

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

**CASE: CASTILLO PÁEZ*
V. PERU
COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgment on the merits delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") in the *Case Castillo Páez v. Peru* of November 3, 1997 wherein it ruled:

1. That the State of Peru violated, to the detriment of Ernesto Rafael Castillo Páez, the right to personal liberty recognized in Article 7 of the American Convention on Human Rights, in relation to Article 1 (1) of said Convention.
[...]

2. That the State of Peru violated, to the detriment of Ernesto Rafael Castillo Páez, the right to personal integrity recognized in Article 5 of the American Convention on Human Rights, in relation to Article 1 (1) of said Convention.
[...]

3. That the State of Peru violated, to the detriment of Ernesto Rafael Castillo Páez, the right to life enshrined in Article 4 of the American Convention on Human Rights in relation to Article 1 (1) of said Convention.
[...]

4. That the State of Peru violated, to the detriment of Ernesto Rafael Castillo Páez and his next of kin, the right to effective recourse to competent domestic courts or judges established in Article 25 of the American Convention, in relation to Article 1 (1) of said Convention.
[...]

5. That the State of Peru is under obligation to take action in order to repair the consequences of said violations and indemnify the next of kin of the victim, and to reimburse them for the expenses incurred as a result of their action before the Peruvian authorities as a result of this process, the appropriate proceedings for this purpose having already begun.

Complementary to stating said violations, the Court stated, among its considerations, that,

[...] the State of Peru is under obligation to investigate the facts resulting in these violations. Even assuming that internal difficulties prevented the identification of those responsible for crimes of this type, the right continues to exist for next of kin to learn what the fate of the victim was and, if so, to learn where his/her mortal remains lie (underlining not in the original.)¹

2. The Judgment on reparations of November 27, 1998, delivered by the Court in the instant case, in which it ruled to:

1. Establish US\$ 245,021.80 (two hundred forty-five thousand and twenty-one US dollars plus eighty cents) or its equivalent amount in domestic currency, as the amount

* Judge Salgado Pesantes notified the Court that, for reasons of *force majeure*, he was unable to participate in the discussion, ruling, and signing of this Order.

¹ *Castillo Páez Case*. Judgment of November 3, 1997. Series C 34, paragraph 90.

the State of Peru must pay as reparations to the next of kin of Ernesto Rafael Castillo Páez. This payment must be made by the State of Peru pursuant to the proportions and terms established in the Judgment.

2. That the State of Peru must investigate the facts of the instant case, as well as identify and punish those responsible for them, and take all necessary measures in its courts to ensure the fulfillment of this obligation.

3. That the payment indicated in the operative paragraphs one and five of the Order must be made within six months from the date the Judgment is notified.

[...]

5. Establish US\$2.000,00 (two thousands US dollars) or its equivalent amount in domestic Peruvian currency, as the sum the State must pay the next of kin of the victim as reimbursement of their costs for procedures in Peruvian courts.

6. That the Court shall monitor the fulfillment of [the] Judgment.

3. The December 2, 1998 brief from the Secretariat of the Court (hereinafter "the Secretariat"), in which it notified the State of Peru (hereinafter "the State "), the day after, regarding the Judgment on reparations delivered in the instant case, for which reason the term for compliance expired on June 3, 1999.

4. The June 11, 1999 report of the Secretariat in which, following directions from the President of the Court (hereinafter "the President "), requested the State to submit its first report on the compliance with Judgment on reparations, namely, "a detailed account of measures taken to make the payment [...], as well as to fulfill the duty to `investigate the facts of the [...] case, identify and punish those responsible for them and take all required measures in [Peruvian] courts to ensure compliance with this obligation."

5. The July 14, 1999 report of the Secretariat in which, following directions from the President, it restated the request made to the State to submit its first report on the compliance with Judgment on reparations, since the term had expired on July 12, 1999.

6. The February 3, 2000 brief from the representatives of the victim's next of kin (hereinafter "the representatives of the next of kin"), in which they submitted their observations on "the refusal of the State of Peru to fulfill the [J]udgment [on] reparations." In addition, they reported that "the State of Peru [had] not only refused to respond to the repeated requests for information [...]" from the Court, but also "[had] not complied with any of the points of [the] [J]udgment," despite five requests from said representatives to the Constitutional and Social Court of the Supreme Court in order to have the Judgment on reparations put into effect. For this reason they requested, among other things, the Inter-American Court to pronounce full non-compliance of the Judgment, to reiterate the obligation of the State to fulfill it, to send the General Assembly of the Organization of American States (hereinafter "the OAS ") a report regarding non-compliance of the Judgment pursuant to Article 65 of the American Convention on Human Rights (hereinafter "the Convention " or "the American Convention ") and, in addition, to ask the General Assembly to consider excluding Peru from the OAS until it fulfills the Judgment on reparations in the instant case.

7. The February 7, 2000 brief from the Secretariat by which, following directions from the Court, the report in the previous paragraph was sent to the State and it

was requested to inform the Court on the measures it had taken to fulfill the Judgment on reparations in the instant case.

8. The March 30, 2001 report from the State mentioning the “the force and enforceability of Judgments [...] delivered by the Court” in the instant case and the State’s willingness to fulfill said rulings. It also indicated that the State’s representatives had met with the next of kin of the victim in order to fully comply with the Judgment. In relation to damage, it reported about “internal action before the Ministry of Finance to allocate funds”; in relation to investigation and punishment of those responsible for the facts, it stated that a process had begun at the Court and that the representatives of the victim’s next of kin and the State’s representative had “formally met with the judge [...] whom [was] informed on the position of the State of Peru to the effect of fully complying with the Judgments delivered by the Court.” Finally, it mentioned the existence of amnesty laws and a Judgment of the Constitutional Court “that could hinder the compliance with Judgment on reparations.” It pointed out, nevertheless, that “this circumstance, as well as the Judgment delivered by the Inter-American Court on March 14, 2001 in the Barrios Altos case” must be timely evaluated.

9. The report of the State on the compliance with judgment on reparations, submitted on May 7, 2001, reporting that “it ha[d] paid in full [on April 26, 2001] the amount for reparations established [...], plus all legal interests due,” at the exchange rate in force at the time of the payment “no tax or fee has been levied on the amounts paid to the next of kin of the victim.” Also, it stated that all needed action was being taken, in coordination with the representatives of the next of kin, to “drive the criminal process [...] in order to investigate the facts and punish the responsible parties for the arrest-disappearance of [Ernesto Rafael Castillo Páez].”

10. The June 1, 2001 Order of the Court on Compliance with Judgment on the cases *Castillo Páez*, *Loayza Tamayo*, *Castillo Petruzzi et al.*, *Ivcher Bronstein* and *that of the Constitutional Court* in which it ruled:

1. Notice fulfillment by the State of Peru of the Judgments on Competence delivered in the *Cases of the Constitutional Court* and *that of Ivcher Bronstein* on September 24, 1999, as well as progress made to the issuance date of [the] Order on compliance with Judgments delivered by the Court in the cases *Castillo Páez*, *Loayza Tamayo*, *Castillo Petruzzi et al.*, *Ivcher Bronstein* and *that of the Constitutional Court*.

[...]

11. The December 4, 2001 briefs from the Secretariat in which, following directions from the full Court, it requested the parties to provide information on the compliance with Judgment on reparations.

12. The January 7, 2002 brief from the representatives of the next of kin, in which they submitted their observations, pointing out that the State had paid in full the amount for damages plus interests due, and indicating that they “consider[ed] that [the] point of the Judgment [dealing with pecuniary damage] ha[d] been satisfactorily fulfilled.” They also stated that, in relation to the investigation of the facts and the identification and punishment of those responsible for them, “[o]n August 29, 2001 [...] [the] criminal accusation [was] formalized [against] fifteen members of the Peruvian National Police for abduction “since, at the time of the facts (October 1990) forced disappearance was not a statutory offence in Peruvian criminal legislation.” To this effect, they added that this point had not been fulfilled

and that the Court should continue to monitor compliance with this point as well as of the obligation of delivering the victim's mortal remains to his next of kin.

13. The January 7, 2002 report, in which the State reported on internal action taken to fulfill the Judgment on reparations, including a request to start an investigation on the facts of the case, the beginning of a complementary investigation by the prosecutor, the formalization of the criminal accusation against the sixteen suspects, the issuance of a brief to start the investigative stage and of the "Order of appearance" of the suspects, who were prohibited from leaving the country.

14. The January 11, 2002 brief of observations from the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), stating its conformity with the payment of damages awarded. In relation to the investigation on the facts of the case, the Commission affirmed that, at the beginning of the investigative stage "some of the [...] suspects were not included [...]like [for instance ...] two members of the [N]ational [P]olice of Peru, who falsified and made disappear the record of detainees of the Police Station of San Juan de Miraflores, where [Mr.] Castillo Páez was taken."

15. The October 4, 2002 brief from the Secretariat in which, following directions from the President, the State was requested to submit detailed information on the compliance with Judgment on reparations; as well as the reminders of that request, sent by the Secretariat to the State on November 5 and November 19, 2002.

16. The November 27, 2002 Order of the Court regarding compliance with Judgment in the instant case, in which the Court considered, *inter alia*, that:

[...] while monitoring the comprehensive fulfillment of the [J]udgment on reparations in the instant case, the Court has substantiated that the State paid the amounts corresponding to damages and interests to the victim's next of kin, in compliance with operative paragraphs one, four, and five of the Judgment on reparations. Likewise, the Court notes that the State reported on actions required to "promote the criminal process [...] to investigate the facts and punish the responsible parties for the arrest-disappearance of [Ernesto Rafael Castillo Páez]."

Also, the Court ruled:

1. That the State [had] the duty to take all required action to make effective and to promptly fulfill the November 27, 1998 Judgment on reparations passed by the Inter-American Court of Human Rights in the case Castillo Páez, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.
2. That the State should submit to the Court, no later than March 30, 2003, a detailed report on the action taken in order to comply with the Court's ruling in the considering nine of the [...] Compliance Resolution.²
3. That the victim's representatives and next of kin, as well as the Inter-American Commission on Human Rights, should submit their observations in relation to the report submitted by the State within two-months from the time said report is submitted.

[...]

² Considering nine of the November 27, 2002 Order of the Court regarding compliance with Judgment in the *Castillo Páez v. Perú Case* establishes that "the Court considers it pertaining that the State notifies it on the progress in the investigation carried out in Peru against several individuals accused for the abduction and subsequent disappearance of Ernesto Rafael Castillo Páez by the Peruvian National Police in compliance with the second operative paragraph of the Judgment on reparations."

17. The November 29, 2002 report of the State, in which it reiterated "ha[ving] complied with the payment for monetary reparations" awarded by the Court. Also, it reported that an investigation was being carried out by the Public Prosecutors Office.

18. The December 3, 2002 report of the State, in which it pointed out that "the criminal process initiated against the presumed responsible of the arrest-disappearance of Ernesto Castillo Páez [was] following the course stated in Peruvian law." In line with this, several witnesses had deposed and the first examination of the accused had taken place. Also, the State reported that, at the date of the report, "the investigative stage of the criminal proceedings ha[d] ended" and was "awaiting the Prosecutor's Opinion," which had not been given due to a strike at the Judiciary Branch of the Government.

19. The March 25, 2003 brief of the next of kin of the victim, in which they stated no defendant had been arrested as of that date, and that many of them continued to serve at the Police; that the trial against the presumed responsible was being "handed from one judge to another," and that, after over twelve years from the disappearance of the victim and four years after the Inter-American Court delivered a Judgment declaring the responsibility of the State in the instant case, those responsible for the crime had not been identified and arrested, and no sentence had been passed on them, and that the mortal remains of the victim continued to be unlocated.

20. The April 9, 2003 report of the State, pointing out the existence of "various factors beyond State control [that] have resulted in a tremendous increase in the procedural load of the different bodies of the Judiciary." For this reason, the Judiciary is undergoing a reform process and reiterated the terms of its December 3, 2003 report (*supra* Having Seen 18) in relation to the progress made by the State in terms of the obligation to investigate the facts, identify, and punish those responsible, established on the Judgment on reparations.

21. The June 19, 2003 brief of the representatives of the next of kin, in which they confirmed that "the measures mentioned by the representative of the State in his report, have effectively been taken." They considered, however, that "the State [...] (the Judiciary) ha[d] not given this process the attention it deserve [d]," as the process has been conducted by three different judges in the investigative stage for eighteen months; that the facts had not been interpreted as establishing the crime of forced disappearance since, at the time the facts took place, forced disappearance was not a statutory offence in Peruvian criminal legislation, in spite of this being a crime against humanity, which has resulted in a different focus on the investigation in the instant case and in allowing the indictees to remain at large, since "both the indictees and the members of the top management of the Peruvian Police, as well as the representatives of the Executive Branch of the State and the officers of the Home Office , had taken various actions aimed at hindering and distorting the proceedings." Also, they reported that a reconstruction of the crime was not ordered in the brief to start the investigative stage, but rather was made upon request of the Castillo Páez family, and that the Prosecutor had issued a final and an extended opinion, and the judge had issued the Final Report; and that in all three documents the perpetration of abduction to the detriment of Ernesto Rafael Castillo Páez was established. However, they differed in terms of the number of suspects in relation to what occurred to the victim.

22. The July 18, 2003 report of the Commission, in which it recognized the effort made by the State to comply with the payment of damages, interests, and costs; it considered positive the beginning of a criminal process, in spite of the time elapsed since the delivery of the Judgments by the Court, but it considered "insufficient" the results of said investigation in the terms pointed out by the representatives of the victim's next of kin in the previous paragraphs. Also, the Commission pointed out that the State did not send any information whatsoever on the internal investigation that must be carried out in relation to violation of the right to life to the detriment of Ernesto Rafael Castillo Páez and to establish "what happened in relation to the loss of the *habeas corpus* record filed by the next of kin of [...] Castillo Páez as a result of the facts," nor on measures taken to locate the mortal remains of the victim. Consequently, the Commission requested the Court to continue monitoring the compliance with Judgment and "in case a situation similar to the current one prevails," to report on this to the General Assembly from the OAS, pursuant to Article 65 of the American Convention.

23. The November 13, 2003 brief of the Secretariat, in which it requested the parties, following directions from the President, to submit information related to the compliance with Judgment in the instant case.

24. The November 24, 2003 brief of the representatives of the next of kin, in which they reiterated that the operative paragraph one of the Judgment on reparations, dealing with pecuniary reparation, "ha[d] been satisfactorily complied with by the State [...]." In relation to the obligation to investigate, they pointed out that "even though nearly sixty months have elapsed since said Judgment was delivered, the State of Peru has not satisfactorily fulfilled its duty to investigate the facts of the case, nor to identify and punish those responsible for them." Particularly, the representatives saw it as progress in the investigation the fact that on September 11, 2003, the Third Higher Criminal Prosecutor's Office of Lima brought charges against sixteen suspects of abduction to the detriment of Ernesto Rafael Castillo Páez and requested a sixteen-year imprisonment sentence to be imposed upon each of them, plus jointly and several payment of 30.000 nuevos soles (Peruvian currency,) as civil reparation to legal heirs. In relation with this indictment, the representatives of the next of kin requested taking precautionary measures to ensure the sixteen suspects would be present at the oral proceedings. Finally, the representatives stated their "concern for the lack of investigation of the violation of the right to life" of the victim. The representatives of the next of kin requested the Court to continue monitoring the compliance with Judgment.

25. The November 24, 2003 report of the Inter-American Commission, pointing out, firstly, that "it [would] not issue a ruling on operative paragraphs one, four, and five that, in accordance with the November 27, 2002 Order of the [...] Court, were fulfilled by the State by paying the damages and interests to the next of kin of the victim." Also, the Commission reiterated what the representatives of the next of kin had stated regarding the development of the accusation against the sixteen suspects. On the other hand, it considered "That the State must take action to locate the mortal remains of the victim and to determine wh[at] occurred in relation to the loss of the record of *habeas corpus* recourse filed by the next of kin of the victim when the facts took place." The Commission requested the Court to continue monitoring compliance with Judgment.

26. The November 25, 2003 brief of the State, establishing that it "ha[d] paid in full the amount for reparations established by the Judgment on reparations [...] plus

legal interests, turned into Peruvian currency [...] at the exchange rate in force at the time of payment." In relation to the duty of investigating, the State pointed out that "in coordination with the counsel for the defense of the next of kin of the victim, necessary action [was] being taken to promote the criminal process," where the Prosecutor "ha[d] recently issued his Opinion finding the defendant responsible and asking for effective punishment." Finally, the State declared that "two acts and a Judgment of the Constitutional Court are currently in force that could hinder compliance with Judgment on reparations, in relation to the point dealing with the investigation and punishment of those responsible for the disappearance of Ernesto Rafael Castillo Páez." The State explained that these are Act number 26479 of July 14, 1995 (*Amnesty Act*) and Act number 26492 of June 30, 1995, as well as the Judgment of the Constitutional Court in record number 013-96-I/TC published on May 9, 1997, "declaring inadmissible the application for unconstitutional nature against those acts."

CONSIDERING:

1. It is an inherent power of the judicial functions of the Court to oversee compliance with its decisions.
2. The State of Peru is a State Party to the American Convention since July 28, 1978, and recognized the competence of the Court on January 21, 1981.
3. In view of the definitive and unappealable nature of the Judgments of the Court, pursuant to Article 67 of the American Convention, the State must promptly and completely comply with them within the term set for this purpose.
4. The Article 68(1) of the American Convention states that: "The States Parties to the Convention undertake to fulfill the Judgment of the Court in any case to which they are parties," treaty obligations of the States Parties are binding for all branches or bodies of the State.
5. The obligation to comply with the rulings contained in the Judgment of the Court is in accordance with a basic principle of law regarding the international responsibility of the State, backed by international case law, according to which the States must fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already stated before and is set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, they cannot refuse to fulfill the previously established international responsibility for domestic reasons.³
6. The Court notices the effort and the progress made by the State to comply with the Court Judgments.
7. In monitoring comprehensive compliance with Judgments on the merits and reparations issued in the instant case, and upon analyzing the information supplied by the State, the representatives of the next of kin, and the Inter-American Commission, the Court has verified that the State has complied with the payment of damages for non-pecuniary damage, pecuniary damage, legal expenses and costs, pursuant to points one and five of the Order of the Judgment on reparations.

³ Cf. *Bulacio Case*. Judgment of September 18, 2003. Series C, Number 100, paragraphs 116-118; *Benavides Cevallos Case*. *Compliance with Judgment*. Order of the Court of September 9, 2003, considering three and six; and *Baena Ricardo et al Case*. *Compliance with Judgment*. Order of the Court of June 6, 2003, considering four.

8. Upon analyzing the information supplied by the State, the representatives of the next of kin, and the Inter-American Commission, the Court considers it imperative that the State reports to the Court regarding the following points pending compliance:

- a) Follow-up on action taken to investigate the facts of the instant case in relation to violations of rights enshrined in the American Convention, to the detriment of Ernesto Rafael Castillo Páez, and to identify and punish those responsible for them, both abettors and perpetrators of the crime against Mr. Castillo Páez, since it does not follow from the information supplied that, thus far, this obligation has been fulfilled in accordance with the rulings of this Court (*point two of the November 27, 1998 Judgment on reparations*); and
- b) Follow-up on the legal measures taken to return the mortal remains of Ernesto Rafael Castillo Páez to his next of kin.

9. Providing sufficient information on compliance with the Judgment is a duty of the State, repeatedly stated by this Court.⁴

10. In relation to the point already fulfilled by the State (*supra* considering seven) this Court will not require again any information whatsoever.

11. In relation to the points still not complied with by the State (*supra* considering eight), the State must comply with them as soon as possible. The Court will consider the general status of compliance with Judgments on the merits it has delivered (November 3, 1997) and its Judgments on reparations (November 27, 1998), once it receives the aforementioned report of the State together with the observations from the representatives of the victim's next of kin and of the Inter-American Commission.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

By virtue of its powers to monitor compliance with its rulings and pursuant to Articles 67 and 68 (1) of the American Convention on Human Rights, Article 25 (1) of the Statute of the Court and Article 29 (2) of its Rules of Procedure,

DECLARES:

⁴ Cf. *Neira Alegría et al Case. Compliance with Judgment. Order of the Court of November 28, 2002, considering nine; El Amparo Case. Compliance with Judgment. Order of the Court of November 28, 2002, considering eight; Loayza Tamayo Case. Compliance with Judgment. Order of the Court of November 27, 2002, considering eight; Castillo Páez Case. Compliance with Judgment. Order of the Court of November 27, 2002, considering nine; Garrido and Baigorria Case. Compliance with Judgment. Order of the Court of November 27, 2002, considering eight; Blake Case. Compliance with Judgment. Order of the Court of November 27, 2002, considering nine; Caballero Delgado and Santana Case. Compliance with Judgment. Order of the Court of November 27, 2002, considering six and seven; and Baena Ricardo et al Case. Compliance with Judgment. Order of the Court of June 21, 2002, considering two; Baena Ricardo et al Case. Compliance with Judgment Order of the Court of June 6, 2003, considering ten and twelve; and "The Last Temptation of Christ" Case (Olmedo Bustos et al..) Compliance with Judgment Order of the Court of November 28, 2003, considering ten.*

1. That pursuant to considering seven of this Order, the State has fully complied with points one and five of the Order of the Judgment on reparations delivered by this Court on November 27, 1998 in relation to damages.

2. That it will keep open the proceedings on monitoring compliance with those points still not complied with in the instant case, pursuant to considering eight of this Order.

DECIDES:

3. To urge the State to take all necessary action to quickly make effective all reparations decreed in the November 3, 1997 and November 27, 1998 Judgments still unfulfilled, in accordance with the provisions of Article 68 (1) of the American Convention on Human Rights.

4. To demand that the State submits a detailed report no later than April 1, 2004, indicating all action taken to effectively carry out an investigation of what occurred to Ernesto Rafael Castillo Páez as well as of the location of his mortal remains, as pointed out in the considering eight of this Order.

5. Ask the Inter-American Commission on Human Rights, as well as the representatives of the victim's next of kin, to submit their observations to the State report mentioned in the previous operative paragraph no later than two months from the date of submission.

6. Continue monitoring the compliance with Judgment on the merits delivered on November 13, 1997 and of the Judgment on reparations delivered on November 27, 1998 in the *Castillo Páez Case*.

7. Notify the State, the Inter-American Commission on Human Rights, and the representatives of the victim's next of kin regarding this Order on compliance with Judgment.

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. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary