (*supra* sixteenth having seen paragraph). In this respect, it stated that this "would subject the investment to the high rates of devaluation that affect[ed] the Colombian economy" and requested the Court to reconsider its authorization. The Commission also proposed that an investment should be made in term deposit certificates in dollars in the "*Banco Cafetero*."

18. Note CDH/10,319-648 of February 16, 1999, in which the Secretariat, on the instructions of the President, requested the State to forward its comments on the possibility of making an investment in TDCs in United States dollars in the *Banco Cafetero* in favor of the minors, Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez.

19. The brief of March 31, 1999, in which the State referred to the Commission's proposal (*supra* seventeenth having seen paragraph). In this respect, it indicated that it agreed to make an investment in TDCs in United States dollars in *Bancafe* because it was more advantageous for the minors, Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez. It also stated that the interest on the trust fund had been forwarded to the accounts of the representatives of the minors every month.

20. The note of the President of June 4, 1999, in which, so authorized by the whole Court, he requested the State to present an updated report by July 30, 1999, on the payment owing to the minors, Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez; about the payment owing to the next of kin of María del Carmen Santana; about finding the remains of the victims and delivering them to their next of kin, and about the obligation to continue judicial proceedings in relation to the disappearance and alleged death of the victims in the case and to punish those responsible.

21. The report of the State of July 30, 1999, and its attachment, in which it indicated that, when the trust fund set up in favor of the minors, Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez, was terminated, which should be on October 27, 1999, an investment would be made in TDCs in United States dollars in the *Banco Cafetero* in Miami. It also stated that it had not been able to obtain detailed information on the identity of María del Carmen Santana and had not been able to trace her next of kin. In this respect, it indicated that it had ordered publication of a "summons" in newspapers with wide national circulation. Regarding setting up a trust fund in favor of the next of kin of Ms. Santana, it stated

that the Ministry of Defense had indicated that it would have added US\$10,000 (ten thousand United States dollars) to the trust fund set up for the minors, but that it was unable to do so because FIDUBANCOOP had gone into liquidation. The State also indicated that it had been unable to locate the remains of the victims, despite four exhumation procedures. Lastly, Colombia added that the criminal proceeding was before the National Human Rights Unit of the Office of the Attorney General, which had "remanded Gonzalo Arias Alturo in custody"; but this measure had been revoked and the pre-trial proceeding had been precluded in his favor, "as if he had already been prosecuted and acquitted of the kidnapping of Isidro Caballero and María del Carmen Santana." However, the State added that Mr. Arias Alturo continued in detention for offenses other than those investigated in the proceeding to which the instant case refers.

22. The communication of September 10, 1999, and its attachment, in which the Commission indicated that the petitioners had found María del Carmen Santana's mother.

23. The communication of September 16, 1999, and its attachments, in which the Commission presented the documents corresponding to the Registry Office and other documentation that demonstrated the existence of Ana Vitelma Ortiz, the mother of María del Carmen Santana Ortiz.

24. Note CDH-10,319/682 of September 29, 1999, in which the Secretariat gave the State until November 15, 1999, to make the investment in term deposit certificates in United States dollars in the *Banco Cafetero*, since Colombia had informed the Court that it could not comply with this obligation before October 27, 1999, the date on which the trust fund contract signed by the Ministry of Defense and FIDUBANCOOP expired (*supra* twenty-first having seen paragraph).

25. The communication of October 15, 1999, and its attachments, in which the Commission presented its comments on the State's report of July 30, 1999 (*supra* twenty-first having seen paragraph). In this respect, it indicated that the lack of due diligence by Colombia in seeking the next of kin of María del Carmen Santana Ortiz had unjustifiably delayed the reparation of the damage caused, because the documents forwarded by the representatives of the victims concerning the identity of the victim and her next of kin had been obtained from public offices (*supra* twenty-second and twenty-third having seen paragraphs). With regard to the measures taken to locate the remains of the victims, it indicated that the State's report referred to steps taken prior to the delivery of the judgment on reparations (*supra* second having seen paragraph). Lastly, it indicated that the Military Superior Court had advised the representatives of the victims that "on July 10, 1998, the discontinuance of the proceeding in favor of Major General Alfonso Vacca Perilla had been confirmed," who had been absolved of all responsibility, which indicated "the lack of serious measures to achieve the transfer of the investigation to the ordinary jurisdiction."

26. Note CDH-10,319/691 of November 25, 1999, in which the Secretariat, on the instructions of the President, informed the State that the period granted for complying with the payment owing to the minors, Andrés Caballero Parra and Ingrid Carolina Caballero Delgado had expired, and therefore requested that the respective information should be forwarded as soon as possible.

27. Note CDH-10,319/709 of April 7, 2000, in which the Secretariat, on the instruction of the President, requested the State to provide information on several components of the judgments on merits and reparations delivered by the Court that were pending compliance. Among these, it mentioned the payment owing to the minors, Andrés Caballero Parra and Ingrid Carolina Caballero Martínez; the payment owing to the next of kin of María del Carmen Santana; finding the remains of the victims and delivering them to their next of kin, and the judicial proceedings on the disappearance and alleged death of the victims in the case, as well as the punishment of those responsible.

28. The report of the State of May 15, 2000, and its attachments, in which it indicated that it had invested in TDCs "in favor of the minors[,... although] they were in the name of the Ministry of Defense, in view of the irrevocable assignment to the Ministry by FIDUBANCOOP" and because the United States banking laws prohibited the establishment of TDCs in the name of minors under 18 years of age. It also reported that, in relation to the compensation for the next of kin of Ms. Santana, it had also established a TDC in the name of the Ministry of Defense, until the closest next of kin were determined under domestic legislation. With regard to finding the remains of the victims, the State indicated that "a total of four exhumation procedures ha[d] been conducted to search for the bodies [...], and they [...] ha[d] not been successful." Lastly, Colombia stated that "it [was] continuing to make efforts to identify and punish those responsible for the disappearance of Isidro Caballero and María del Carmen Santana."

29. The brief of June 16, 2000, and its attachments, in which the Commission presented its comments on the State's report (*supra* twenty-eighth having seen paragraph). In this respect, it indicated that the TDCs had not been established in the name of the minors or their representatives, but in the name of the Ministry of Defense, although the State had not justified its decision not to establish them in the name of the representatives of the minors. It also indicated that, in September 1999, the representatives had provided evidence of the existence of María del Carmen Santana and her next of kin, but, even though they had obtained authoritative documents that, according to domestic legislation, were appropriate evidence to show the existence of a person, the Office of the Attorney General had ordered measures designed to find the persons who had already been identified. The Commission indicated that the State had not adopted measures to recover the remains of the victims since 1995. Regarding the investigation of the facts, the Commission stated that on September 10, 1998, the closure of the investigation had been revoked in order to again question the persons linked to the homicide, but that 20 months later, it had not received information on the extension to the investigation. It also indicated that the State had not provided adequate information on the termination of the proceeding against Major General Alfonso Vacca Perilla. The attachment to the said brief contained recommendations made by the Technical Investigations Unit to "locate the site where the victims [were] buried."

30. The brief of the State of June 29, 2000, in which it requested the Court to authorize the establishment of a TDC instead of a trust fund in favor of the next of kin of María del Carmen Santana, since the country's financial institutions were not interested in establishing the trust fund "because the amount of the investment would not be cost-effective."

31. The brief of August 1, 2000, and its attachment, in which the Commission presented its comments on the State's report of June 29, 2000 (*supra* thirtieth

having seen paragraph). In this respect, it indicated that the authorization requested by the State in that report "was unacceptable, because the next of kin of María del Carmen Santana ha[d] already been identified and it was incumbent to proceed to comply with the judgment as regards payment of the compensation."

32. Note CDH-10,319/722 of August 21, 2000, in which the Secretariat, on the instructions of the whole Court, requested the State to provide information on "the reasons why it ha[d] not proceeded to pay the compensation [...]" to the closest next of kin of María del Carmen Santana.

33. The report of the State of October 2, 2000, and its attachments, in which it referred to the compensation for the next of kin of María del Carmen Santana. In this respect, it stated that it was not legally in order to pay Ana Vitelma Ortiz, because there were inconsistencies between [the records of] the Registry Office for Births and the birth certificate presented, with regard to the names of both the maternal and the paternal grandparents of Ms. Santana. It also indicated that the doubts about the authenticity of the documents submitted by Ana Vitelma Ortiz, should be resolved by the Human Rights Unit of the Office of the Attorney General.

34. The brief of November 6, 2000, and its attachments, in which the Commission presented its comments on the State's report of October 2, 2000 (*supra* thirty-third having seen paragraph). In this respect, it expressed its concern for the failure to investigate the death of the victims, for the failure to take measures to locate their remains, and for the delay in paying the compensation corresponding to Ms. Santana's next of kin. It also indicated that the State had not complied with the judgment of the Court and requested the Court to order Colombia to "provide information on progress in identifying, prosecuting and punishing those responsible[;] [...] about the measures to locate the remains of the victims and deliver them to their next of kin[, and] to [c]ompensate the closest next of kin of María del Carmen Santana."

35. The report of the State of December 28, 2000, in which it indicated that an agreement had been reached with the representatives of the victims and their next of kin about delivery of the compensation corresponding to the alleged mother, even though, to date, no one had come forward to make the claim. In this respect, it indicated that the documents presented allowed the relationship of Ana Vitelma Ortiz to be inferred, and she would make a sworn statement saying "[t]hat María del Carmen Santana [had been] detained and disappeared by State agents[;][...][t]hat Mrs. Ortiz ha[d] not received any payment[; and] that the woman who had disappeared had no children [...]."

36. The brief of July 12, 2001, and its attachments, in which the Commission presented its comments on the State's report of December 28, 2000 (*supra* thirty-fifth having seen paragraph). In this respect, it indicated that the payment of US\$10,000.00 (ten thousand United States dollars) had been made to Ana Vitelma Ortiz. However, it indicated that payment of the interest earned from the date on which the trust fund was set up in January 1998 and the date on which payment was effectively made in May 2001 remained pending. Lastly, the Commission reiterated the need for the State to comply with the investigation and punishment of those responsible and finding the remains of the victims.

37. The Order on compliance with judgment issued by the Court on December 4, 2001, in which it decided:

1. That the State of Colombia must indicate to the Court, within 30 days of notification of this order, the reasons why the term deposit certificate corresponding to the payment of the amounts owing to the minors, Andrés Caballero Parra and Ingrid Carolina Caballero Martínez, [had not been] established, as would have been appropriate, in principle, in favor of the representatives of the said minors, but rather in favor of the Ministry of Defense. After examining the explanation, the Court w[ould] take the pertinent decision.

2. That the State of Colombia must indicate to the Court, within 30 days of notification of this order, the reasons why Ana Vitelma Ortíz has not been paid the interest earned from January 1998 to May 2001, on the sum of money that the Court established as compensation for non-pecuniary damages in favor of the next of kin of María del Carmen Santana. When the explanations have been examined, the Court will take the pertinent decision.

3. That, within 30 days of notification of th[e] order, the State of Colombia must provide information on the measures taken to locate the remains of the victims and deliver them to the next of kin and also on the progress of the judicial proceedings leading to the identification and punishment of those responsible for the facts of the case.

38. The report of the State of January 14, 2002, and its attachment, in which it referred to the aspects requested in the Order of the Court (*supra* thirty-seventh having seen paragraph). In this respect, it advised that "[t]he legislation of the United States prohibit[ed] establishing [TDCs] in the name of minors" and that the State wanted to avoid third parties being able to redeem the security, so that it established the latter in the name of the Ministry of Defense, but in favor of the minors, who would receive monthly interest payments through their representatives. Regarding the amount of interest claimed by Mrs. Ortiz, it stated that "the Ministry [...] [did] not owe any amount for interest on the US\$10,000 [...] since this amount had been adjusted to the value in force at the date the obligation was paid" and "the way in which the Ministry of Defense had adjusted the amounts initially ordered mean[t] that the purchasing power of the compensation ordered by the Court was retained." Regarding the investigation, it stated that the National Human Rights Unit was conducting this and six individuals were being investigated as being involved. Lastly, it added that, in relation to the search for the corpses, "no precise date ha[d] been established for [the respective] procedure," because several of the State's intelligence agencies had indicated that there were security problems in the area where the bodies had allegedly been buried.

39. The brief of February 12, 2002, in which the Commission presented its comments on the State's report (*supra* thirty-eighth having seen paragraph). In this respect, it stated, regarding the establishment of the TDCs, that, "should the State consider that the mothers of the minors [were] not in a position to administer the funds properly [...], domestic law provided mechanisms to establish the eventual responsibility of the legal representatives." It also indicated that "the failure to pay the compensation owed to the next of kin of María del Carmen [Santana] occurred because of the absence of effective measures to locate the victim's next of kin and even the denial of [her] identity," so that the payment of interest for the delay could be attributed to this factor. With regard to the search for the remains of the victims, the Commission indicated that the State had not "provided any explanation about the measures taken since 1995 [...] to at least identify [the] place where [their] remains might be found." Lastly, it stated that "even though ten years had elapsed since the events, impunity still reign[ed] with regard to the facts."

40. Note CDH-10,319-763 of October 4, 2002, in which the Secretariat, on the instructions of the President, requested the State to submit a report on compliance with the judgment and granted it until November 1, 2002, to do so.

41. The report of the State of November 12, 2002, in which it indicated that "the Ministry of Defense had advised that it [was] consulting with *Bancafé* in the city of Miami concerning the possibility of transferring or endorsing the term deposit to the representatives of the minors, since [it was] in the name of that Ministry." It also reiterated that it did not owe any interest on the payment to Mrs. Ortiz. Regarding the search for the remains of the victims, the State indicated that it had not set a date for conducting the exhumation procedures "for reasons of public order in the area where they [were] presumably buried." Lastly, regarding the investigation being undertaken by the Human Rights Unit of the Office of the Attorney General, it stated that there was a request to close the investigation stage due to the expiry of the time limit; a decision was pending in this matter and none of the individuals who had been accused was affected by detention measures.

42. The brief of November 20, 2002, in which the representatives of the victims and their next of kin presented their comments on the State's report (*supra* forty-first having seen paragraph). In this respect, they asked the Court to request Colombia to provide information on the measures taken to register the TDCs "in the name of the legal representatives of the minors and on the measures taken to ensure that these term deposits offered adequate returns and [were] not affected by any assessment established by the laws of the United States," and also on "payment of the interest owed to the next of kin of María del Carmen Santana [...] from January 1998 to May 2001." It also stated that the information provided by the State on the criminal investigation revealed that impunity would reign with regard to the facts, because, if there were no grounds that allowed imposing measures of detention on individuals connected to the case, it would be impossible to file a list of charges. In this respect, the corresponding measure for this stage of the proceeding is to preclude the investigation. Lastly, it requested that the State should provide information on the "measures it ha[d] taken to ensure that these facts w[ould] not remain unpunished and that those responsible w[ould] be subjected to the corresponding punishments."

43. The brief of November 20, 2002, in which the Commission presented its comments on the State's report (*supra* forty-second having seen paragraph). In this respect, it reiterated the contents of its previous briefs to the effect that "the failure to pay the interest owed [to the mother of María del Carmen Santana] is related to factors under State control, which can be attributed to its role." It also indicated that Colombia "ha[d] not provided any explanation about the measures taken since 1995 [...] to at least identify [the] place where the remains of the victims might be found," and that "ten years after the facts had occurred, the crime suffered by the victims remain[ed] unpunished."

44. The Order of the Court of November 27, 2002, in which it decided:

1. That the State ha[d] the obligation to take all necessary measures to comply effectively and promptly with the judgment of January 29, 1997, delivered by the Inter-American Court of Human Rights in the Caballero Delgado and Santana 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 in order to comply with the decisions of the Court

in its judgment on reparations and, specifically, the provisions of the sixth, seventh and eighth considering paragraphs of the [...] Order on compliance.

3. That the representatives of the victims and their next of kin and the Inter-American Commission on Human Rights must present their comments on the State's report within two months of receiving it.

[...]

45. The report of the State of April 4, 2003, in which it indicated that, in agreement with the petitioners, it had called a meeting to be held on April 7, 2003, to explain the requirements and the documents needed by the *Banco Cafetero Internacional* to change the name in which the TDCs were registered. During this meeting, the issue of the interest that had not been paid to Ana Vitelma Ortiz would also be discussed. Lastly, the State indicated that the Office of the Attorney General had not provided any further information on the measures taken to locate the remains of the victims or on progress in the investigation of the facts.

46. The brief of July 4, 2003, in which the representatives of the victims and their next of kin presented their comments on the State's report of April 4, 2003, among which they indicated that:

a) Regarding the meeting held on April 10, 2003, the participants were informed that a single term deposit certificate had been established, even though it was for two different individuals, of which, only Ingrid Carolina Caballero Martínez would have attained her majority on the investment's date of expiry. In this respect, *Bancafé* had advised that a change in ownership would imply canceling the current TDC, creating another one, and losing the guaranteed financial return by adjusting them to current rates that were lower. Consequently, the representatives requested that the ownership should not be changed and that the situation of the minor, Iván Andrés, should be resolved to ensure that he was not prejudiced. The issue of the interest owed to Ana Vitelma Ortiz was not referred to at this meeting;

b) Regarding the investigations, the National Human Rights Unit of the Office of the Attorney General had ordered the preclusion of the criminal investigation in favor of the individuals involved in the criminal proceeding, but had ordered that the preliminary stage of the investigation should continue, which suggests that this could not last more than six months. They also indicated that, 16 years after the victims had disappeared, the criminal investigation was ineffective, because those responsible had not been identified or punished. In this respect, they requested that the Office of the Attorney General should declare the investigation re-opened, and that the 1990 acquittal should be annulled; and

c) They considered that the Court should convene a public hearing for the State to explain the reasons why it had not complied with its judgments.

47. The communication of July 8, 2003, and its attachment, in which the representatives of the victims and their next of kin presented the original document with the comments on the State's report. The attachment consisted of the Resolution issued by the National Human Rights Unit of the Office of the Attorney General on June 13, 2003.

48. The brief of July 8, 2003, in which the Commission presented its comments on the State's report of April 4, 2003 (*supra* forty-fifth having seen paragraph). In this respect, it indicated that, since only one TDC had been established, even though there were two different beneficiaries, the investment in favor of the minor, Iván Andrés Caballero Parra, would be subject to different interest rates, which would be relatively less favorable than the ones that would correspond to him if the TDC remained in force until he attained his majority. It also indicated, with regard to the investigation of the facts, that the preclusion of the investigation, and its continuation in a preliminary stage could mean that in six months it was concluded definitively. Lastly, the Commission added that the State had made no progress in the search for and recovery of the remains of the victims.

49. The report of the State of August 19, 2003, in which it presented additional information to that of April 4, 2003 (*supra* forty-fifth having seen paragraph). In this respect, it indicated that, at the meeting held with the petitioners, a change in the ownership of the TDC had been ruled out, so as not to adversely affect the financial conditions of the minors who were the beneficiaries of the reparations. It also stated that on September 1, 2004, the Ministry of Defense would order the financial institution, *Bancafé Internacional* to transfer half the amount of the TDC to an account opened in the name of Ingrid Carolina, and to establish a new TDC in the name of the representative of the minor, Iván Andrés Caballero Parra, with the amount of the TDC that has already been established. Lastly, the State advised that it had transmitted the comments presented by the Inter-American Commission and the petitioners to the Office of the Attorney General and the Ministry of Defense.

50. The brief of November 8, 2003, and its attachment, in which the representatives of the victims and their next of kin presented their comments on the additional information submitted by the State on August 19, 2003 (*supra* forty-ninth having seen paragraph). In this respect, it indicated that as representatives of the civil party, they had requested that an objection should be filed against the decision of the Office of the Attorney General of June 13, 2003, which, *inter alia*, "releases definitively the individuals who are involved and investigated." They also objected to the re-opening of the investigation that terminated in an acquittal in 1990. However, on October 9, 2003, the Office of the Attorney General had rejected the appeal that had been filed and had ruled on the arguments presented by stating that "the investigation could not be re-opened, because it was necessary to initiate an additional, independent procedure." In this respect, it indicated that the Office of the Attorney General had indicated that "it ha[d] no interest in promoting the review procedure, if it was accepted that the decision [had not prejudiced] anything." Consequently, the representatives indicated that the State showed a lack of interest in clarifying the facts and punishing those responsible. They also stated that Nodelia Parra and her son could not file an action for judicial review with regard to the acquittal of 1990, because they had not been procedural subjects in the criminal proceeding, in which there was no civil party.

51. The brief of November 10, 2003, and its attachment, in which the Commission presented its comments on the additional report of the State of August 19, 2003 (*supra* forty-ninth having seen paragraph). In this respect, it indicated that the representatives of the victims and their next of kin had contested the decision of the Office of the Attorney General "which precluded the criminal investigation," based on the right to know the truth about what had happened, to have access to justice, and on judgment C-004 of 2003 delivered by the Constitutional Court of Colombia, which decided that, in cases in which the State had been declared

responsible for human rights violations and when it had been determined that it had not conducted a serious and effective investigation, it was possible to file the action for judicial review. The Commission also indicated that the Code of Criminal Procedure established that the procedural subjects in a specific case have legal capacity to file this recourse. However, neither Nodelia Parra nor her son took part as such in the proceeding that concluded with an acquittal in 1990, because there was no civil party. Consequently, it indicated that it was for the Attorney General to make effective the re-establishment of the rights affected by the crimes that had been committed. Despite the foregoing, it advised that on October 9, 2003, the Office of the Attorney General had rejected the appeal filed by the representatives of the victims, terminating once and for all the possibility of knowing the truth.

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. That Colombia has been a State Party to the American Convention on Human Rights since July 31, 1973, and accepted the obligatory jurisdiction of the Court on June 21, 1985.
3. That, in this respect, 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."
4. That the obligation to comply with the decisions in 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 treaty¹.
5. 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.

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* * *

6. That, in the course of monitoring full compliance with the judgments on merits and reparations delivered in the instant case, and having examined the information provided by the State, the Commission, and the representatives of the victims and their next of kin, the Court has verified that:

- a) Payment of the amounts corresponding to reparations and reimbursement of the expenses of María Nodelia Parra Rodríguez (*first and second operative paragraph of the judgment on reparations*) has already

¹ Cf. *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; and *"The Last Temptation of Christ" (Olmedo Bustos et al.)*. *Compliance with judgment*. Order of the Inter-American Court of Human Rights of November 28, 2002, third considering paragraph.

been made. In this respect, the Court considers that it is not pertinent to request any further information on this matter.

b) A term deposit certificate (TDC) has been established in favor of the minors, Iván Andrés Caballero Parra and Ingrid Carolina Caballero Martínez. However, the Court has observed that the conditions under which this investment was made still need to be monitored, because a single TDC was established in favor of two different individuals, of whom, one of them, the minor Ingrid Carolina, will attain her majority on the date that this certificate matures, on September 1, 2004. Moreover, when the investment was made, it was put in the name of the Ministry of Defense, which undertook, at the request of the representatives of the victims and their next of kin, to order the transfer of the money to an account to be opened in the name of each of the minors when the certificate matures. In this respect, since the minor Iván Andrés will not have attained his majority at the date of maturity, it was agreed that a new TDC would be established in the name of his representative. Consequently, the Court considers that this element (*corresponding to the first operative paragraph of the judgment on reparations*) is pending compliance and requests that, when the TDC matures on September 1, 2004, information should be provided on the transfers made and on the establishment of a new investment in favor of the minor Iván Andrés; and

c) Payment of the amount corresponding to the reparation for compensation for non-pecuniary damage in favor of Ana Vitelma Ortiz, mother of María del Carmen Santana (*paragraph 51 and first operative paragraph of the judgment on reparations*) has been made. However, the documentation provided by the parties shows that the State has not paid the interest accumulated between the date of which the trust fund should have been set up in January 1998 and the effective date of payment in May 2001. In this respect, the Court considers that Colombia has complied with the payment of the sum of US\$10,000.00 (ten thousand United States dollars) indicated by the Court in its judgment on reparations (*supra* second having seen paragraph), but requests the State to provide information on payment of the said interest. The Court considers that it is not pertinent to request any further information on the part of the obligation that has already been complied with.

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* * *

7. That, in the judgment on merits of December 8, 1995, the Court decided that:

5. [...] the Republic of Colombia [was] obligated to continue judicial proceedings into the disappearance and presumed death of the persons named and to extend punishment in accordance with internal law.

8. That, after examining the documentation presented by the parties, the Court has verified that, to date, those responsible for the disappearance of the victims have not been identified. In this respect, the State has conducted two criminal proceedings. The first began in 1989 and culminated in an acquittal in 1990, and the next of kin of the victims did not participate in it as procedural subjects. During the second proceeding, the procedural unity was interrupted when the investigation

against Major General (ret.) Alfonso Vacca Perilla was transferred to the military jurisdiction in May 1997, and the criminal proceeding with regard to the other individuals who were accused was continued by the National Human Rights Unit of the Office of the Attorney General. The proceeding in the military court terminated with Mayor General Vacca Perilla's acquittal in 1998, and the criminal proceeding in the civil courts ended with the declaration of the preclusion of the criminal investigation.

9. That the Court, as determined in its constant case law, considers that it is inadmissible to invoke provisions of domestic law to try and prevent the investigation and punishment of those responsible for human rights violations.² Any interpretation to the contrary would deny the *effet util* of the provisions of the American Convention with respect to the domestic law of the States Parties and would deprive the international proceeding of one of its principal functions, because, instead of being conducive to justice, it would foster the impunity of those responsible for such violations.³

10. The Court also considers that the general obligations embodied in Articles 1(1) and 2 of the American Convention require the States Parties to adopt promptly all measures to ensure that no one is deprived of the right to judicial protection,⁴ embodied in Article 25 of the American Convention.

11. That judgment C-004 of 2003 of the Constitutional Court of Colombia (*supra* fifty-first having seen paragraph) decides that it is admissible to file an action for judicial review "against the preclusion of the investigation, the termination of the proceeding, and an acquittal in proceedings concerning human rights violations [...], provided that [...] a decision of an international body that monitors and controls human rights, formally accepted by" Colombia has declared the State responsible for the human rights violations. The Court considers that it is extremely important that Colombia adopt all necessary measures to clarify the facts by carrying out judicial proceedings that lead to the identification and punishment of those responsible. The next of kin of the victim should have full access and capacity to intervene at all stages and in all instances of these investigations, in accordance with domestic law and the provisions of the American Convention.⁵

12. In accordance with the foregoing, Colombia cannot invoke provisions of domestic law, such as the procedural figure of preclusion of the criminal investigation, in order to prevent access to justice and to obstruct compliance with the decisions of this Court concerning the investigation and punishment of those

² Cf. *Bulacio case*. Judgment of September 18, 2003. Series C. No. 100 paras. 116 and 117; *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; and *Barrios Altos case*, Judgment of March 14, 2001. Series C No. 75 para. 41.

³ Cf. *Benavides Cevallos case. Compliance with judgment*. Order of the Inter-American Court of Human Rights of September 9, 2003, sixth considering paragraph; and *Las Palmeras case. Reparations* (Art. 63(1) of the American Convention on Human Rights). Judgment of November 26, 2002. Series C No. 96, para. 69.

⁴ Cf. *Bulacio case*, *supra* note 2, para. 116; and *Caso Barrios Altos, Judgment on merits*, *supra* note 2, para. 43.

⁵ Cf. *Bulacio case*, *supra* note 2, para. 121.

responsible for serious human rights violations, in the terms of the treaty obligations assumed by the States.⁶

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* *

13. That, in the fourth operative paragraph of the judgment on reparations, the Court decided that "the Colombian State [was] obliged to continue its efforts to locate and identify the remains of the victims and deliver them to their next of kin."

14. That the most recent measures taken by the State that appear in the case file regarding finding the remains of the victims and delivering them to their next of kin correspond to the unsuccessful exhumations conducted in 1995, and that the Office of the Attorney General has indicated that it had not been able to order other exhumation procedures for reasons of public order. This matter is still pending compliance, because a State may not invoke provisions of domestic law to justify non-compliance with an international obligation. In this respect, the Court deems it necessary that the State forward specific, updated information on the measures taken to comply with the obligation to locate and deliver the remains of the victims.

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* *

15. That, with regard to the matters that Colombia has complied with (*supra* subparagraphs (a) and (b) of the sixth considering paragraph), this Court considers that it is not pertinent to request any further information.

16. That the pending matters (*supra* subparagraphs (b) and (c) of the sixth considering paragraph, and eighth, eleventh and twelfth considering paragraphs) must be complied with by the State forthwith. Consequently, the State must forward a report on the matters pending compliance indicated by the Court and, subsequently, the representatives of the victims and their next of kin, and the Inter-American Commission must present their comments on the State's report.

17. That the Court will consider the general status of compliance with its judgments on merits of December 8, 1995, and on reparations of January 29, 1997, when it has received the said State report and the corresponding comments of the Inter-American Commission and the representatives of the victims and their next of kin.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 67 and 68(1) of the American Convention on Human Rights, Article 25(1) of its Statute and Article 29(2) of its Rules of Procedure,

DECLARES:

⁶ Cf. *Bulacio case*, *supra* note 2 paras. 116 and 117; *Trujillo Oroza case, Reparations*, *supra* note 2, para. 106; *Benavides Cevallos case. Compliance with judgment*, *supra* note 3, sixth considering paragraph; and *Barrios Altos case*, *supra* note 2, para. 41.

1. That the State has complied partially with the provisions of the first and second operative paragraph of the judgment on reparations, as regards:

a) Payment of the amounts corresponding to reparations and reimbursement of the expenses of María Nodelia Parra Rodríguez, as mentioned in subparagraph (a) of the sixth considering paragraph of this Order; and

b) Payment of the amount corresponding to the reparations for compensation for non-pecuniary damage in favor of Ana Vitelma Ortiz, mother of María del Carmen Santana, except for the amount relating to interest on arrears, as mentioned in subparagraph (c) of the sixth considering paragraph of this Order.

2. That it will keep the proceeding on monitoring compliance in this case open, as regards the following matters that are pending compliance:

a) Payment of the interest accrued on arrears in favor of Ana Vitelma Ortiz, mother of María del Carmen Santana, as indicated in subparagraph (c) of the sixth considering paragraph of this Order;

b) Transfer of half the sum corresponding to the reparations invested in the term deposit certificate in United States dollars and the interest on this certificate at the date of its maturity, to the account to be opened in the name of the minor, Ingrid Carolina Caballero Martínez, who will attain her majority at that time, as indicated in subparagraph (b) of the sixth considering paragraph of this Order;

c) Investment in a new term deposit certificate in United States dollars of the sum corresponding to half the reparations and interest invested in the TDC that matures on September 1, 2004, in favor of the representatives of the minor, Iván Andrés Caballero Parra;

d) Investigation and punishment of those responsible for the disappearance and alleged death of the victims, as indicated in the eleventh and twelfth considering paragraph of this Order; and

e) Location of the victims' remains and their delivery to the next of kin, as indicated in the fourteenth considering paragraph of this Order.

AND DECIDES:

3. To urge the State to adopt all necessary measures to comply effectively and promptly with the judgments on merits of December 8, 1995, and on reparations of January 29, 1997, delivered by the Inter-American Court of Human Rights in the Caballero Delgado and Santana case, pursuant to Article 68(1) of the American Convention on Human Rights.

4. To call upon the State to present to the Inter-American Court of Human Rights, a detailed report indicating all the measures adopted to comply with the reparations ordered by the Court in its judgments and, specifically, on the matters

pending compliance, as indicated in the second operative paragraph of this Order, by April 1, 2004, at the latest.

5. To call upon the representative of the victims and their next of kin and the Inter-American Commission on Human Rights to present their comments on the State's report mentioned in the preceding paragraph within two months of receiving it.

6. To continue monitoring the matters pending compliance of the judgments on merits of December 8, 1995, and on reparations of January 29, 1997.

7. To notify this Order on compliance to the State, the Inter-American Commission on Human Rights, and the representative of the victims and their 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