

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF APRIL 20, 2010**

**CASE OF HELIODORO PORTUGAL V. PANAMA
MONITORING COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The judgment on preliminary objections, merits, reparations and costs (hereinafter "the judgment") handed down by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on August 12, 2008, in which it decided that the State shall:

10. [...] pay Graciela De León, Patria Portugal and Franklin Portugal, the amount established in paragraph 233 of this judgment, as compensation for pecuniary damage, within one year of notification of the judgment, in the terms of paragraphs 233 and 268 to 272 herein.

11. [...] pay Graciela De León, Patria Portugal and Franklin Portugal, the amounts established in paragraph 239 of th[e] judgment, as compensation for non-pecuniary damage, within one year of notification of the judgment, in the terms of paragraphs 239 and 268 to 272 herein.

12. [...] investigate the facts that gave rise to the violations in the instant case, and identify, prosecute and, if applicable, punish those responsible, in the terms of paragraphs 243 to 247 of th[e] judgment.

13. [...] publish, once, in the official gazette and in another newspaper with widespread circulation, Chapters I, III, VI, VII, VIII, IX and X of th[e] judgment, without the corresponding footnotes, and its operative paragraphs, within six months of notification of the judgment, in the terms of paragraph 248 hereto.

14. [...] carry out a public act acknowledging its international responsibility in relation to the violations declared in this judgment, within six months of notification of the judgment, in the terms of paragraph 249 hereto.

15. [...] provide the medical and psychological care required by Graciela De León de Rodríguez, Patria Portugal and Franklin Portugal, free of charge and immediately, through its specialized health care institutions, in the terms of paragraph 256 of the judgment.

16. [...] define the offenses of forced disappearance of persons and torture within a reasonable time, in the terms of paragraphs 181, 189, 192 to 207, 213 to 215 and 259 of th[e] judgment.

17. [...] make the payment for reimbursement of costs and expenses, within one year of notification of the judgment, in the terms of paragraphs 267 to 272 hereof.

2. The briefs of February 25, March 10 and 18, and April 13 and 23, 2009, in which the Republic of Panama (hereinafter "the State" or "Panama") provided information on compliance with the judgment.

3. The communications of February 5 and May 14, 2009, in which the representatives of the victims (hereinafter "the representatives") presented their observations on the information provided by the State.

4. The brief of May 29, 2009, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) forwarded its observations on the State’s reports and on the observations submitted by the representatives.

CONSIDERING THAT:

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

2. Panama has been a State Party to the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) since June 22, 1978, and accepted the compulsory jurisdiction of the Court on May 9, 1990.

3. According to the provisions of Article 67 of the American Convention, the State must comply fully and promptly with the judgments of the Court. Also, 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 this end, the State must ensure implementation at the national level of the Court’s decisions in its judgments.¹

4. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law on the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. The treaty obligations of the States Parties are binding for all the powers and organs of the State.²

5. The States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

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¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Cesti Hurtado v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, third considering paragraph, and *Case of El Amparo v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, third considering paragraph.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Cesti Hurtado*, *supra* note 1, fifth considering paragraph, and *Case of El Amparo*, *supra* note 1, third considering paragraph.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999, para. 37; *Case of Cesti Hurtado*, *supra* note 1, sixth considering paragraph, and *Case of El Amparo*, *supra* note 1, sixth considering paragraph.

6. Regarding the obligation to pay Graciela De León, Patria Portugal and Franklin Portugal the compensation for pecuniary and non-pecuniary damage and the costs and expenses (*tenth, eleventh and seventeenth operative paragraphs of the judgment*), the State advised that it had made the respective payments with the established time frame.

7. In this regard, the representatives advised that the said payments had been duly made to the members of the Portugal family and, consequently, asked the Court to establish that this measure of reparation had been complied with.

8. For its part, the Commission "t[ook] note" that the payment vouchers provided by the State "corresponded to the amounts established by the Court in its judgment." It therefore considered that this obligation "had been duly complied with by the Panamanian State."

9. The President takes note of the measures undertaken by the State as regards the payment of the compensation, costs and expenses, an aspect that will be assessed by the Court in plenary session in order to declare full compliance with this decision.

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10. With regard to the obligation to investigate the facts that gave rise to the violations in the case and to identify, prosecute and, if appropriate, punish those responsible (*twelfth operative paragraph of the judgment*), the State advised that the criminal proceedings had been re-opened and that "the sworn statements of several witnesses and of the victim, and the penal and the unsworn statements of three of the four accused had been incorporated into this stage of the re-opened case"; that "various documentary and expert evidence" had been incorporated; "confrontations had been conducted," and "the unsworn statement of Manuel Antonio Noriega, which had been requested from the United States of America via judicial assistance, was awaited."

11. The representatives argued that "the State had merely presented lists of measures adopted" without "mentioning the existence of a specific line of investigation to explain the connection between the different measures taken." In addition, they stated that the information presented "does not allow it to be established that there has been any real progress in elucidating the truth about what happened to Heliodoro Portugal." They added that the reports presented "do not indicate the date on which the said measures had been taken," which means "that it is not possible [...] to determine whether they were taken in compliance with the judgment in the case." Moreover, they indicated that there had been omissions in the provision of information to Mr. Portugal's next of kin on the progress of the investigations.

12. The Commission considered that "it was unclear" what the State was referring to when it reported "that, in the context of the investigation, the victim's sworn statement had been taken." Furthermore, the Commission observed that "the information provided by the State does not allow it to be established whether the investigation initiated following the re-opening [of the case] and the measures adopted to overcome the shortcomings and irregularities identified in the judgment had been carried out with due diligence."

13. The President considered that complete and detailed information was required on the status of the investigations that included a copy of the measures taken and an explanation of the current lines of investigation in the proceedings.

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14. Regarding the obligation to publish the pertinent parts of the judgment in the official gazette and in another national newspaper with widespread circulation (*thirteenth operative paragraph of the judgment*), the State advised that the judgment had been published in the official gazette on February 6, 2009, and, in the "*Diario Panamá América*" on February 28, 2009. The State forwarded copies of these publications.

15. In this regard, the representatives indicated that "[a]fter conducting a complete analysis of each of these publications," it considered that the State "had complied fully with this measure."

16. The Commission also considered that "this obligation had been duly complied with by the State."

17. The President takes note of the measures taken by the State as regards the said publications, an aspect that will be assessed by the Court in plenary session in order to declare full compliance with this decision.

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18. With regard to the State's obligation to carry out a public act acknowledging its international responsibility in relation to the violations declared in the judgment (*fourteenth operative paragraph of the judgment*), the State indicated that "on February 6, 2009, it had held a solemn ceremony to acknowledge international responsibility for the violations declared in the judgment in the Nationality Hall of the Ministry of the Interior and Justice." In addition, it indicated that "[t]he act was held in the presence of the next of kin of Heliodoro Portugal, the President of the Supreme Court of Justice, the Attorney General, and the Vice President of the National Assembly," and that "the declaration was made by the Minister of the Interior and Justice in the presence of prosecutors, Government officials and the public in general." It added that "[t]he act was covered by all the written, radio and television media." The Panamanian State attached a copy of the declaration read during the act and a copy of the Cabinet decision appointing the Minister of the Interior and Justice to make the said declaration.

19. The representatives argued that the said public act "had not been convened with sufficient notice," because "Patria Portugal received the invitation [...] only two days before it was held, which obliged her and her family to make last minute changes in their respective agendas so as to be able to attend it, including the transfer of some family member who do not live in the capital." They indicated that the "haste with which the act was convened also meant that their representatives could not participate in it." In addition, they affirmed that "the Portugal family did not participate in any way in the preparation of the act, and was never consulted about the details." In this regard, the representatives indicated that "Patria Portugal asked to take the floor when the Minister of the Interior had finished reading the resolution containing the acknowledgment of responsibility, [and] was not allowed to intervene." The representatives indicated that "the content of the act did not make redress to the victim's next of kin" and that Patria Portugal had stated that, for her, it showed "disdain for [her] father, for [her] family and for Panamanian society," because "[her] father did not die in an armed conflict as they tried to suggest." They indicated that the authorities "[n]ever apologized" and that, consequently, "the speech made by the Minister of

the Interior and Justice did not include an express acknowledgement by the State of the facts that gave rise to the violations declared" by the Court and did not "acknowledge the obligation to see that justice is done," "nor did it express any commitment to that end." According to the representatives, this failure to apologize expressly "was condemned by those present." The representatives also indicated that the act "gave rise to public declarations of condemnation by several next of kin of individuals disappeared during the military dictatorship, the media and journalists, human rights defenders, and the Ombudsman, as well as a widespread debate in society on the need for the State to apologize to the victims of human rights violations that took place during the military dictatorship."

20. For its part, the Commission assessed positively "that the State had organized and carried out an act acknowledging responsibility"; nevertheless, it observed "that some aspects of the way in which this act was carried out were not appropriate for achieving the essential purpose for which it was conceived; namely, moral reparation." The Commission considered that the invitation to the family was not issued with "sufficient notice"; that the "public apology, as part of the State's acknowledgement of international responsibility" was important, bearing in mind that "it is essential that, when organizing acts of this nature, special consideration be given to the individual expectations of the victims and their next of kin if appropriate, including their wish to intervene," and it awaited "details of the measures adopted by the Panamanian State to make up for the omissions in the public act to acknowledge responsibility."

21. The President finds that the Court requires more information from the parties on the acts of public apology that took place in relation to the provisions of the judgment.

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22. With regard to the obligation to provide the medical and psychological treatment required by Graciela De León Rodríguez, Patria Portugal and Franklin Portugal (*thirteenth operative paragraph of the judgment*), the State advised that "it had given instructions for the Santo Tomás Hospital to continue providing Heliodoro Portugal's next of kin, with the required medical and psychological treatment, free of charge and immediately."

23. In this regard, the representatives indicated that this obligation "should have been complied with immediately on notification of the judgment," but that "the State only made [the said services] available to the Portugal family five months later." They also indicated that "Graciela De León resides permanently in the city of Penonomé" and, therefore, cannot attend the Santo Tomás Hospital, located in Panama City; consequently, "her medical and psychological care should be provided by a specialized institution near her place of residence." However, "to date, the State has not taken any measure in this regard." Furthermore, regarding the psychological treatment, the representatives underscored that the State had indicated that "it has no outpatients system or trained personnel specialized in victims of grave human rights violations in order to offer the services as the Court recommended"; however, the Ministry of Health had asked for support from the Pan-American Health Organization's regional mental health program. In addition, regarding the medical assistance, they indicated that "an initial diagnosis had never been made" to determine the type of disorders from which the victims suffer and, consequently, the "type of treatment they should receive." The representatives advised that Patria Portugal "had requested health care services [...] when she required them," although "incidents have arisen that have prevented her from receiving the medical care ordered." The

representatives concluded that "the State of Panama has not taken steps to ensure that this measure is implemented appropriately"; but rather, it is implemented "as a series of fragmented activities that are carried out at the request of the beneficiaries, without any initial diagnosis having been made accompanied by a treatment plan."

24. For its part, the Commission indicated that Panama "has not adopted sufficient measures to comply with this obligation," in particular "the lack of specialized psychological care," "the absence of a diagnosis" of the needs for medical attention, and the "failure to decide on the place to provide the health care service to Graciela De León Rodríguez."

25. The President finds that the Court requires more information on the medical and psychological care that is being provided and, in particular on the way in which it has been implemented, inasmuch as it is intended as a reparation for the human rights violations attributed to the State.

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26. Regarding the obligation to define the offenses of forced disappearance of persons and torture (*sixteenth operative paragraph of the judgment*), the State indicated that the Ministry of the Interior and Justice had forwarded to the National Assembly a "bill [...] amending and adding articles to the Penal Code in relation to the offenses of forced disappearance and torture."

27. The representatives observed that the wording proponed in the bill "does not resolve all the problems indicated by the Court in its judgment, regarding both the offense of forced disappearance and the offense of torture, and in the case of the latter, the divergence from the international formulas is even more evident and of greater concern."

28. The Commission indicated that it "should only be considered that this operative paragraph has been complied with when the law is approved by means of the constitutional procedures in force, and provided that the problems noted by the Court in its judgment have been overcome." In addition, the Commission stated that "the wording of the bill could resolve four problems with the actual definition of forced disappearance as an offense that were identified in the judgment; namely, the application only to "unlawful detentions," "the disjunction between the elements of detention and the refusal to provide information on the whereabouts of the victim," "the failure to include acknowledgement of the victim's detention," and "the failure to establish the continuing or permanent nature of the offense." Nevertheless, the Commission "remains concerned about the proportionality of the punishment in relation to the gravity of the offense." Furthermore, regarding the offense of torture, the Commission indicated that "the text of the bill does not establish clearly the elements that constitute the offense of torture and continues to limit its application only to persons who are detained."

29. The President finds it necessary to have more information on the actual status of the legislative processing of the bill presented by the Government. In addition, he finds it necessary to have information on the amendments that may have been made in relation to the initial proposal in order to adapt it fully to the considerations set out by the Court in its judgment.

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30. On monitoring compliance with judgment, the President finds that further information is required with regard to the actions taken by the State to comply with the pending operative paragraphs.

31. Regarding monitoring compliance with judgment, Article 69 of the Rules of Procedure,⁴ stipulates that:

1. The procedure for monitoring compliance with the judgments and other decisions of the Court shall be carried out through the submission of reports by the State and observations to those reports by the victims or their legal representatives. The Commission shall present observations to the State's reports and to the observations of the victims or their representatives.

2. The Court may require from other sources of information relevant data regarding the case in order to evaluate compliance therewith. To that end, the Tribunal may also request the expert opinions or reports that it considers appropriate.

3. When it deems it appropriate, the Court may convene the parties to a hearing in order to monitor compliance with its decisions. [...]

4. Once the Tribunal has obtained all relevant information, it shall determine the status of compliance with its decisions and shall issue the relevant orders.

32. In the instant case it is pertinent and opportune to convene a private hearing for the Inter-American Court to receive complete and updated information from the State on compliance with all the measures of reparation ordered in the judgment delivered in this case and to hear the corresponding observations of the Inter-American Commission and the representatives.

THEREFORE

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority of the Court to monitor compliance with its decisions, and pursuant to Articles 33, 67, 68(1) of the American Convention on Human Rights, Articles 24(1), and 25(1) and 25(2) of the Court's Statute, and Articles 4, 15(1), 31 and 69 of the Rules of Procedure of the Court,

DECIDES:

1. To convene the Inter-American Commission on Human Rights, the representatives of the victims, and the State of Panama to a private hearing to be held at the seat of the Inter-American Court on May 26, 2010, from 11 a.m. to 12.30 p.m., during the Court's eighty-seventh regular session, so that the Court may obtain information from the State on compliance with all the measures of reparation ordered in the judgment on preliminary objections, merits, reparations and costs handed down in this case, and hear the corresponding observations of the Inter-American Commission and the representatives of the victims.

2. To require the Secretariat of the Court to notify this order to the State, the Inter-American Commission and the representatives of the victims.

⁴ The Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary