

**Order of the
Inter-American Court of Human Rights**

August 27, 2010

**Case of García Prieto et al. v. El Salvador
Monitoring Compliance with Judgment**

Having Seen:

1. The Judgment on preliminary objections, merits, reparations, and costs (hereinafter "the Judgment") issued in the present case by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 20, 2007.

2. The Order of the Inter-American Court of February 3, 2010, on compliance with the Judgment, through which it declared:

1. That according to the statements in Considering Clauses numbers 14 and 19 of the [...] Order, the State has complied with the following operative paragraphs in the Judgment:

(a) to publish once in the Official Gazette the operative paragraphs of the Judgment, as well as paragraphs 1 to 3, and 5 to 11, in Section I; and 76 to 160, in Section VIII, in the terms set forth in the Judgment (*operative paragraph number six in the Judgment delivered on November 20, 2007*);

(b) to pay Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralte de García Prieto the amount established in the Judgment as compensation for non-pecuniary damages (*operative paragraph number eight in the Judgment delivered on November 20, 2007*); and

(c) to pay Mrs. Gloria Giralte de García Prieto the amount established in the Judgment, for the costs and expenses incurred both in the domestic sphere and before the Inter-American system for the protection of human rights (*operative paragraph number nine in the Judgment delivered on November 20, 2007*).

Judge Diego García-Sayán excused himself of hearing the present case, in conformity with Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court in force at that time (now Article 21), and therefore he did not participate in the issuing of the Judgment and the present Order. Thus, Judge García-Sayán handed over the Presidency, in terms of Article 4(2) of the Rules of Procedure, to the Vice-President of the Court, Judge Leonardo A. Franco, acting President in the present case.

2. That, as indicated in Considering Clauses numbers 10, 14 and 18 of the [...] Order, the Court will keep the proceedings for monitoring compliance open in relation to the points with which compliance is still pending in the instant case, to wit:

(a) to bring to a conclusion the pending investigations into the homicide of Ramón Mauricio García Prieto and into the threats and acts of harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralte de García Prieto (*operative paragraph number five in the Judgment delivered on November 20, 2007*).

(b) to publish once in a newspaper with wide national coverage the operative paragraphs in the Judgment, as well as paragraphs 1 to 3, and 5 to 11, in Section I; and 76 to 160, in Section VIII under the terms set forth in the Judgment (*operative paragraph number six in the Judgment delivered on November 20, 2007*);

(c) to provide, free of charge, the medical, psychiatric, or psychological care that may be required by Mr. José Mauricio García Prieto Hirlemann and by Mrs. Gloria Giralte de García Prieto (*operative paragraph number seven in the Judgment delivered on November 20, 2007*).

And Decide[d]:

1. To call upon the State to take all such steps as may be necessary to put into effect and promptly comply with those points with which compliance is still pending as ordered by the Court in the Judgment delivered on November 20, 2007, pursuant to the provisions in Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights, no later than May 5, 2010, a report indicating all the measures adopted in order to comply with the reparations ordered by this Court with which compliance is still pending, as set forth in Considering Clauses numbers 10, 14 and 18, as well as in declarative paragraph number two, in the [...] Order.

3. To request the Inter-American Commission on Human Rights and the representatives of the victims to submit their comments on the report by the State mentioned in the operative paragraph above, within four and six weeks, respectively, as of the date the report be received.

4. To continue monitoring the points with which compliance is still pending in the Judgment delivered on November 20, 2007.

[...]

3. The brief of May 27, 2010, through which the Republic of El Salvador (hereinafter "El Salvador" or "the State") referred to compliance with the Judgment.

4. The briefs of April 29th and June 30, 2010, through which the victims' representatives (hereinafter "the representatives") forwarded their observations to that informed by the State with regard to compliance with the Judgment.

5. The communication of July 5, 2010, through which the Secretariat of the Court, following instructions of the President of the Court, requested that the representatives and the State forward the original or copy of the publication in a newspaper of ample circulation of the relevant parts of the Judgment, which according to the representatives was done on June 10, 2010. The communications of July 12 and 13, 2010, through which the State and the representatives filed a copy of the publication of the relevant parts of the Judgment ordered in the present case.

6. The brief of July 15, 2010, through which the Inter-American Commission of Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) forwarded its observations to that informed by the State with regard to compliance with the Judgment.

Considering that:

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

2. El Salvador has been a State Party to the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) since June 23, 1978, and under Article 62 thereof, it accepted the contentious jurisdiction of the Court on June 06, 1995.

3. Article 68(1) of the American Convention sets forth 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.” For such purpose, the States must guarantee that the Court’s decisions are implemented domestically.¹

4. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State within the established term.

5. The obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility. The obligations imposed by the Convention upon State Parties bound all powers and authorities of the State.²

6. The States Parties to the American Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on protected rights), but also to procedural provisions, such as the one concerning compliance with the Court’s judgments. These obligations shall be interpreted and

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Baen Ricardo et al. v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause Number three, and *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment*. Order of the President of the Inter-American Court of Human Rights of July 20, 2010, Considering clause number three.

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 Baena Ricardo. Monitoring Compliance with Judgment*, *supra* note 1, Considering Clause number five, and *Case of Vargas Areco V. Paraguay. Monitoring Compliance with Judgment*, *supra* nota 1, Considering Clause number four.

applied so that the guarantee protected is truly practical and effective, bearing in mind the special nature of human rights treaties.³

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7. In what refers to the fifth operative paragraph of the Judgment that mentions the State's obligation to conclude the pending investigations with regard to the murder of Ramón Mauricio García Prieto, and the threats and harassments suffered by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto (*supra* Having Seen paragraph number 1), the State did not forward information on the progress made in the investigations promoted by the General Prosecutors' Office of the Republic since the official report from said institution had not been received. Due to this it is going to carry out the respective processes to obtain the relevant information.

8. In their observations, the representatives mentioned that the State did not comply with the request for information made by the Tribunal, and that the lack of information makes it evident that the investigations remain in the same state they were in when the Order of February 3, 2010, was issued. According to the representatives the State has not yet adopted actions to comply with this measure.

9. Likewise, the Inter-American Commission observes with concern that despite that in the Court's last order it considered that the State "has not carried out actions in order to perform a prompt, exhaustive, and effective investigation," in its report it did not present any information whatsoever on this matter pending compliance, failing to obey the Court's order to "intensify its efforts and carry out all relevant actions in order to advance in the investigations." The Commission reiterated that the obtainment of justice is essential in order to mitigate damage, and thus it considers the compliance with the obligations imposed on the State in this regard fundamental.

10. From that mentioned by the State and the observations filed by the parties, this Tribunal reiterates to the State the obligation it has to intensify its efforts and carry out all relevant actions as soon as possible in order to make progress in the investigations in the murder of Ramón Mauricio García Prieto Giralt and the threats and acts of harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto. Based on the aforementioned, the Court considers it necessary that the State present updated, detailed, and complete information on the implementation of each of the investigations and diligences carried out.

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11. Regarding the sixth operative paragraph of the Judgment, which establishes the State's obligation to publish in another newspaper of ample national circulation the relevant parts of the Judgment (*supra* Having Seen paragraph 1), the State informed that it expected to publish

³ *Cr. Case of Ivcher Bronstein v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Yatama v. Nicaragua.* Monitoring Compliance with Judgment. Order of the Court of May 28, 2010, Considering Clause number six, and *Case of Vargas Areco v. Paraguay. Monitoring Compliance with Judgment, supra* note 1, Considering Clause number five.

again on June 10, 2010, in the framework of the anniversary of the death of Mr. Ramón Mauricio García Prieto, since the publication made in the newspaper "El Mundo" on May 13, 2008 "was not acknowledged by the García Prieto [f]amily or its representatives [...], and therefore, it did not fulfill its reparative duty or that of a guarantee of non-repetition."

12. In their observations the representatives informed that the State published on June 10, 2010, date of the anniversary of the murder of Ramón Mauricio García Prieto, a supplement in the "Prensa Gráfica" that "included the State's position regarding this case, the relevant parts of the [J]udgment and information on its state of compliance," which "was received with satisfaction by the victims." Therefore, they requested that the Court consider this obligation complied with.

13. The Commission valued that informed by the parties positively and considered this matter complied with.

14. According to that informed with regard to the publication of the relevant parts of the Judgment in a newspaper of widespread circulation in El Salvador, the Tribunal considers that the State has complied with this aspect of the sixth operative paragraph of the Judgment and values the State's willingness to comply with its commitment to publish the Judgment again and correct the deficiencies of the previous publication. At the same time, this Court points out that in said publication, besides that ordered in the Judgment, it included a summary regarding the monitoring of compliance with the Judgment, titled "Current State of the Compliance with the Judgment" and a photograph.

15. This Tribunal values positively the comprehensive compliance with the sixth operative paragraph of the Judgment on preliminary objections, merits, reparations, and costs issued by the Court on November 20, 2007, in what refers to the relevant parts of the Judgment in a newspaper of ample circulation, which constitutes progress by the State in the execution and implementation of the Court's judgments.

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16. With regard to the seventh operative paragraph of the Judgment, which indicates the State's obligation to offer the medical, psychiatric, or psychological assistance required by Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralte de García Prieto (*supra* Having Seen paragraph 1), the State indicated that on April 8, 2010, it held a meeting in which the Minister of Public Health and Social Assistance, the Minister of Justice and Public Security, and the Sub-Director of the National Civil Police participated and discussed, among others, the present case, and the Minister of Public Health and Social Assistance presented a "Proposal of Procedures to Comply with the Judgments issued by the Inter-American Court of Human Rights," which it enclosed. Likewise, the State mentioned that on January 10, 2010, held a meeting with the representatives and Mrs. Gloria de García Prieto, who stated that both Mr. Mauricio García Prieto and Mrs. Gloria de García Prieto "suffer complex diseases and that already have different diagnosis from specialists and specific medications, reason for which they consider it unnecessary to be submitted to new medical exams and/or to change medications." Thus, the State has promoted the holding of a meeting on June 3, 2010, with those people in order to reach an agreement on how to offer the medical and psychological service as soon as possible.

17. The representatives stated that the "Proposal on Procedures to Comply with the Judgments Issued by the Inter-American Court of Human Rights" presented by the State, which includes some general guidelines on the way on which the attention will be offered, is not yet in execution. Likewise, they indicated that the victims and their representatives held a meeting with the Minister of Public Health and Social Assistance in order to reach an agreement on how to implement medical attention. In this sense, they reiterated what had already been stated in the public hearing in the sense that due to the seriousness and complexity of the health sufferings of Messrs. García Prieto it is not possible to start with a diagnosis, since each of them has received attention according to their needs in what refers to health matters. The Minister of Public Health and Social Assistance stated that it was possible to offer the service through the Salvadorian Institute of Social Security (hereinafter "ISSS"), since it has employed or employs doctors that currently offer treatment to the victims through the private health system and that there is an agreement between the ISSS and said Ministry for the treatment of patients, in which it would include the victims. Finally, they expressed that the victims are satisfied with this possibility, but they have not yet been offered any type of treatment and that the proposal does not include the psychological attention, thus they considered that the State did not comply with these measures and they expressed the need that they be implemented.

18. The Commission took note of the information presented and reiterated it is necessary to implement that ordered in the present operative paragraph as soon as possible, since the victims already have a diagnosis and have been in treatment for the last fifteen years. Likewise, it stated that it was awaiting information on that ordered by the Court including the information regarding psychological treatment.

19. From that stated by the parties it can be concluded that there has been an rapprochement between the victims and the State to coordinate the preparation of the medical services, and in this sense the Tribunal values the State's express willingness to comply with that ordered in the Judgment. However, the Court reiterates that paragraph 201 of the Judgment states that this reparation measure must be implemented as of its notification and more than 3 years have gone by since that date, and it is still pending compliance. In that sense, the Tribunal considers that the State shall immediately adopt all measures necessary and appropriate to offer Mr. José Mauricio García Prieto Hirlemann and Mrs. Gloria Giralt de García Prieto adequate and free medical, psychiatric, or psychological treatment, determined based on their health needs and in mutual agreement with the victims, including the supply of medications. In order to monitor compliance with this obligation, it is necessary that the State provide detailed and updated information in this regard.

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20. The Court will consider the general state of compliance with the Judgment (*supra* Having Seen paragraph 1), once it receives the corresponding information on the reparations pending compliance.

Therefore:**The Inter-American Court of Human Rights,**

by virtue of its authority to monitor compliance with its own decisions, pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Article 25(1) and 30 of its Statute and Articles 31(2) and 69 of its Rules of Procedure,

Declares:

1. That pursuant with that stated in Considering Clauses 11 through 15 of the present Order, the State has complied with the publication in a newspaper of ample national circulation for a single time, the operative paragraphs of the Judgment, as well as paragraphs 1 through 3, 5 through 11 of Chapter I; and 76 through 160 of Chapter VIII in the terms established in the Judgment (*sixth operative paragraph of the Judgment of November 20, 2007*).

2. That pursuant with that stated in Considering Clauses 10 and 19 of the present Order, it will maintain open the procedure of monitoring compliance with the matters pending compliance in the present case, namely:

a) to bring to a conclusion the pending investigations into the homicide of Ramón Mauricio Garcia Prieto and into the threats and acts of harassment suffered by Mr. José Mauricio Garcia Prieto Hirlemann and Mrs. Gloria Giralte de Garcia Prieto (*fifth operative paragraph of the Judgment of November 20, 2007*), and

b) to provide, free of charge, the medical, psychiatric, or psychological care that may be required by Mr. José Mauricio Garcia Prieto Hirlemann and by Mrs. Gloria Giralte de Garcia Prieto (*seventh operative paragraph of the Judgment of November 20, 2007*).

And Decides:

7. To require that the State adopt all the measures necessary to fully and promptly comply with the matters pending compliance that were ordered by the Tribunal in the Judgment of November 20, 2007, pursuant to the stipulations of Article 68(1) of the American Convention on Human Rights.

8. To request that the State present to the Inter-American Court, no later than November 10, 2010, a report indicating all the measures adopted to comply with the reparations ordered by this Court that are pending compliance, pursuant with that stated in considering clauses 10 and 19, as well as declarative paragraph 2 of the present Order.

9. To request that the Inter-American Commission on Human Rights and the victims' representatives present their observations to the State's report mentioned in the previous operative paragraph, within a six and four-week term, respectively, computed as of the receipt of the State's report.

10. To continue monitoring the matters pending compliance of the Judgment of November 20, 2007.

11. To request that the Secretariat notify the present Order to the State, the Inter-American Commission on Human Rights, and the representatives.

Leonardo A. Franco
Acting President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardio Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary