

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF FEBRUARY 21, 2011

CASE OF ESCUÉ ZAPATA v. COLOMBIA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on Merits, Reparations, and Costs (hereinafter the "Judgment") handed down by the Inter-American Court of Human Rights (hereinafter the "Court," the "Inter-American Court," or the "Tribunal") on July 4, 2007, as well as the Interpretation of the Judgment issued by the Court on May 5, 2008.

2. The Order of the President of the Court of April 29, 2010, whereby the Republic of Colombia (hereinafter the "State" or "Colombia"), the representatives of the victim (hereinafter the "representatives"), and the Inter-American Commission (hereinafter the "Inter-American Commission" or the "Commission") were called to attend a private hearing on Monitoring Compliance with the Judgment so as to analyze the implementation of the reparation measure provided for in Operative Paragraph Twelve of the Judgment, which refers to medical, psychiatric, and psychological treatment, as well as similar measures ordered in seven other cases.¹

3. The Court's Order of May 18, 2010, whereby it declared that:

1. The State has completely fulfilled the following obligations:

- a) To pay pecuniary and non-pecuniary damages as well as reimburse costs and expenses (*Operative Paragraph Eight of the Judgment*);
- b) To create a fund that bears the name "Germán Escué Zapata," that the Community may use to carry out works or services of collective interest to its benefit (*Operative Paragraph Ten of the Judgment*); and,
- c) To hold a public act acknowledging [its] responsibility (*Operative Paragraph Fourteen of the Judgment*).

[...]

5. The Court will maintain the proceedings for monitoring compliance open with respect to the following obligations that are pending fulfillment:

¹ *Case of 19 Tradesmen v. Colombia. Merits, Reparations and Costs.* Judgment of July 5, 2004. Series C No. 109; *Case of Gutiérrez Soler v. Colombia. Merits, Reparations and Costs.* Judgment of September 12, 2005. Series C No. 132; *Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 134; *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of January 31, 2006. Series C No. 140; *Case of the Ituango Massacres v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 1, 2006. Series C No. 148; *Case of La Rochela Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of May 11, 2007. Series C No. 163, and *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192.

- d) To administer the criminal trials that are currently ongoing and all those that may arise in the future in order to determine the identity of those responsible for the facts of the case (*Operative Paragraph Nine of the Judgment*);
- e) To award a grant for university studies (*Operative Paragraph Eleven of the Judgment*);
- f) To provide adequate and specialized medical, psychiatric, and psychological treatment to the family members of the victim (*Operative Paragraph Twelve of the Judgment*); and,
- g) To publish the Judgment in the Official Gazette (*Operative Paragraph Thirteen of the Judgment*).

4. The private hearing on Monitoring Compliance with the Judgment held on May 22, 2010 at the Court's seat.

5. The State's briefs of June 9, August 17, and October 22, 2010, whereby it reported on its steps taken in fulfillment of the Judgment.

6. The representatives' briefs of July 12, August 27, and September 24, 2010, whereby they presented their observations on monitoring compliance with the Judgment.

7. The Inter-American Commission's briefs of September 24 and November 5, 2010, whereby it presented its observations on monitoring compliance with the Judgment.

CONSIDERING:

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

2. Colombia has been a State Party to the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") since July 31, 1973, and recognized the binding character of the Court's jurisdiction on June 21, 1985.

3. Pursuant to Article 67 of the American Convention, the States must promptly and fully comply with the judgments of the Court. Likewise, in accordance with Article 68(1) of the 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 States must ensure domestic implementation of the Tribunal's orders and judgments.²

4. The obligation to comply with the rulings of the Court conforms to a basic principle of law, backed by international jurisprudence, on the international responsibility of States. According to this principle, 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 cannot invoke their domestic laws in order to avoid pre-existing international responsibility.³ Thus, the treaty

² Cf. *Case of Baena Ricardo et al. . Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Valle Jaramillo v. Colombia. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of December 21, 2010, Considering Clause three, and *Case of the Ituango Massacres v. Colombia. Monitoring compliance with Judgment*. Order of the Inter-American Court of Human Rights of December 22, 2010, Considering Clause three and four.

³ Cf. *International responsibility for the issuance and application of laws that violate the Convention (Art. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Valle Jaramillo v. Colombia*, *supra* note 2, Considering Clause four, and *Case of Castro Castro Prison v. Peru. Monitoring compliance with*

obligations of States Parties bind all State branches and organs.⁴

5. The States Parties to the Convention must guarantee compliance with the provisions thereof and their effectiveness (*effet utile*) in their domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (i.e. those addressing the protected rights), but also in connection with their procedural provisions, such as those concerning compliance with the Court's decisions. These obligations are to be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties.⁵

A) Regarding the Administration of Criminal Proceedings⁶ (Operative Paragraph Nine of the Judgment)

6. The State reported that "the Juzgado Segundo Penal del Circuito de Santander de Quilichao [Second Criminal Court of the Santander de Quilichao Circuit], by way of its judgment of June 9, 2008, found [3] police officers guilty for the murder of Mr. Germán Escué Zapata and sentenced them to 18 years in prison and other ancillary punishments. Later, these individuals exercised their right of appeal and on June 11, 2010 and by means of the Judgment of the Sala Tercera de Decisión Penal del Tribunal Superior de Popayán [Third Criminal Division of the Superior Court for the District of Popayán], the appeals court affirmed the July 9, 2008 Judgment while modifying the sentence imposed on [one of those convicted] from 18 to 16 years in prison. Also in the aforementioned ruling, the court overturned the conviction [of one of the defendants] for the crime of being a co-perpetrator in aggravated murder, while affirming the sentence imposed for the offense of false testimony against the second instance judgment. This led to [the defendants'] appeal before the Honorable Supreme Court of Justice." Presently, two of the defendants are being held in jail. The State asserted that the representatives have made active and timely interventions in this criminal trial as civilian parties. Furthermore, the process is supported by a Special Agency of the Public Prosecutors' Office set up to monitor its proper implementation.

7. The State also reported that " an investigation was informally begun, at the request [...] of the Public Prosecutor's Office [...], to determine the identity of

Judgment. Order of the Inter-American Court of Human Rights of December 21, 2010, Considering Clause six.

⁴ Cf. Case of Castillo Petruzzi 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 Valle Jaramillo v. Colombia*, supra note 2, Considering Clause four, and *Case of Castro Castro Prison v. Peru*, supra note 3, Considering Clause six.

⁵ Cf. Case of Ivcher Bronstein v. Peru. Competence. Judgement of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of Valle Jaramillo v. Colombia*, supra note 2, Considering Clause five, and *Case of Castro Castro Prison v. Peru*, supra note 3, Considering Clause seven.

⁶ As far as determining the scope of the the provisions of paragraph 166 of the Judgment on merits, reparations and costs of July 4, 2007 is concerned, the Interpretation Judgment of May 5, 2008, pursuant to paragraph 15, as appropriate, states that:

15. With regard to the present case, the Court clarified that, under the reparation ordered, the term "results of [the] process" refers to final criminal court decisions that lead to the end of the proceeding and settle the main dispute, whether the decisions are acquittals or convictions. These results [should] be publicized so that Colombian society and the Paez Community can know the facts and, where appropriate, who was responsible. Also, family members and this Community, by means of their representatives, must be properly informed of the course of the judicial proceedings, particularly by the prosecutors.

other responsible parties and to ascertain other instances of culpable conduct that have not yet been investigated. This process is at the preliminary stage." The State expressed its willingness to continue with the proceedings until a final judgment has been rendered. The State does not accept the representatives' rejection of the decisions made by the Public Prosecutor's Office by way of unsubstantiated statements in, for instance, alleging that it is proven that those individuals, whose investigation was closed, [must have] participated in the kidnapping and execution of the victim. In this regard, the State finds that the representatives, in their capacity as a civil party to the investigation, must cooperate in providing evidence and making use of domestic remedies to challenge judicial rulings.

8. The representatives noted the advances made in the investigations, but regard them to be insufficient to declare compliance with the measures ordered. They added that "the contradiction between the body of evidence and the [Superior Court of Popayán's] acquittal [of one of the defendants] is very noteworthy, considering that in the criminal case there is good evidence that demonstrates [the defendant's] part" in the victim's murder. Furthermore, they added that "[p]resently one part of the proceedings is at the preliminary stage, another at the investigation stage awaiting trial, and another is at the sentencing stage."

9. The Commission "value[d] the updated information presented by the State on the domestic proceedings and awaits further information" regarding the outcome of the investigations. The Commission added that the State should respond to the representatives' arguments of April 5, 2010 regarding the relief of various individuals from criminal liability.

10. The Court values the information put forth by the State as it reflects its willingness to comply with its international obligations to investigate and punish those responsible for the human rights violations identified in the present case. Consequently, the Court considers that the State has made significant progress in implementing this reparation measure, and awaits updated information on the processes still underway, specifically concerning the aforementioned termination of criminal proceedings relating to certain individuals.

B) *Regarding the grant for of Myriam Zapata Escué to carry out university studies⁷ (Operative Paragraph Eleven of the Judgment)*

11. The State, in its October 22, 2010 report, reiterated the information it had previously provided (*supra* Having Seen 5) on the agreement with the Instituto Colombiano de Crédito y Estudios Técnicos en el Exterior [Colombian Institute of Educational Credit and Technical Studies Abroad] (hereinafter, "ICETEX"), whereby it created a fund designated to cover Myriam Zapata's academic, living, and moving expenses for the duration of the course of study of her choice, i.e., ten academic semesters. In this regard, the State attached a copy of the payment made on December 29, 2009 to ICETEX. Also, the State reported on the procedures for carrying out future payments, which basically consist in sending the Department of Human Rights and International Humanitarian Law of the Foreign Ministry, or directly to the ICETEX Fund Office, the following documents: 1) an academic transcript of the immediately preceding semester, and 2) proof of enrollment for the academic semester to be studied. Once received, payment will be sent within 15 days, the University will be informed that payment is being

⁷ Cf. Case of Escué Zapata v. Colombia. Interpretation of Judgment on merits, reparations and costs. Judgment of May 5, 2008. Series C No. 178, paragraphs 26 to 29. In said Judgment the scope, in the present case, of the provisions of paragraph 170 of the Judgment on merits, reparations and costs, passed down by the Court on July 4, 2007, was clarified.

processed, and the student will be able to begin her classes without any problems. Living expenses will be paid in advance on a semester-by-semester basis, following the commencement of the academic semester.

12. The State also added that “it would like to request that the representatives provide constant support services to the beneficiary during her student career [...] bearing in mind that she has a history of a high level of truancy from her classes, she does not respond to calls on made to her cellular phone, she has missed various exams, and, she has not attended weekly support meetings with a university professional in charge of helping her with her acclimation and providing her with academic assistance.” The State so remarked because the payment of tuition and living expenses “were ordered for the typical duration of the degree — that is, ten semesters— and the payments are subject to the student’s compliance with university norms concerning attendance, justification of attendance, and minimum grade point average requirements.” The State requested that the Court declares its compliance with the present Operative Paragraph.

13. In their communication of September 24, 2010, the representatives reported that “Myriam Zapata was accepted at the Pontificia Universidad Javeriana de Cali to study a program in psychology and [...] is currently in the second semester of her degree.” They requested that the State submit the Agreement with ICETEX so that the victims and the representatives can have knowledge of it. The representatives added that the State must guarantee the grant be provided until the culmination of the beneficiary’s studies. They also “positively assessed the advances made regarding compliance with this measure,” and requested that the Court continue to monitor compliance due to some “difficulties that have arisen [along the way].”

14. In its observations of September 24, 2010, the Commission expressed its satisfaction with the important steps taken to date in compliance with the present measure. Nonetheless, the Commission indicated that since there were still ongoing discussions as to the regulations for the operation of the fund, it deemed it appropriate to continue with the supervision of the measure, as the Commission still lacks complete information on the fund’s sustainability and internal operating procedures.

15. The Court observes that, regarding the implementation of the grant fund awarded to Myriam Zapata, the representatives indicated by way of their letter of September 24, 2010, that difficulties have arisen but they did not specify what kind. Similarly, the Commission referred to the discussion on regulations for the operation of the fund. However, in the State’s letter of October 22, 2010, it responded to various queries made by the representatives and explained the processes and procedures involved in carrying out the respective payments, from which it was possible to gain an understanding of the mechanisms in place to ensure the permanence and sustainability of the grant until the completion of the beneficiary’s studies (*supra* Considering Clauses 11 and 12). The State also referred to the professional support services that have been offered to the beneficiary for her acclimation and to academic support. Therefore, this Court values Colombia’s efforts in administrating Myriam Zapata Escué’s university grant and regards the State to have implemented this measure in accordance with the guidelines established in its Interpretation of the Judgment of May 5, 2008 (paras. 27, 28, and 29). Nonetheless, the Court reminds all parties that, as set forth in the aforementioned Interpretation of the Judgment, the following criteria, where applicable, must be met:

27. [...] [I]f necessary, [t]he beneficiary must receive support in the form of courses, or other academic support, that may take place before or during her university career in order to facilitate her entry or continued attendance at the university, and to avoid that she drops out [...].

28. Furthermore, the Court clarifies that the duration of the State's obligation to finance Myriam Zapata Escués' post-secondary studies will be extended pursuant to the rules of the corresponding institution of higher learning and in accordance with the applicable scholastic criteria for someone in her situation. If the corresponding institution indicates times limits for obtaining the degree or rules regarding minimum GPA requirements, or any other similar requirements, the beneficiary must comply, in conditions that respect her cultural diversity, as explained in the preceding paragraph. The application of these criteria must likewise pay heed to the special and preferential academic support measures that are necessary for the successful integration of ethnic minorities into the national education system.

16. In accordance with the foregoing, the Court regards the State to have fulfilled Operative Paragraph Eleven of the Judgment.

C) Regarding the provision of specialized medical, psychiatric, and psychological treatment (Operative Paragraph Twelve of the Judgment)

17. Regarding this obligation, awarded to Mses. Zapata Escué, Myriam Zapata Escué, Bertha Escué Coicue, and Francya Doli Escué Zapata, as well as Messrs. Mario Pasu, Aldemar Escué Zapata, Yonson Escué Zapata, Ayénder Escué Zapata, Omar Zapata, and Albeiro Pasu, the Court received information from the State, the representatives, and the Inter-American Commission during the private hearing on monitoring compliance with Judgment held as part of the present case (*supra* Having Seen 4). In this regard, the Court reiterates that this reparation measure will be examined by monitoring compliance altogether in eight Colombian cases. As a result, the court will pass appropriate judgment on all the information received, including the information put forward during the hearing held in relation to the case.

D) Regarding the Publication of the Judgment in the Official Gazette (Operative Paragraph Thirteen)

18. The State reported that "the publication of the paragraphs of the Judgment in the Official Gazette was carried out on May 10, 2010," and consequently requested that the Court declare its full compliance with this measure.

19. The representatives observed that "the publication was carried out in accordance with the Court's requirements; however, the time it took to fulfill this obligation was excessive, given that it was completed almost three years after they were ordered."

20. The Commission considered that this measure had been fulfilled.

21. In its Order of May 18, 2010, the Court declared the partial fulfillment of this measure, regarding the publication of the Judgment in a nationally circulated Spanish-language newspaper and a regional *nasa yuwe*-language newspaper, as well as a summary, which had the restorative and symbolic effect of the measure in the heart of the Community. Also, considering the State has now carried out the publication of the relevant parts of the Judgment in the Official Gazette on May 10, 2010, and the parties involved gave their approval, the Court deems that Colombia has fully complied with Operative Paragraph Thirteen of the Judgment.

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, Articles 25(1) and 30 of its Statute, and Rules 31 and 69 of its Rules of Procedure,⁸

DECLARES:

1. Pursuant to the content of the present Order, the State has fully complied with the following Operative Paragraphs of the Judgment:

- a. To award a grant for study at university level (*Operative Paragraph Eleven of the Judgment*); and,
- b. To publish the Judgment in the Official Gazette (*Operative Paragraph Thirteen of the Judgment*).

2. In monitoring compliance with the Judgment in the present case and after analyzing information submitted by the State, the Commission, and the representatives, the Court will maintain the proceedings for monitoring compliance open with respect to the obligations contained in the following Operative Paragraphs pending fulfillment:

- a. To administer the criminal trials that are currently being processed and all those opened in the future in order to determine the identity of those responsible for the criminal acts in this case, pursuant to Considering Clause 10 (*Operative Paragraph Nine of the Judgment*); and,
- b. To provide specialized medical, psychiatric, and psychological treatment to the family members of the victim (*Operative Paragraph Twelve of the Judgment*).

AND ORDERS:

1. To require that the State adopt all measures as may be necessary to promptly and effectively comply with the paragraphs pending compliance that were ordered by the Court in its Judgment, pursuant to Article 68(1) of the American Convention on Human Rights.

2. To request that the State submit, by June 7, 2011, a report containing detailed, updated, and specific information on the status of its obligations pending fulfillment, as set forth in Declarative Paragraph 2.

3. To request that the representatives of the victims and the Inter-American Commission submit their observations on the State's report mentioned in the previous Operative Paragraph, within four and six weeks, respectively, following receipt of the report.

4. To continue monitoring Operative Paragraphs of the Judgment on Merits, Reparations, and Costs of July 4, 2007, that are pending fulfillment.

5. To require that the Secretariat of the Court serve notice of the present Order to the State of Colombia, the Inter-American Commission, and the representatives of the victims.

⁸ Approved by the Court in its LXXXV Regular Session of Hearings held from November 16 to 28, 2009.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary