

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

OF JANUARY 18, 2012

CASE OF CASTAÑEDA GUTMAN v. UNITED MEXICAN STATES

**MONITORING COMPLIANCE WITH JUDGMENT
NOTICE OF A PUBLIC HEARING**

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 August 6, 2008.

2. The order on monitoring compliance with the judgment issued by the Court on July 1, 2009, in which the Court declared that:

It would keep open the proceeding of monitoring compliance with the sixth operative paragraph of the judgment, which establishes that the State must, within a reasonable time, complete the adaptation of its domestic law to the Convention, in order to adjust the secondary legislation and the norms that regulate proceedings for the protection of the rights of the citizen to the provisions of the constitutional amendment of November 13, 2007, so that this remedy truly guarantees citizens the possibility of contesting the constitutionality of the legal regulations concerning the right to be elected, in the terms of paragraphs 227 to 231 of the judgment [...].

3. The reports presented by the United Mexican States (hereinafter also "the State" or "Mexico") on September 7, 2009, March 1 and July 13, 2010, and August 29, 2011, in relation to the operative paragraph of the judgment pending compliance.

4. The briefs of October 13, 2009, March 17 and August 10, 2010, and September 16 and November 14, 2011, and their respective attachments, in which the representatives of the victim (hereinafter also "the representatives") presented their observations on the State's reports.

5. The briefs of November 30, 2009, May 7 and September 1, 2010, and October 5, 2011, and their attachments, in which the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") forwarded its observations on the State's reports and on the information presented by the representatives.

CONSIDERING THAT:

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

2. Mexico has been a State Party to the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) since March 24, 1981, and accepted the binding jurisdiction of the Court on December 16, 1998.

3. As established in Article 67 of the American Convention, the State must comply with the judgments of the Court fully and promptly. In addition, 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 of the Court’s decisions in its judgments at the domestic level.¹

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

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

6. The States Parties to the Convention that have accepted the Court’s binding jurisdiction must comply with the obligations established by the Court. This obligation includes the duty of the State to advise the Court of the measures adopted to comply with the decisions of the Court in its judgments. Prompt observance of the State obligation to inform the Court of the manner in which it is complying with each aspect ordered by the Court is essential in order to assess the status of compliance with the judgment as a whole.⁴

7. The State advised that, on July 1, 2008, “the ‘Decree amending, adding to or annulling various provisions of the Organic Law of the Judiciary of the Federation and of the General Law on the procedure for filing challenges concerning electoral matters’ was published in the Federal Official Gazette.” These changes make it possible, *inter alia*, for any Chamber of the Electoral Court of the Federal Judiciary to determine the non-application of

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Chitay Nech et al. v. Guatemala*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights December 1, 2011, third considering paragraph.

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, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 1, fourth considering paragraph.

³ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of November 24, 1999, Series C No. 54, para. 37, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 1, fifth considering paragraph.

⁴ Cf. *Case of Barrios Altos*. Monitoring compliance with judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, seventh considering paragraph, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 1, sixth considering paragraph.

a legal norm on the basis that it is unconstitutional in proceedings for the protection of political and electoral rights. The State indicated that these amendments were sufficient “for the Court to declare that the Mexican State has complied fully with the judgment.” In addition, it referred to different cases, several of which had been filed by private individuals, in which both the Superior Chamber and the Regional Chambers of the Electoral Court had declared electoral norms non-applicable that were contrary to the Constitution; “thus implementing the amendments to article 99 of the Constitution and to the secondary legislation.” Regarding the observations of the representatives, the State added that: (i) neither the changes to article 80(1)(d) of the General Law on the procedure for filing challenges concerning electoral matters (LGSMIME), nor the annulment of paragraph VII of article 73 of the *Amparo* Law, were the result of the judgment, and (ii) regarding the amendment of article 10(1)(a) of the LGSMIME, that this provisions had been tacitly annulled by the criteria of “constitutional supremacy” and of “subsequent law, annuls previous law,” and also “it was not a matter included in the judgment.” Based on the foregoing, the State asked the Court to “declare that the sixth operative paragraph of the judgment had been complied with [...] and to determine that the respective monitoring proceedings had concluded.”

8. The representatives considered that Mexico was failing to comply with the judgment by maintaining in force articles 10(1)(a) and 80(1)(d) of the LGSMIME and 73.VII of the *Amparo* Law, and by having “added new grounds for dismissing the remedy for the protection of electoral rights” by article 10(1)(f) of the LGSMIME. Regarding the alleged tacit annulment of article 10(1)(a), they stated that, in one of the cases cited by the State, the Judiciary’s Electoral Court considered that it remained in force, and used it as grounds for declaring the petition irreceivable. They indicated that the criteria of “constitutional supremacy” and of “subsequent law annuls previous law” “are interpretative criteria, but do not provide legal certainty or security.” Furthermore, they indicated that the case law mentioned by the State reveals “significant progress in [the] system of access to justice by citizens who consider that their political and electoral rights have been violated.” Nevertheless, they do not reveal that the said article 80(1)(d) has ceased to be a barrier to access to justice by those who seek protection for their right to be elected, even though they have not been proposed by a political party. They considered that “according to the judgment, the State has the obligation to annul the article on the basis that it violates the right of access to justice, rather than permitting it to remain in the system.” With regard to article 73.VII of the *Amparo* Law, they stated that the only remedy to protect a citizen who alleges that his right to be elected has been violated, if his candidacy has not be proposed by a political party, would be the application for *amparo*, which is also irreceivable in the case of electoral matters, since the said article has not been annulled. They concluded that, “not only has the State [...] failed to comply with the requirements of the judgment, but it has adopted regressive measures that raise further barriers to the exercise of the right to judicial protection in political-electoral matters” and asked the Court to “continue monitoring full compliance with the judgment and to keep open the instant case until the State has complied fully with all aspects of it.”

9. The Commission stated that it “appreciates the efforts made by the State to continue adapting its domestic law by way of the legal reforms described in its brief,” because it “considers that [...] this represents an important step [...] towards compliance with the judgment.” However, it considered that these efforts were insufficient and that the information presented was inadequate to conclude definitively that the reforms carried out comply with the proposed objectives. It indicated that “article 80(1)(d) of the LGSMIME was amended owing to the need to eliminate membership in a political party as a factual procedural requirement for the protection proceeding, so that any citizen can accede to it, if they consider that their right to be elected has been violated”; furthermore, it stressed that

this amendment refers to the right to judicial protection and not to political rights as the State argues. It appreciated the explanations provided by the State on the tacit annulment of the above-mentioned article 10(1)(a), but indicated that this norm must be amended expressly using the corresponding legislative procedures, so that its current normative content is clear. The Commission indicated that none of the cases mentioned by the State were related to the factual presumption in question in the case before the Court. Lastly, it underscored that the State had not clarified in any of its reports whether the limitation established in article 10(1)(f) of the LGSMIME, "as a procedural requirement, applies only to electoral matters."

10. Regarding monitoring compliance with judgment, Article 69(3) of the Rules of Procedure⁵ establish that:

When it deems it appropriate, the Court may convene the State and the victims' representatives to a hearing in order to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing.

11. The President notes that, according to the information provided by the State, it has made several changes in its laws and jurisprudence, amending, adding to, and annulling various provisions of the Organic Law of the Federal Judiciary and of the General Law on the procedures for filing challenges concerning electoral matters. In addition, the State has indicated that the amendment or annulment of certain provisions of the LGSMIME and the *Amparo* Law cannot be inferred from the operative paragraphs of the Court's judgment, or that this reform has occurred tacitly. For their part, in their observations, both the representatives and the Commission indicated that these amendments are not sufficient to comply with what the Court ordered and that the said provisions must be amended or annulled.

12. Owing to the nature of the operative paragraph pending compliance, and the information and arguments presented by the parties in this regard, the President finds it appropriate to convene a private hearing so that the Inter-American Court may receive complete and updated information from the State on compliance with this aspect of the judgment on preliminary objections, merits, reparations and costs handed down in this case, and receive the observations of the representatives of the victim, and the opinion of the Inter-American Commission.

THEREFORE:

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

in exercise of the Court's authority to monitor compliance with its decisions, having consulted with the other judges of the Court, and in accordance with Articles 68(1) of the American Convention, and 15(1) and 69(3) of the Rules of Procedure of the Inter-American Court of Human Rights,

DECIDES:

1. To convene the United Mexican States, the representatives of the victim and the Inter-American Commission on Human Rights to a private hearing to be held at the seat of the Inter-American Court of Human Rights on February 20, 2012, at 3 p.m.

⁵ Approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009.

2. To require the Secretariat of the Inter-American Court to notify this order to the United Mexican States, the representatives of the victim, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary

So ordered,

Diego García-Sayán
President

Emilia Segares Rodríguez
Deputy Secretary