

**Order of the
Inter-American Court of Human Rights
of November 17, 2004
Case of Castillo-Páez v. Peru
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the Merits delivered by the Inter-American Court of Human Rights (hereinafter the "Court" or the "Inter-American Court") of November 3, 1997, whereby it unanimously established:

[...]

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

[...]

2. That the State of Peru violated the right to humane treatment recognized in Article 5 of the American Convention on Human Rights in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.

[...]

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

[...]

4. That the State of Peru violated the right to effective recourse to a competent national court or tribunal, recognized in Article 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez and his next of kin.

[...]

5. That the State of Peru is obliged to repair the consequences of those violations and compensate the victim's next of kin and reimburse them for any expenses they may have incurred in their representations to the Peruvian authorities in connection with this case, for which purpose the proceeding remains open.

Complementary to the declaration of such violations, the Court pointed out, in its considerations, that

[...] the Peruvian State is obliged to investigate the events that produced them. Moreover, on the assumption that internal difficulties might prevent the identification of the individuals responsible for crimes of this kind, the victim's family still have the right to know what happened to him and, if appropriate, where his remains are located...¹

¹ *Case of Castillo-Páez*. Judgment of November 3, 1997. Series C No. 34, para. 90.

2. The Judgment on Reparations delivered by the Court in the instant case on November 27, 1998, whereby it unanimously decided:

1. To set the reparations that the State shall pay to the next of kin of Ernesto Rafael Castillo-Páez at US\$245,021.80 (two hundred forty-five thousand twenty-one United States dollars and eighty cents) or its equivalent in local currency. The State is to make these payments in the proportion and under the conditions set forth in [...] this Judgment.

2. That the State of Peru shall investigate the facts in the instant Case, identify and punish those responsible and adopt the necessary domestic legal measures to ensure that this obligation is fulfilled.

3. That the payments indicated in operative paragraphs 1 and 5 shall be made within six months from the date of notification of this Judgment.

[...]

5. To set the amount the State shall pay to the victim's next of kin to reimburse them for costs incurred in domestic legal proceedings at US\$2,000.00 (two thousand United States dollars) or its equivalent in the local currency of Peru.

6. That it shall oversee fulfilment of this Judgment.

3. The Order of compliance with Judgment delivered November 27, 2003, whereby the Court considered:

[...]

7. That in overseeing overall compliance with the judgments on the merits and on reparations delivered in the instant case, and after analysing the information provided by the State, by the representatives of the next of kin, and by the Inter-American Commission, the Court has corroborated that the State has complied with the payment of compensation for immaterial and material damages, and costs and expenditures, in conformity with operative paragraphs one and five of the Judgment on reparations.

8. That after analysing the information provided by the State, by the representatives of the next of kin, and by the Inter-American Commission, the Court deems it indispensable that the State report to the Court concerning the following aspects of the judgment not yet fulfilled and still pending:

a) follow up concerning the steps taken to investigate the facts in the instant Case relative to violations of rights recognised in the American Convention, to the detriment of Ernesto Rafael Castillo-Páez, and to identify and punish those materially and intellectually responsible for what occurred to Mr. Castillo-Páez, since, on the basis of the information provided, it is not possible to conclude that this obligation may, to date, have been fulfilled in conformity with the decision of this Court (*Operative paragraph two of the Judgment on Reparations of November 27, 1998*); and

b) steps taken to return the mortal remains of Ernesto Rafael Castillo-Páez to his next of kin.

[...]

DECLAR[ED]:

1. that in conformity with considering paragraph seven of the [...] Order, the State has fully complied with the obligations specified in operative paragraphs 1 and 5 of the Judgment on Reparations delivered by this Court on November 27, 1998 on the matter of compensation.

2. that it shall maintain the procedure of supervision of compliance with the obligations pending in the instant case open, in conformity with the provisions in considering paragraph eight of the [...] Order.

[and] ORDER[ED]:

3. To urge the State to adopt all measures required to give effect to and provide for expeditious compliance with the reparations ordered in the November 3, 1997, and November 27, 1998, judgments not yet complied with and pending, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

4. To require the State that, by April 1st, 2004 at the latest, it submit, a detailed report indicating all measures adopted to conduct effectively the investigation concerning what occurred to Ernesto Rafael Castillo-Páez, and on the whereabouts of his mortal remains, as indicated in considering paragraph eight of the [...] Order.

5. To require the Inter-American Commission on Human Rights, as well as the representatives of the next of kin of the victim, to submit their observations to the State's report mentioned in the preceding operative paragraph within two months of the receipt thereof.

6. To continue supervising compliance with the Judgment on the Merits of November 13, 1997 and the Judgment on Reparations delivered on November 27, 1998 in the *Case of Castillo-Páez*.

4. Note CDH-10.733/518 of April 6, 2004, by means of which the Secretariat, following the President's instructions, requested the State to submit the report on compliance with the judgments (*supra* Having seen 3), given that the deadline for the submission of the cited report had expired on April 1, 2004.

5. On April 23, 2004, the State expressed that it had not yet submitted the report on compliance with the judgment required by the Court, as a consequence of the resignation of the agent and the successive resignation of the alternate agent in the case, and that it would provide it once a new agent was appointed.

6. The June 7, 2004, brief, whereby the State informed that it had appointed an agent for the case.

7. Note CDH-10.733/533 of July 9, 2004, whereby the Secretariat, with instructions from the full Court, informed the State that, during its LXIII Regular Session, it had taken knowledge of the fact that Peru had not submitted the report that it should have submitted by April 1, 2004, at the latest (*supra* Having seen 3). In this respect, the Secretariat reiterated to the State its request for the submission, within the shortest possible time, of the report on compliance with Court orders, which had been already requested to it in note CDH-10.733/518 of April 6, 2004 (*supra* Having seen 4).

CONSIDERING:

1. That supervision of compliance with its orders is one of the attributions inherent to the Court's jurisdictional functions.

2. That Peru has been a State Party to the American Convention since July 28, 1978, and that it recognised the jurisdiction of the Court on January 21, 1981. On November 3, 1997, the Court delivered its judgment on the merits and on November 27, 1998, its judgment on reparations in the instant case (*supra* Having seen 1 and 2).

3. 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.” To such effect, the States must ensure implementation, at the domestic level, of the requirements stated by the Court in its Orders.²

4. That by virtue of the nature of the Court’s judgments as final and not subject to appeal, as established in Article 67 of the American Convention, they must be promptly fulfilled by the State in all of their aspects.

5. That the States Parties to the Convention which have recognised the Court’s contentious jurisdiction have the duty to comply with the obligations ordered by the Court. In this sense, Peru must adopt all measures necessary to comply effectively with the Court’s orders as per its Judgment of November 3, 1997 (*supra* Having seen 1) and its Judgment on Reparations of November 27, 1998 (*supra* Having seen 2). This obligation includes the State’s duty to report to the Court on measures adopted to comply with the Court’s orders contained in the cited judgments. Such obligation of the State to keep the Court informed concerning its orders is of basic importance to assess the status of compliance in the case.

6. That the term provided for in the Compliance with Judgment Order delivered by the Court on November 27, 2003, (*supra* Having seen 3) for the State to submit a report on the requirements not yet complied with mentioned below, expired on April 1, 2004:

- a) follow up concerning the steps taken to investigate the facts of the instant case and to identify and punish those responsible, since, on the basis of the information provided, it is not possible to conclude that this obligation will, to date, have been fulfilled in conformity with the decision of this Court (*Operative paragraph two of the Judgment on Reparations of November 27, 1998*); and
- b) efforts made to locate the mortal remains of Ernesto Rafael Castillo-Páez (*Judgment on the Merits of November 3, 1997*).

7. That the Secretariat has, on two occasions and following instructions from the President and the full Court (*supra* Having seen 4 y 7), required the State to submit the report on compliance with the judgments, the latter not having yet provided any information in this respect.

8. That since the Court has not received the information required pursuant to the November 27, 2003, Order (*supra* Having seen 3) concerning compliance with the judgment on the merits of November 3, 1997, and on reparations of November 27, 1998, it does not have all the data necessary to assess whether there were reparations that would have been provided and to determine which reparations ordered by the Court have not been fulfilled and are still pending.

² Cf. *Case of Baena-Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131.

9. That the Court shall, upon receipt of the pertinent information, take into consideration the general status of compliance with its judgments on the merits of November 3, 1997, and on reparations of November 27, 1998.

NOW THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to supervise compliance with its decisions pursuant to the provisions in Articles 33, 62(1), 62(3), 65, 67 y 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute of the Court, and Article 29(2) of its Rules of Procedure,

DECIDES:

1. To require the State to report, no later than January 31, 2005, on compliance with the judgments on the merits of November 3, 1997, and on reparations of November 27, 1998.
2. To request the representatives of the victims and their next of kin, and the Inter-American Commission on Human Rights, to submit observations to the report of the State mentioned in the preceding operative paragraph, within four and six weeks, respectively, of receipt of the report.
3. To continue overseeing compliance with the judgments on the merits of November 3, 1997, and on reparations of November 27, 1998.
4. To notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the victims and their next of kin.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Oliver Jackman

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Diego García-Sayán

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary