

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2012**

CASE OF EL AMPARO v. VENEZUELA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The judgments on merits, and on reparations and costs in this case delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on January 18, 1995, and September 14, 1996, respectively.
2. The orders on monitoring compliance issued by the Court on November 28, 2002, July 4, 2006, and February 4, 2010. In the latter, the Court declared, *inter alia*:
 1. That it will keep open the monitoring proceedings until the pending operative paragraph in this case has been complied with; namely, to continue the investigations into the facts of this case and to punish those found responsible (*fourth operative paragraph of the judgment*).
3. The brief of June 28, 2010, in which the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") forwarded information on compliance with the fourth operative paragraph of the judgment on reparations.
4. The brief of July 19, 2010, in which the representatives of the victims (hereinafter also "the representatives") forwarded their observations on the State's report.
5. The brief of August 10, 2010, 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 report and on the brief of the representatives.
6. The note of the Secretariat of the Court of July 5, 2011, in which, on the instructions of the President of the Court (hereinafter "the President"), it asked the State to present, by September 2, 2011, at the latest, an updated report on compliance with the fourth operative paragraph of the judgment on reparations. In particular, the State was asked to present specific, clear and comprehensive information, including:
 - a) All the actions that would be taken to investigate the facts of this case, to identify and, as appropriate, to punish those responsible; the possible dates of these actions, and the institutions or individuals who would take them, and

- b) If any obstacle to the implementation of the measures referred to in the preceding subparagraph is identified, the plan to overcome it must be indicated, with a specific time frame.

7. The notes of the Secretariat of the Court of October 7 and November 22, 2011, in which, on the instructions of the President and of the Court in plenary, respectively, it reiterated the request made to the State to present the said updated report and timetable. At the time this order was issued, the State's report had not been received.

CONSIDERING, THAT:

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

2. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") since August 9, 1977, and, pursuant to Article 62 of the Convention, it accepted the binding jurisdiction of the Court on June 24, 1981.

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 that end, the States are required to ensure the implementation of the Court's decisions at the domestic level.¹

4. The States Parties to the American Convention that have accepted the binding jurisdiction of the Court have the duty to comply with the obligations established by the Court. This duty includes the State's obligation to inform the Court of the actions taken to comply with the Court's orders in its decisions. Prompt observance of the State's obligation to inform the Court of the way in which it is complying with each measure ordered by the Court is essential in order to assess the status of compliance with the judgment as a whole.²

5. The obligation to comply with the provisions of the Court's judgments corresponds to a basic principle of international law, supported by international case law, according to which, the 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, a party may not invoke the provisions of its domestic law as justification for its failure to assume the pre-established international responsibility. The treaty obligations of the States Parties are binding for all the powers and organs of the State.³

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Gutiérrez Soler v. Colombia. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 8, 2012, third considering paragraph.

² Cf. *Case of Barrios Altos v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2005, seventh considering paragraph, and *Case of Castañeda Gutman v. Mexico. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of January 18, 2012, sixth considering paragraph.

³ 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 Castañeda Gutman*, *supra* note 2, fourth considering paragraph.

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 must 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) Obligation to investigate the facts and to punish those responsible

7. In its report of June 2010, Venezuela indicated that the Public Prosecutor's Office had determined "the relevance of reopening the investigation [...] noting, first, that procedures remain to be conducted which may result in relevant information that the Prosecutor was unaware of when deciding to close the proceedings; and this represents a fresh opportunity [...] to achieve the complete clarification of the events investigated and, ultimately, would lead to judicial proceedings that are strictly in accordance with the procedural principles established in our domestic and international law." In addition, the State advised that, among other measures, the Public Prosecutor's Office had requested information from various agencies on the migratory movements, address, criminal record, and police and banking records of certain individuals, and also the expert appraisal of several elements. Lastly, Venezuela indicated that the Public Prosecutor's Office "will continue to conduct the procedures that it considers [...] pertinent, in order to [...] attribute the corresponding responsibilities in this case."

8. The representatives affirmed that, in its report, the State had failed to indicate the dates on which the Public Prosecutor's Office had sent out the requests for information or when it expected to obtain a response; also, it did not attach copies of these communications. Furthermore, it did not indicate the cost of some of the appraisals requested, or provide information on the results obtained, or the date on which they could expect to obtain them. They noted that the State had indicated that procedures remain to be conducted, but it did not mention what these procedures are, when they would be conducted, and which State institution would be responsible for conducting them. In addition, they indicated that Venezuela had not forwarded the timetable requested in the order of February 4, 2010, or any other information requested in this order. They considered that the report submitted by the State did not comply with the requirements indicated in this decision.

9. Additionally, the representatives indicated that, despite the requests they have made to the State, they have "not been consulted or informed about the progress of the investigations at any stage of the proceedings." Moreover, they observed that the State's report only referred to the investigation of three individuals, "although the State [...] has information identifying other individuals who are responsible." Venezuela must remove all the obstacles to establishing responsibilities and imposing punishments on both the perpetrators and the masterminds, and must investigate all those responsible. They indicated that, in 2009, progress had been made in the investigation of other similar massacres, in which the Prosecutor General had summoned the victims, family members, and representatives to meetings and

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of Gutiérrez Soler v. Colombia*, *supra* note 1, fourth considering paragraph.

informed public opinion about the evolution of the proceedings. However, this did not happen in the case of El Amparo, and it appears that this same willingness to investigate does not exist in all the cases, but rather there is "a discriminatory application of justice." Lastly, they asked the Court to urge the State: (a) to present the timetable with the actions to be taken to advance the investigations, the dates on which these actions will be carried out, and the institution or persons in charge; (b) to undertake the necessary investigation of each of the persons indicated as perpetrators of the facts; (c) to expedite investigations to establish the masterminds behind the massacre, and (d) to summon the two survivors, family members of the victims, and representatives to inform them of the timetable and to hear their observations and suggestions.

10. The Inter-American Commission observed that, even though the State had provided information on some measures, "it has not provided information on the adoption of decisive measures or concrete steps towards compliance with the aspects ordered by the Inter-American Court in the judgment on reparations delivered almost 14 years ago." It asked that Venezuela be required to submit the timetable of specific actions in relation to the investigation requested by the Court as soon as possible, to conduct the investigative procedures required to comply with the pending obligations, and to allow the victims to participate.

11. The Inter-American Court takes note of the information provided by the State regarding the different investigative measures that the Public Prosecutor's Office ordered during the first months of 2010. However, according to the State's report, these measures were limited to requests for information and for expert appraisals. The Court does not have information on whether these measures were actually implemented, whether they produced the expected results and, finally, whether they resulted in any progress in the investigation into the facts of this case. This information has not been provided to the Court subsequently, despite several requests (*supra* having seen paragraph 7).

12. The Court also takes note of the observations of the representatives that: (a) the investigation is focused on a few individuals only and not on all those who were identified as perpetrators; (b) the State did not provide information on the progress of the investigation into the possible masterminds, and (c) unlike other cases, the State authorities have not received the victims or their family members and legal representatives. In this regard, the Court finds it necessary that Venezuela, in its next brief (*infra* second operative paragraph), forward information on these and other observations made by the representatives in their brief, as well as those made by the Inter-American Commission.

13. The Court recalls that in the hearing on monitoring compliance held on January 29, 2010, in this case, the State indicated that:

The time has come for justice to be done [...]; the delay in the start of the investigations was due to the fact that the priority [in previous years] was not to investigate this; [the State] had given priority to re-establishing social rights. [...] Nevertheless, it emphasized the actual political will to start the investigations.

It is true that the perpetrators have been fully identified, but time is required for the Office of the Prosecutor General to proceed with the investigations. The investigations will not be difficult because some of the evidence is already in the military jurisdiction, so that it can easily be collected and reconstructed.

14. Also, during that hearing, in response to a proposal from the Inter-American Commission, Venezuela accepted the idea of "making the activities that will be carried out in the investigation official by means of a timetable, [in order to] establish time frames and follow up on them." Consequently, the Court decided, *inter alia*, to require the State to submit, by June 25, 2010, at the latest, a timetable with specific, clear and comprehensive information. Venezuela did not forward the timetable or the said information, even though it had undertaken to do so during the said hearing (*supra* having seen paragraphs 2 and 3).

15. In addition, on July 5, 2011, the Court asked the State to provide updated information on compliance with the measure pending compliance and, specifically, the timetable indicated in the order of February 4, 2010, granting Venezuela a time frame that expired on September 2, 2011 (*supra* having seen paragraph 6). Despite this request, which was reiterated twice, on October 7 and November 22, 2011 (*supra* having seen paragraph 7), and that more than five months have passed since the initial period granted expired, and three months since the last communication of the Secretariat, the State has not presented the information requested. Consequently, the Court does not have recent information on progress in compliance with the pending measure.

16. This omission by the State is contrary to its obligation to comply with the measures of reparation ordered by the Court and to advise the Court of the actions taken to implement them in the domestic sphere; moreover, it denies the right of access to international justice to the victims and beneficiaries of the said reparations.⁵

17. In this regard, Venezuela must take all necessary steps to comply immediately and effectively with the measures ordered by this Court in the judgments. This obligation includes the State's duty to report on the actions taken to comply with the measures ordered in the judgment. The Court finds it necessary to emphasize and recall that prompt observance of the State's obligation to inform the Court of the way in which it is complying with each measure ordered by the Court is essential for assessing the status of compliance with the judgment as a whole, and is not fulfilled by the mere formal presentation of a document to the Court; but rather, it is a twofold obligation that, to be fulfilled effectively, requires the formal presentation of a document within the time frame granted with specific, true, current and detailed information on the issues to which this obligation refers.⁶

18. Without the appropriate information from the State, this Court cannot exercise its function of monitoring the execution of its judgments. It is pertinent to recall that the provision of sufficient information on the actions it takes is a State obligation established by this Court.⁷ The General Assembly of the Organization of American States has reiterated "the need for the States Parties to provide, in a timely fashion,

⁵ Cf. *Case of Bámaca Velásquez, v. Guatemala. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, eleventh considering paragraph, and *Case of Loayza Tamayo v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of September 22, 2006, tenth considering paragraph.

⁶ Cf. *Case of Bámaca Velásquez*, *supra* note 5, seventh considering paragraph, and *Case of the Yean and Bosico Girls v. Dominican Republic. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of October 10, 2011, fifteenth considering paragraph.

⁷ Cf. *Case of the Five Pensioners V. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, fifth considering paragraph, and *Case of Blanco Romero v. Venezuela. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2011, thirty-eighth considering paragraph.

the information requested by the Court in order to enable it to meet fully its obligation to report on compliance with its judgments."⁸

19. In this case, in order to monitor compliance with the judgment, it is essential that the State submit the information requested as of the order of February 2010, in a detailed, complete and updated report on the actions taken to comply with the measure of reparation ordered in the judgment that remains pending.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES, THAT:

1. As indicated in considering paragraphs 1 to 19 of this order, the State is not fulfilling its obligation to inform this Court of the measures taken to comply with the fourth operative paragraph of the judgment on reparations and costs delivered on September 14, 1996, that remains pending.

2. The Court will keep open the proceedings on monitoring compliance with the following measure that remains pending in this case; namely, continuing the investigation into the events to which this case refers and punishing those responsible (*fourth operative paragraph of the judgment [on reparations and costs]*).

AND DECIDES:

1. To reiterate the requirement that the Bolivarian Republic of Venezuela adopt all necessary measures to comply promptly and effectively with the measure pending compliance indicated in the second declarative paragraph of this order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State to submit to the Inter-American Court of Human Rights by July 15, 2012, at the latest, an updated report indicating all the measures adopted to comply with the reparation ordered by this Court that remains pending, in accordance with the second declarative paragraph of this order. In particular, the State is again asked to present a timetable with specific, clear and comprehensive information (*supra* considering paragraphs 14 and 15), which includes:

⁸ Cf. *inter alia*, General Assembly, Resolution AG/RES. 2587 (XL-O/10) approved at the fourth plenary session, held on June 8, 2010, entitled "Observations and recommendations on the Annual Report of the Inter-American Court of Human Rights," fourth operative paragraph, and General Assembly, Resolution AG/RES. 2652 (XL-O/11) approved at the fourth plenary session, held on June 7, 2011, entitled "Observations and recommendations on the Annual Report of the Inter-American Court of Human Rights," fifth operative paragraph.

- a) All the actions it will take to investigate the facts of the instant case, to identify and, as appropriate, to punish those responsible; the possible dates of those actions, and the institutions or individuals who will perform them, and
 - b) If any obstacle to the implementation of the actions referred to in the preceding subparagraph is identified, the plan for overcoming it must be indicated with a specific time frame.
3. To request the representatives of the victims and the Inter-American Commission on Human Rights to present their observations on the State's report referred to in the preceding operative paragraph, within four and six weeks, respectively, of notification of this report.
4. To require the Secretariat of the Court to notify this order to the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

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

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI
WITH THE ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF FEBRUARY 20, 2012
CASE OF EL AMPARO v. VENEZUELA
MONITORING COMPLIANCE WITH JUDGMENT**

With this opinion, the undersigned expresses his agreement with the order indicated above (hereinafter "the order"), in the understanding that, in keeping with the relevant norms and in view of the extended, and consequently more than prudent or reasonable, time that has elapsed since the delivery of the judgment in this case without the State concerned (hereinafter "the State") having complied with its fundamental elements, the Inter-American Court of Human Rights (hereinafter "the Court") must advise the General Assembly of the Organization of American States (hereinafter "OAS General Assembly") of this situation.

The foregoing is based on the following elements: (a) the specific provisions of the American Convention on Human Rights¹ and the Statute of the Court;² (b) the State concerned must comply with the judgments of the Court³ and the adoption of the pertinent measures in the event of non-compliance is the responsibility of the OAS General Assembly, the political authority;⁴ (c) once it has delivered the "*final and non-appealable*" judgment,⁵ the Court has no further powers other than the authority to deliver the judgment on reparations and costs, if it has not already done so,⁶ to interpret both judgments,⁷ to rectify any obvious mistakes, clerical errors, or errors in calculation in which it has incurred,⁸ to monitor compliance with the judgment,⁹ and to inform the OAS General Assembly in case of non-compliance;¹⁰ (d) it is not incumbent upon the Court to substitute for the possible inadequacies of the mechanism established in the Convention for cases of non-compliance with its judgments, but rather, in this eventuality, to submit to the OAS General Assembly "*proposals or recommendations on ways to improve the inter-American system of human rights*,"¹¹ and it corresponds to the States to adopt the amendments or modifications they deem appropriate;¹² (e) it is not admissible to transform the regulatory mechanism of monitoring compliance with a "*final and non-appealable*" judgment,¹³ into the prolongation of the case: (f) it is not a question of invoking the *pro homine* principle in this regard,¹⁴ because the mechanism of monitoring compliance with judgments is not a right recognized in the Convention, but rather an instrument established by the Rules of Procedure to allow the Court to improve its compliance with the obligation to inform the OAS General Assembly of non-compliance with its judgments, and (g) in

¹ Art. 65.

² Art. 30.

³ Art. 68(1) of the Convention.

⁴ Art. 65 of the Convention.

⁵ Art. 67 of the Convention.

⁶ Art. 66 of the Rules of Procedure of the Court.

⁷ Art. 67 of the Convention. Art. 68 of the Rules of Procedure of the Court.

⁸ Art. 76 of the Rules of Procedure of the Court.

⁹ Art. 69 of the Rules of Procedure of the Court.

¹⁰ Art. 65 of the Convention. Art. 30 of the Statute of the Court.

¹¹ Art. 30 of the Statute.

¹² Arts. 76 and 77 of the Convention.

¹³ Art. 67 of the Convention.

¹⁴ Art. 29 of the Convention.

accordance with the meaning of the term "*monitor/supervise*"¹⁵ and the provisions of the Rules of Procedure,¹⁶ the mechanism of monitoring judgment entails obtaining information on the latter, in order to inform the General Assembly of any eventual failure to comply with it.

A more extensive version of the foregoing, taking into consideration, as I have indicated previously,¹⁷ on the one hand, that strict respect by the Court for the norms that govern it is a requirement *sine qua non* for the proper safeguard of human rights and, on the other hand, case law as a subsidiary means for the determination of the rules of law¹⁸ and its obligatory nature only for the parties to the litigation and with regard to the case that has been decided,¹⁹ so that, consequently, it can be modified in other cases, can be found in the undersigned's Concurring Opinions to the orders of the Inter-American Court of Human Rights of November 22, 2011, *Case of Blanco Romero et al. v. Venezuela* and *Case of Servellón García et al. v. Honduras*, and of November 23, 2011, *Case of the Saramaka People v. Suriname*, *Monitoring compliance with judgment*.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

¹⁵ Diccionario de la Lengua Española, Real Academia Española, edición 2001: *supervisar*: "ejercer la inspección superior en trabajos realizados por otros" [oversee the work performed by others].

¹⁶ Art. 69.

¹⁷ Dissenting Opinions with regard to the judgment of the Inter-American Court of Human Rights, Merits, reparations and costs. *Case of Barbani et al. v. Uruguay*, of October 13, 2011, III. General considerations.

¹⁸ Arts. 62(1) and 3 of the Convention and 38(1) of the Statute of the International Court of Justice.

¹⁹ Arts. 63(1) of the Convention and 59 of the Statute of the International Court of Justice.