

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF NOVEMBER 22, 2010**

CASE OF BAYARRI V. ARGENTINA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary objections, merits, reparations, and costs (hereinafter the "Judgment") delivered by the Inter-American Court of Human Rights (hereinafter the "Court," the "Inter-American Court," or the "Tribunal") on October 30, 2008, whereby, *inter alia*, the Court:

DECLAR[ED THAT]:

[...]

8. The State must pay Mr. Juan Carlos Bayarri the amounts referred to in paragraphs 141, 142, 151, 155, 159, 170, and 194 of the [...] Judgment, as compensation for pecuniary and non-pecuniary damages, as well as expenses and fees incurred, within one year of the date of notification of the [...] Judgment [...].

9. The State must immediately provide Mr. Juan Carlos Bayarri with the free medical care he requires and must do so for as long as necessary [...].

10. The State must conclude the criminal proceedings begun as a result of the events that led to the violations in the present case and adjudicate the matter in accordance with applicable law [...].

11. The State must publish in the Official Gazette and in two other publications with a wide national circulation, on just one occasion, Chapters I, VII, VIII and IX of the [...] Judgment, without the corresponding footnotes and the operative paragraphs of the Judgment, within six months of the date of notification of the [...] Judgment [...].

12. The State must ensure that Mr. Juan Carlos Bayarri's name is duly and immediately purged from all public records in which he appears with a criminal history [...].

13. The State must include, if it has not already done so, members of security services and the investigatory and administrative bodies of its legal system in its activities to create awareness and greater education on the prevention of torture and cruel, inhuman, or degrading treatment [...].

2. The briefs of January 8, February 3, and February 24, 2010, and annexes, whereby the Argentine Republic (hereinafter the "State" or "Argentina") presented information on progress made towards compliance with the Judgment handed down by the Tribunal in the present case.

3. The brief of April 5, 2010, and its annexes, whereby the representatives of the victim (hereinafter the "representatives") presented their observations on the information submitted by the State (*supra* Having Seen 2).

4. The brief of May 11, 2010, through which the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") presented its observations on the information submitted by the State and the representatives (*supra* Having Seen 2 and 3).

CONSIDERING:

1. Monitoring compliance with its decisions is a power inherent to the judicial functions of the Court.

2. Argentina has been a state party to the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") since September 5, 1984, and that it recognized the contentious jurisdiction of the Court on that same date. On March 31, 1989, Argentina ratified the Inter-American Convention to Prevent and Punish Torture (hereinafter the "Convention against Torture" or the "IACPPT").

3. Pursuant to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Thus, the treaty obligations of states parties bind all State branches and bodies.¹

4. Given the final and incontestable nature of the Court's judgments as provided for in Article 67 of the American Convention, the States must promptly and fully comply with said judgments.

5. The obligation to comply with the rulings of the Court constitutes a basic principle of law on the international responsibility of States. That is, States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and as set forth in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States may not invoke the provisions of its internal laws as justification to neglect its existing international responsibility.²

6. The States Parties to the Convention must guarantee compliance with the provisions thereof and their effectiveness (*effet utile*) within their domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e. those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner such that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

¹ Cf. *Case of Castillo Petrucci et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering Clause three; *Case of De la Cruz Flores v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering Clause three; and, *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Considering Clause 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 De la Cruz Flores v. Peru. Monitoring Compliance with Judgment*, *supra* note 1, Considering clause five; and, *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment*, *supra* note 1, Considering Clause five.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of De la Cruz Flores v. Peru. Monitoring Compliance with Judgment*, *supra* note 1, Considering

a) *Regarding the State's obligation to pay Mr. Juan Carlos Bayarri the amounts set as compensation for pecuniary and non-pecuniary damages, as well as for expenses and fees incurred (operative paragraph eight of the Judgment).*

7. The State reported that on "November 26, 2009, the full amount set as compensatory damages [as well as expenses and fees] [was] transfer[red] to a bank account that Mr. Juan Carlos Bayarri [had] informed the authorities of." The State submitted a memorandum from the Ministry of Economics and Public Finance to the Tribunal. In this memorandum, addressed to the Ministry of Foreign Relations, it stated that USD 295,000 (two-hundred and ninety-five thousand US dollars) had been deposited into a bank account belonging to Mr. Bayarri "in accordance with the information [he] denounced."

8. The representatives manifested that on December 1, 2009, "[Mr. Bayarri] was paid compensation [...] equivalent to [...] USD]295,000; that is, two-hundred and ninety-five thousand US dollars."

9. The Inter-American Commission expressed its appreciation for the State's compliance with the present operative paragraph.

10. In view of the foregoing, and given that there is no dispute between the parties, the Tribunal deems that the State has complied with the obligation to pay Mr. Bayarri the amounts set as compensation for pecuniary and non-pecuniary damages, as well as for expenses and fees incurred, in accordance with operative paragraph eight of the Judgment. To this end, the Court notes that this obligation has been complied with within the period set forth in the Judgment.

b) *Regarding the obligation to provide Mr. Juan Carlos Bayarri with the free medical care he requires immediately and for as long as necessary (operative paragraph nine of the Judgment).*

11. The State reported on "various arrangements made to coordinate the provision of the required medical services." Likewise, the State manifested that "the steps to obtain the necessary funds for [Mr. Bayarri's] dental care [had] already [been] approved [...], which [would] enable the dental issue to be resolved as soon as possible, allowing [the State] to move on to the benefits that are still outstanding."

12. The representatives manifested that "the State had already begun the dental treatment." Furthermore, they stated that even though other medical treatment was still pending, it was agreed, together with Mr. Bayarri, that said treatments would be undertaken "upon conclusion of the dental care, given that it would be inconvenient to undergo both treatments concurrently."

13. The Inter-American Commission remarked that it "acknowledged the information presented by Mr. Bayarri," and that it appreciated "that the dental treatment had already begun." Furthermore, it requested that the Court oblige the State to present "specific and up-to-date information on the follow-up and continuity of this issue."

Clause six; and, *Case of Tristán Donoso v. Panama. Monitoring Compliance with Judgment*, supra note 1, Considering Clause six.

14. In conservation of the information presented by the State and the representatives, the Court observes that the dental treatment awarded in the Judgment has begun and that medical attention for the other injuries referenced in the Judgment has yet to commence. Thus, the Court requests that the State provide updated information regarding this issue in its next report (*infra* Operative Paragraph 2). Consequently, the Tribunal considers that the State to have partially complied with the obligation set forth in operative paragraph nine of the Judgment.

c) Regarding the obligation to conclude the criminal proceedings undertaken as a result of the events that gave rise to the violations addressed in the present case, and to settle the issue in accordance with the provisions of the law

15. The State indicated that in the criminal investigation concerning the torture suffered by Mr. Bayarri, the Criminal Trial Chamber No. 39, Department 135, reported that “on September 23, 2009, case number 66.138/96 was set for trial after dismissing the defense’s argument.”

16. The representatives stated that, regarding case No. 66.138/1996 (ex 32.289/1991) put forward due to the alleged torture and illegal imprisonment of Mr. Bayarri, as well as the misrepresentation of facts and false testimony to his detriment, on “May 30, 2006, the Court ordered the closure of the examination phase [of the investigation], thereby sending the case to its [p]lenary phase so that the Court [would] issue a judgment” in accordance with Law 2372. Despite this, the representatives stated that in virtue of an “invocation by the [...] accused,” the case began to be processed pursuant to Law 23.984, and “as a result, [as of] March 2010, [...] the case continues to follow the same course as it did 18 and a half years ago.” The representatives stated that the case filed against two of the suspects was dismissed at the first and second instances because of an alleged limitation of criminal proceedings and that this decision was raised again on appeal on March 27, 2008, by the Prosecutor General and the representatives of the victim. The representatives further stressed that, in spite of the case, one of the police officers (allegedly involved in the torture, illegal imprisonment, and other criminal acts against the victim) continues to ascend the ranks within the police force, reaching Commissioner of an important General Directorate of Police. Furthermore, the representatives observed that in case No. 13.754/04 concerning a judicial official accused of, “among other crimes, failure to fulfill [o]fficial [p]ublic [d]uties and the concealment of serious crimes committed” against Mr. Bayarri. The charges were dismissed at the first and second instances, thus causing the matter to be taken to appeal on June 1, 2009. At present, the case continues to be pending before the Cámara Nacional de Casación Penal [National Chamber of Criminal Appeals in Cassation]. For that reason, the representatives rejected the excessive delays in settling the alleged human rights violations committed against Mr. Bayarri, which they categorized as irregular, abnormal, incredible, and without precedent in Argentina.

17. The Commission stated that, during its pendency before the Court, the most important reparations measure in this case was still the cessation of the continual denial of justice faced by Mr. Bayarri. It expressed its concern that since the notification of Judgment there have not been any significant advances in this investigation. Consequently, the Commission stated that the State’s duty to investigate relates to the obligation to prevent and fight impunity, noting that such actions are not limited to criminal matters but also concerns the disciplinary and administrative responsibilities of judicial personnel who violated due process and other legal guarantees to the detriment of Mr. Bayarri.

18. The Court manifests that in the present case an effective and complete investigation has yet to be undertaken, given that some 19 years after the commencement of legal proceedings to settle the wrongs suffered by Mr. Bayarri, there have been no significant advancements whatsoever. Furthermore, the Tribunal has previously stated in its jurisprudence that the obligation to prosecute, single out, and when necessary, punish perpetrators so as to uncover the truth is one of the foremost rulings in its judgments because it enables a moral reckoning for the victims; allows the emotional healing process to begin; reestablishes social relations; contributes to prevent the repetition of similar acts; helps to eliminate any possible power advantage the perpetrators may come to possess; and, signifies the triumph of the rule of law in that punishment and reparation are apportioned to those to whom they rightfully correspond.⁴

19. The Tribunal notes that when the international judicial process is complete and a judgment is rendered, it is then incumbent upon the State to avoid repeating the same conduct that led to the litigation in the first place. The judgment and the damages ordered therein are aimed at providing a new framework and vision that permit resolution of the controversy in an effective and timely fashion.⁵ Consequently, “[a] trial that is carried until its conclusion and fulfills its mandate represents an unequivocal condemnation of human rights violations, contributes to the reparation of the victims, and demonstrates to society that justice has been done.”⁶ The State of Argentina has not achieved any such satisfaction in the present case. Quite the contrary: impunity continues to afflict the victim. Furthermore, in its Judgment, this Court reiterated “to the State its obligation to ensure that the victim enjoy full access to and the ability to participate in all stages and instances of the trial in which [he himself] is the plaintiff [...], in full compliance with domestic law and the norms present in the American Convention, including but not limited to the duty to guarantee protection against harassment and threats aimed at distorting the judicial process, preventing an official clarification of the facts, or unlawfully encumbering those responsible for achieving these ends. When the victim decries the use of judicial resources as a tool of intimidation, the State must guarantee the victim’s right to be heard before an independent and impartial tribunal with all applicable due process rights that pertain thereto.”⁷

20. This Court notes the sparse information that the State has submitted regarding its obligation to conclude the aforementioned criminal proceedings. Nonetheless, the Court has ascertained by means of a certified correspondence issued by Criminal Trial Chamber No. 39

⁴ Cf. *Case of Molina Theissen v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 16, 2009, Considering Clause twenty; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2009, Considering Clause nineteen; and, *Case of the Serrano Cruz Sisters v. El Salvador. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering Clause sixteen.

⁵ Cf. *Case of Molina Theissen v. Guatemala. Monitoring Compliance with Judgment*, *supra* note 4, Considering clause twenty-four; *Case of the Serrano Cruz Sisters v. El Salvador. Monitoring Compliance with Judgment*, *supra* note 4, Considering Clause seventeen; and, *Case of El Amparo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering Clause twenty.

⁶ Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, Considering Clause twenty-one; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Monitoring Compliance with Judgment*, *supra* note 4, Considering Clause twenty-one; and, *Case of El Amparo v. Venezuela. Monitoring Compliance with Judgment*, *supra* note 5, Considering Clause sixteen.

⁷ Cf. *Case of Bayarri v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 30, 2008. Series C No. 187, para. 176.

on February 5, 2010, and put forward by the representatives (*supra* Having Seen 3), that on September 23, 2009, case 66.138/96 was sent to trial. However, this correspondence also states that the case depends on a motion to vacate filed by the defense of the accused “and as a result, the brief ha[d] not yet been brought before an Oral Court that [would]” later be assigned.⁸

21. In accordance with the information presented by the State, the representatives, and the Commission, this Court considers that the obligation to conclude the criminal proceedings into facts that led to the alleged violations in the present case is still pending, as well as the obligation to resolve them according to applicable law as stated in operative paragraph ten of the Judgment (*supra* Having Seen 1). Consequently, this Tribunal requests that the State submit information and documentation that would make it possible to clarify the questions raised by the Commission and the representatives, as well the information submitted by the State in its report. The Court stresses that Argentina must finalize, within a reasonable time period, these ongoing criminal proceedings while permitting the victim to enjoy full access to and the ability to participate in all stages and instances of the trial, in accordance with domestic law and the applicable sections of the American Convention.⁹ It is also appropriate to note that the authorities in charge of the investigation and prosecution must undertake their obligations with due diligence, especially considering the case has been open for numerous years, far exceeding all reasonable time periods, as was noted by the this Court in its Judgment, and as also demonstrated by the recurring objections on periods of prescription grounds. When the investigation and trial phases go beyond the reasonable time allotted, they are of detriment to the victim’s right to justice. Similarly, the Court requests that the relevant judicial authorities pronounce judgment within a reasonable timeframe on the appellate proceedings initiated by the Prosecutor General and the representatives of the victim so that case 66.138/96 and all legal actions relating thereto may be resolved without further delay. Furthermore, the Court requests that the State provide information on whether it has begun any other type of administrative or disciplinary procedure against those accused of torturing Mr. Bayarri.

d) Regarding the obligation to publish, on just one occasion, in the Official Gazette and in two other widely circulated publications in the country, Chapters I, VII, VIII, and IX of the Judgment, excluding the corresponding footnotes, as well as the operative part contained therein (operative paragraph eleven of the Judgment).

22. The State reported that, in accordance with the National Media Secretariat’s information, on November 16, 2009, Chapters I, VII, VIII, and IX of the Judgment were published in the newspaper “La Prensa,” and on December 21, 2009, they were also published in the newspaper “Crónica.” Furthermore, the State indicated that according to the National Bureau of Official Records for the Republic of Argentina, on December 2, 2009, the same paragraphs were published in the Official Gazette. The State supplied the Tribunal with copies of these publications.

⁸ Certified record from the Argentine National Judiciary of February 5, 2010 (file of annexes accompanying the case file on monitoring compliance, vol. I, pg. 1).

⁹ Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of the Caracazo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 23, 2009, Considering Clause fourteen; and, *Case of Carpio Nicolle et al. v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of July 1, 2009, Considering Clause twenty-one.

23. The representatives noted that, in fact, the State executed the publications as stipulated in the terms of its report.

24. The Commission valued that the State had complied with said operative paragraph.

25. The Court positively views the State's actions to ensure that the Judgment relating to the present monitoring process was published. Therefore, based on the information provided by the parties, the Court emphasizes the importance of compliance with this reparation measure and deems that operative paragraph eleven of the Judgment (*supra* Having Seen 1) has been fully complied with.

e) Regarding the obligation to ensure that Mr. Juan Carlos Bayarri's name is duly and immediately purged from all public records in which he appears with a criminal history (operative paragraph twelve of the Judgment).

26. The State declared that the security forces, i.e. the National Naval Prefecture, the Gendarmerie, the Argentine Federal Police, and the Airport Police, have taken steps to comply with the Court's order. The State submitted documents to the Court confirming that Mr. Bayarri has no criminal history in the first three of these institutions. The State did not submit any such documentation from the Airport Police.

27. The representatives noted that "[his] police record has already [...] been deleted," however, they also indicated that the State did not submit any proof certifying that his criminal history had been eliminated by the Airport Police.

28. The Commission characterized the State's information as helpful, but nonetheless stated that it awaits updated information regarding the Airport Police's purging of the relevant records.

29. The Court positively views the efforts made by the State to date to purge Mr. Bayarri's criminal record from public records in Argentina. Nevertheless, considering the comments made by the State, the representatives, and the Commission, it is evident that certain probative information and documentation relating to the purging of Mr. Bayarri's criminal history from the Airport Police's records has still not been received. As a result, the Court deems that the obligation set forth in operative paragraph twelve of the Judgment (*supra* Having Seen 1) to be partially complied with and, therefore, requests that the State present any outstanding information that is relevant to clearing Mr. Bayarri's criminal history.

f) Regarding the obligation to include, if it has not already done so, the participation of members of security services and those involved in the investigatory and administrative branches of its legal system in activities to create awareness and educate about the prevention of torture and cruel, inhuman, or degrading punishment or treatment (operative paragraph thirteen of the Judgment).

30. The State has not presented any information regarding this obligation.

31. The representatives remarked that there is no indication that “the relevant Argentine police and/or judicial personnel have been duly instructed on the prevention of torture, cruel punishments, and/or other degrading treatments [...].”

32. The Commission requested that the Tribunal obligate the State to present specific and detailed information on compliance with this operative paragraph.

33. The Court observes that the State has not submitted any information to it concerning this part of the Judgment. Consequently, the Tribunal regards the obligation contained in operative paragraph thirteen of the Judgment (*supra* Having Seen 1) as unfulfilled and requests that the State supply updated information on this point in its next brief.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its power to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and 31(2) and 69 of its Rules of Procedure,

DECLARES:

1. In accordance with Considering Clauses 10 and 25 of the present Order, the State has complied with the following operative paragraphs of the Judgment:

a) To pay Mr. Juan Carlos Bayarri the amounts awarded as compensation for pecuniary and non-pecuniary damages, as well as for expenses and fees incurred (*operative paragraph eight of the Judgment*); and,

b) To publish, on just one occasion, in the Official Gazette and in two other widely circulated national publications, the operative part and Chapters I, VII, VIII and IX of the Judgment, not including the corresponding footnotes, within six months of notification of the Judgment (*operative paragraph eleven of the Judgment*).

2. According to considering clauses 14 and 29 of the present Order, the State has partially complied with the following operative paragraphs of the Judgment:

a) To provide Mr. Juan Carlos Bayarri with the free medical care he requires immediately and for as long as necessary (*operative paragraph nine of the Judgment*); and,

b) To ensure that Mr. Juan Carlos Bayarri’s name is duly and immediately purged from all public records in which he appears with a criminal history (*operative paragraph twelve of the Judgment*).

3. Pursuant to considering clauses 21 and 33 of the present Order, the following operative paragraphs are pending compliance:

- a) To conclude the criminal proceedings begun as a result of the facts that led to the violations in the present case and adjudicate the matter in accordance with applicable law (*operative paragraph ten of the Judgment*); and,
 - b) To incorporate, if it has not already done so, the participation of the members of the security services and those involved in the investigatory and administrative branches of its legal system in its activities to create awareness and educate about the prevention of torture and cruel, inhuman, or degrading punishment or treatment (*operative paragraph thirteen of the Judgment*).
4. The Court will maintain the proceedings to monitor compliance open with respect to the outstanding obligations as set forth in Declarative Paragraphs two and three *supra*.

AND DECIDES:

5. To request the Republic of Argentina to adopt all necessary measures to promptly and effectively comply with its outstanding obligations as set forth in Declarative Paragraphs two and three *supra*, pursuant to Article 68(1) of the American Convention on Human Rights.
6. To request the Republic of Argentina to submit a detailed report by March 14, 2011, regarding the measures it has adopted to comply with its outstanding obligations as provided for in Considering Clauses seven and thirty-three of this Order. Subsequently, the Republic of Argentina is hereby obliged to submit compliance reports every three months.
7. To request the representatives of the victim and the Inter-American Commission on Human Rights to present their relevant observations on the Republic of Argentina's reports referred to in operative paragraph six of the present Order, within four and six weeks, respectively, following the receipt of the report.
8. To continue supervising the outstanding obligations contained in the Judgment.
9. To request the Secretariat of the Court to notify the Republic of Argentina, the Inter-American Commission on Human Rights, and the representatives of the victim of the present Order.

Diego García-Sayán
President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So directed,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary