

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

OF FEBRUARY 22, 2011

CHAPARRO ÁLVAREZ AND LAPO ÍÑIGUEZ v. ECUADOR

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 Inter-American Court” or “the Court”) on November 21, 2007, in which it ordered that:

[...]

8. The State must eliminate forthwith the names of Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez from the public records in which they still appear with a criminal record [...].

9. The State must immediately inform the relevant private institutions that they should eliminate from their records any reference to Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez as authors or suspects of the criminal act of which they were accused in this case [...].

10. The State must publicize this judgment within six months of notification of the judgment [...].

11. The State must adapt its legislation within a reasonable time to the parameters of the American Convention on Human Rights [...].

12. The State must adopt forthwith all the administrative or other measures necessary to eliminate *ex officio* the criminal record of those persons who are acquitted or whose cases are dismissed. Also, within a reasonable time, it must implement the pertinent legislative measures to this end [...].

13. The State and Juan Carlos Chaparro Álvarez must submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage [...].

14. The State must pay Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Íñiguez the amounts established in [... the] judgment, to compensate them for pecuniary and non-pecuniary damage and for reimbursement of costs and expenses, within one year of notification of th[e] judgment [...].

2. The orders on monitoring compliance with judgment issued by the Court on April 29, 2009, and May 19, 2010. In the latter, the Court declared that it considered that the obligations contained in the ninth and eleventh operative paragraphs of the judgment had been complied with fully, and that the obligation established in the tenth operative paragraph had been partially fulfilled, and declared that:

3. It would] maintain open the monitoring procedure until the obligations pending compliance in the instant case are complied with, in accordance with considering paragraphs 16, 17, 26, 31, and 24, namely:

- a) To broadcast the judgment by radio and television (*tenth operative paragraph of the judgment*);
- b) To take forthwith all the legislative, administrative or other measures necessary to eliminate *ex officio* the criminal record of those persons who are acquitted or whose cases are dismissed (*twelfth operative paragraph of the judgment*);
- c) To submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage for Mr. Chaparro (*thirteenth operative paragraph of the judgment*), and
- d) To pay Mr. Chaparro the bank interest on arrears in Ecuador indicated in paragraph 245 of the judgment (*fourteenth operative paragraph of the judgment*).

3. The communication of May 27, 2010, and its attachments, with which Mr. Chaparro forwarded, *inter alia*, documents relating to the friendly settlement signed with the Republic of Ecuador (hereinafter "Ecuador" or "the State").

4. The note of the Secretariat of the Court (hereinafter "the Secretariat") of June 4, 2010, requesting the State to present any observations it deemed pertinent on the information sent by Mr. Chaparro regarding the thirteenth operative paragraph of the judgment.

5. The communication of June 11, 2010, and its attachments, in which the State advised that it had appointed Cesar Molina as one of the arbitrators to constitute the court of arbitration that would establish the amounts corresponding to the pecuniary damage caused to Mr. Chaparro Álvarez.

6. The note of the Secretariat of June 17, 2010, in which, on the instructions of the President of the Court, it asked Mr. Chaparro's representatives (hereinafter "the representatives") to appoint an arbitrator to the court of arbitration.

7. The brief of June 18, 2010 and its attachments, in which the representatives appointed Ricardo Vaca Andrade as an arbitrator to establish the amounts corresponding to the pecuniary damage caused to Mr. Chaparro Álvarez, and advised that they had asked for a meeting with the State to determine the third arbitrator whose appointment was pending.

8. The note of the Secretariat of June 21, 2010, in which, on the instruction of the President, it asked the State to respond to the representatives' proposal to hold a meeting to appoint, by mutual agreement, the third arbitrator required to constitute the court of arbitration.

9. The communication of August 19, 2010, and its attachments, in which the State forwarded a report on compliance with the judgment.

10. The briefs of September 7 and 29, 2010, and their corresponding attachments, in which Mr. Chaparro forwarded, *inter alia*, information on the appointment of arbitrators for the arbitration procedure established in the judgment, and submitted his observations on the report presented by the State.

11. The communication of September 29, 2010, and its attachments, in which the State sent information on the appointment of arbitrators for the said arbitration procedure and proposed Alicia Arias and Carlos Andreta as candidates for Ecuador.

12. The notes of the Secretariat of August 20, September 21 and October 5, 2010, in which, *inter alia*, it asked the parties to submit observations on the information forwarded.
13. The brief of November 15, 2010, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") forwarded its observations on the report presented by the State and on the information sent by Mr. Chaparro and by his representatives.
14. The note of the Secretariat of November 17, 2010, requesting the State to forward the *curricula vitae* of Alicia Arias Salgado and Carlos Andreta, the arbitrators proposed by Ecuador (*supra* eleventh having seen paragraph).
15. The brief of November 24, 2010, and its attachments, in which Ecuador forwarded certain information concerning the arbitrators proposed by the State, as well as the *curricula vitae* of Rómulo Antonio García Sosa and Alicia Arias Salgado.
16. The note of the Secretariat of December 20, 2010, granting the representatives and the Commission a specific time frame for forwarding any observations they deemed pertinent on the information presented by the State.
17. The briefs of January 12 and 19, 2010, in which Mr. Chaparro and the Inter-American Commission, respectively, forwarded their observations on the arbitrators proposed by the State.

CONSIDERING THAT:

1. One of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Ecuador has been a State Party to the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") since December 28, 1977, and accepted the jurisdiction of the Court on July 24, 1984.
3. 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. In view of the final and non-appealable nature of the judgments of the Court, as established in Article 67 of the American Convention, the State must comply with them fully and promptly.
5. The obligation to comply with the decisions in the Court's judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which a State must comply with its international treaty

¹ Cf. *Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Valle Jaramillo v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 21, 2010, third considering paragraph, and *Case of the Ituango Massacres v. Colombia. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 22, 2010, third considering paragraph.

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.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.³

6. 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.⁴

a) Regarding the obligation to disseminate the judgment by radio and television within six months

7. With regard to the dissemination of the judgment by radio and television (*tenth operative paragraph of the judgment*), the State reiterated that "it had made two significant efforts to comply with this obligation": (i) the public apology televised simultaneously by all the official State channels on December 10, 2008, and (ii) the documentary "*El Derecho a la Memoria*," with the participation of Juan Carlos Chaparro and his representatives. It added that, regarding the dissemination of the documentary on Ecuador TV, "Juan Carlos Chaparro [...] has stated that he wishes this aspect of the judgment to be suspended while the arbitration procedure [...] is conducted" so that, when it has been completed, "information will be provided on the agreements reached by the Ecuadorian State and Mr. [...] Chaparro in order to comply with this operative paragraph.

8. Mr. Chaparro confirmed that "the information provided by the State is correct" and that, based on the agreement reached by both parties, this aspect would be complied with "when the arbitration procedure ordered by the [Court] had been completed."

9. The Commission assessed positively the efforts made by the State and indicated that it "awaited information on any progress in this regard."

10. In its previous order, the Court acknowledged the measures taken by the State to disseminate the judgment by television and accepted that the State had complied partially with this obligation, by the simultaneous broadcast of the public apology and the documentary "*El Derecho a la Memoria*" on all the official State television channels. Regarding the dissemination of the latter by Ecuador TV, the Court takes note of the

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of the Miguel Castro Castro Prison v. Peru. Monitoring compliance with judgment*. Order of the acting President of the Inter-American Court of Human Rights of December 21, 2010, sixth considering paragraph, and *Case of Valle Jaramillo v. Colombia*, *supra* note 1, fourth considering paragraph.

³ Cf. *Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of November 17, 1999, third considering paragraph; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, sixth considering paragraph, and *Case of Valle Jaramillo v. Colombia*, *supra* note 1, fourth considering paragraph.

⁴ Cf. *Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of the Miguel Castro Castro Prison v. Peru*, *supra* note 2, seventh considering paragraph, and *Case of Valle Jaramillo v. Colombia*, *supra* note 1, fifth considering paragraph.

agreement between the parties to postpone this until the pending arbitration procedure has been completed, and awaits detailed information about the broadcast.

11. However, neither the State nor the representatives have forwarded specific information on the obligation to broadcast the judgment by radio. Consequently, the Court requests the State, within the time frame indicated in the operative paragraphs of this order, to forward complete and detailed information on compliance with the said obligation.

b) Regarding the obligation to eliminate the criminal record of those persons who have been acquitted or whose cases have been dismissed, and to implement all necessary legislative measures

12. With regard to the obligation to take forthwith all the legislative, administrative or other measures required to eliminate, *ex officio*, the criminal record of those persons who have been acquitted or whose cases have been dismissed (*twelfth operative paragraph of the judgment*), the State repeated the information mentioned in the previous order with regard to normative and institutional reforms to protect human rights. Specifically, it indicated that “the Ministry of Justice and Human Rights [...] is preparing a bill with a comprehensive reform of the criminal laws (the Penal Code, the Code of Criminal Procedure and the Code on Execution of Sentences).” It explained that, although the reform included “keeping records of all those detained [...], the records will guarantee and respect human rights.” In addition, the said comprehensive reform “will prohibit judging a person based on any previous record” and “will include a provision to eliminate, *ex officio*, the record of those persons who have been acquitted or whose cases have been dismissed.”

13. Mr. Chaparro observed that “the National Assembly has not yet begun to process the bill on the criminal law reform prepared by the Ministry of Justice, Human Rights and Worship[; consequently, he considered] that the actions undertaken on this point are insufficient.” Mr. Lapo Ñíguez did not refer to compliance with this measure of reparation.

14. The Inter-American Commission noted that “in August 2009, when the State presented this information the first time, it indicated that the bill on the reform of criminal procedure would be submitted to the Legislative Assembly in September 2009. However, [...] it has not presented specific information on whether the bill was effectively submitted, on progress in its discussion and approval, or on how this progress relates to the measure of reparation ordered.

15. The Court observes that the State has not provided current information on the “bill for the comprehensive reform of criminal legislation,” mentioned in the Court’s previous order issued in the context of monitoring compliance in this case and reiterates that it lacks information on measures towards the elimination, *ex officio*, of the criminal record of the persons who have been acquitted or whose cases have been dismissed. Consequently, it requests the State to report on the measures adopted to comply with the reparation established in the judgment within the time frame indicated in this order.

c) Regarding the obligation to submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage

16. In relation to the obligation of the State and Mr. Chaparro to submit to an arbitration procedure in order to establish the amounts corresponding to pecuniary damage (*thirteenth operative paragraph of the judgment*), the State advised that, through the Ministry of Justice and Human Rights, it had hired an independent company to make the necessary technical appraisal to determine the value of Mr. Chaparro’s pecuniary and non-pecuniary

losses and loss of earnings owing to the seizure of the Plumavit factory. It indicated that, after the expert appraisal had been completed, a series of meetings had been held with the representatives and the victim, resulting in a financial agreement, which “had to be approved by the office of the Attorney General; however, the Attorney General’s office ruled that the arbitration procedure should go forward.” Consequently, on June 11, 2010, the State informed the Court that it had appointed Cesar Molina as one of the arbitrators to constitute the court of arbitration in the instant case. In its report of August 19, 2010, it added that the arbitration procedure had started in May 2010, when the parties had each appointed one arbitrator and these two had subsequently selected a third. However, the latter, Roberto Hanze Salem, had not yet accepted his appointment.

17. Subsequently, on September 29, 2010, the State proposed Alicia Arias and Carlos Andreta as candidates to serve on the panel for the arbitration procedure. Following the Secretariat’s request for the *curriculum vitae* of both candidates, the State forwarded the *curricula vitae* of Alicia Arias and Rómulo García, and indicated that Carlos Andreta “would not form part of the panel in the case.”

18. The representatives indicated that, on April 15, 2009, they had advised the office of the Attorney General and the Ministry of Justice that they had “terminate[d] the friendly agreement of July 16, 2009[, which] the State had not fulfilled.” They affirmed that the friendly settlement procedure, the presidential decree authorizing the Ministry of Justice to sign this type of agreement, and the response of the Attorney General denying the authorization for the Ministry of Justice to sign the agreement, represented “delaying tactics by the State in the process of complying [...] with the judgment.” Consequently, they informed the Court of the appointment of Ricardo Vaca Andrade as arbitrator to serve on the court of arbitration and indicated that “since the State [...] and the victim were unable to reach an agreement on the appointment of the third arbitrator, the arbitrators who had been appointed agreed to designate Roberto Hanze Salem as the third arbitrator,” but apparently he had not accepted this designation. Accordingly, they proposed Hernán Salgado Pesantes and Vladimiro Álvarez Grau as candidates for the Court to select the third arbitrator. Mr. Chaparro indicated that he had no observations to make on the candidates proposed by the State.

19. Lastly, Mr. Chaparro indicated the existence of “uncertainty [...] about the costs of the arbitration and the party obliged to assume them” and asked the Court to “order that the State [...] assume the costs of the arbitration and that the respective payments be made as the need arose during the procedure”; to the contrary, “if it did not assume the arbitration costs, this could become a device to obstruct compliance with the judgment.”

20. The Commission indicated that it had no additional observations to make on this point pending compliance.

21. The Court observes that both the State and the representatives have made an effort to achieve a financial agreement establishing the amounts corresponding to pecuniary damage. Despite these efforts and a final agreement having been reached on the amount of the compensation by the Ministry of Justice and Human Rights and Mr. Chaparro and his representatives, ultimately the Attorney General did not grant the corresponding authorization, considering that the agreement with the victim “must be effectively and categorically in favor of the State’s interests,” in which case the ideal scenario was the arbitration procedure, where “the legal position, in defense of the State’s interests, could be explained and argued, so that the designated members of the court of arbitration could take a final decision, based on all the probative elements provided by the parties.”

22. The Court observes that, subsequently, the parties tried to establish the court of arbitration in accordance with the criteria established in paragraphs 232 and 233 of the judgment, each one appointing an arbitrator to compose the panel. Since the parties were unable to reach agreement on the third arbitrator and since, subsequently, the arbitrator appointed by mutual agreement between the arbitrator designated by the State and the arbitrator selected by Mr. Chaparro declined his appointment, in accordance with paragraph 233 of the judgment, the Court must select the third arbitrator from among the candidates proposed by the parties. In this regard, having analyzed the *curricula vitae* of the four arbitrators proposed (*supra* seventeenth and eighteenth considering paragraphs) and taking into consideration that the court of arbitration will be established to make a technical determination of the percentage of losses suffered by Mr. Chaparro as the result of the seizure and embargo of the Plumavit factory by the State, it appoints Alicia Arias Salgado as the third member of the court of arbitration in this case. Consequently, the court of arbitration responsible for establishing the amounts corresponding to pecuniary damage in the instant case is composed of Cesar Molina, Ricardo Vaca Andrade and Alicia Arias.

23. In accordance with paragraph 233 of the judgment, the arbitration procedure must be of an independent nature, carried out in the city in which Mr. Chaparro resides, and respect the applicable domestic law on arbitration, provided that this does not contradict the content of the judgment. Furthermore, the arbitration procedure must commence within the time frame established in the second operative paragraph of this order. Lastly, the amount decided by the court of arbitration must be delivered to Mr. Chaparro within one year, at the latest, from notification of the decision of the court of arbitration.

24. Regarding the payment of the expenses arising from the arbitration procedure, the Court recalls that this measure responds to the reparation of pecuniary damage corresponding to the loss of assets suffered by Mr. Chaparro as a result of the State's actions in the instant case, which were indicated in paragraph 228 of the judgment. The Court recalls that, when an illegal act occurs that can be attributed to the State, the international responsibility of the State arises immediately for the violation of an international norm, with the consequent obligation to make reparation and to cause the consequences of the violation to cease. Furthermore, reparations, as the word indicates, consist in measures tending to eliminate the effects of the violations committed and cannot make the victims either richer or poorer.⁵ Consequently, the victim cannot be held responsible for paying the expenses arising from a procedure to determine the harm to his patrimony, but rather this corresponds to the State as part of its obligation to comply with the Court's decisions in the judgment.

d) Regarding the State's obligation to pay the victims compensation for pecuniary and non-pecuniary damage and reimburse costs and expenses

25. With regard to the payment to Mr. Chaparro of the interest on arrears corresponding to pecuniary compensation for the administration expenses and fees of the National Council for the Control of Psychotropic and Narcotic Substances (CONSEP) described in paragraph 245 of the judgment (*fourteenth operative paragraph of the judgment*), the State advised that "the Ministry of Justice and Human Rights made the corresponding payment in December 2009."

⁵ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 43; *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006, para. 416, and *Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, merits, reparations and costs*. Judgment of November 16, 2009, para. 450.

26. Mr. Chaparro indicated that “[t]he information provided by the State is correct [...]” and that, consequently, he had “now received payment of the [pending] amounts.”

27. The Commission indicated that it “notes compliance with this measure of reparation with satisfaction.”

28. The Court observes that the parties confirm payment of the interest on arrears owed to Mr. Chaparro according to paragraph 245 of the judgment. Based on the foregoing, the Court finds that the State has complied entirely with the fourteenth operative paragraph of the judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 31 and 69 of its Rules of Procedure,⁶

DECLARES THAT:

1. As indicated in the twenty-eighth considering paragraph of this order, the State has complied fully with the obligation to pay Mr. Chaparro the bank interest on arrears in Ecuador as indicated in paragraph 245 of the judgment (*fourteenth operative paragraph of the judgment*).

2. The State has complied partially with the obligation to broadcast the judgment by radio and television (*tenth operative paragraph of the judgment*), as indicated in the tenth considering paragraph of this order.

3. It will maintain the monitoring proceedings open until the State has complied with the pending aspects of this case, in accordance with considering paragraphs 10, 11, 15, 22, 23 and 24, namely:

- a) To broadcast the judgment by radio and television (*tenth operative paragraph of the judgment*);
- b) To take forthwith all the legislative, administrative or other measures necessary to eliminate *ex officio* the criminal record of those persons who have been acquitted or whose cases have been dismissed (*twelfth operative paragraph of the judgment*), and
- c) To submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage for Mr. Chaparro (*thirteenth operative paragraph of the judgment*).

AND DECIDES:

⁶ Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

1. To require the State to adopt all necessary measure to comply promptly and effectively with the pending aspects ordered by the Court in the judgment on merits, reparations and costs of November 21, 2007, as stipulated in Article 68(1) of the American Convention on Human Rights.
2. That the court of arbitration in the instant case be composed of Cesar Molina, appointed by the State, Ricardo Vaca Andrade, appointed by Mr. Chaparro's representatives, and Alicia Arias, chosen by the Court from among the candidates proposed by the representatives and the State, as established in paragraph 233 of the judgment. The arbitration procedure must be conducted as stipulated in the twenty-third considering paragraph and commence within two months of notification of this order.
3. To request the State to present to the Inter-American Court, by August 22, 2011, at the latest, a detailed and exhaustive report indicating all the measures adopted to comply with the reparations ordered by the Court that are pending compliance as indicated in considering paragraphs 11, 15, 22, 23 and 24.
4. To request the representatives and Mr. Lapo Íñiguez to submit observations on the State's report mentioned in the preceding operative paragraph within four weeks of receiving the report.
5. To request the Inter-American Commission to present observations on the State's report mentioned in the third operative paragraph within six weeks of receiving the said report.
6. To continue monitoring the aspects pending compliance of the judgment on preliminary objections, merits, reparations and costs of November 21, 2007.
7. To require the Secretariat to notify this order to the State, the Inter-American Commission, the representatives of Mr. Chaparro Álvarez, and Mr. Lapo Íñiguez.

Diego García-Sayán
President

Leonardo A. Franco

Manuel 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