

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

**CASE OF GARIBALDI v. BRAZIL
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 September 23, 2009, as well as the order of the Court of February 22, 2011, in which it decided to keep the proceedings on monitoring compliance open with regard to the following aspects:

a) Conduct the investigation effectively and within a reasonable time, together with any proceedings that may be opened as a result of the investigation, in order to identify, prosecute and, as appropriate, punish the authors of Mr. Garibaldi’s death. In the same way, the State must investigate and, as appropriate, punish the possible offenses committed in the exercise of their functions by the public officials in charge of the investigation, as established in the judgment (*seventh operative paragraph of the judgment*);

b) Pay Iracema Garibaldi, Darsônia Garibaldi, Vanderlei Garibaldi, Fernando Garibaldi, Itamar Garibaldi, Itacir Garibaldi and Alexandre Garibaldi the amounts established in paragraphs 187 and 193 of the judgment for pecuniary and non-pecuniary damage [...] as specified in paragraphs 200 to 203 of the judgment (*eighth operative paragraph of the judgment*), and

c) Pay Iracema Garibaldi the amount established in paragraph 199 of the judgment for reimbursement of costs and expenses [...] as specified in paragraphs 200 to 203 of the judgment (*ninth operative paragraph of the judgment*).

2. The briefs of June 21 and November 8, 2011, and their attachments, in which the Federative Republic of Brazil (hereinafter also “the State” or “Brazil”) forwarded information in relation to monitoring compliance with the judgment handed down by the Court in this case.

3. The briefs of August 8, 2011, and January 4, 2012, in which the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) forwarded its observations on the reports on compliance with the judgment presented by the State.

4. The briefs of August 17, 2011, and January 18, 2012, in which the representatives of the victims (hereinafter also “the representatives”) forwarded their observations on the information presented by the State.

CONSIDERING THAT:

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

2. Brazil has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since September 25, 1992, and, in accordance with Article 62 of the Convention, accepted the binding jurisdiction of the Court on December 10, 1998.

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 must ensure implementation of the decisions of the Court in its judgments at the domestic level.¹

4. Owing to the final and non-appealable nature of the judgments of the Court established in Article 67 of the American Convention, the State must comply with them promptly and fully.

5. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law on the international responsibility of the State, supported by international case law, according to which, a State must comply with its 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, the States may not invoke the provisions of domestic law as justification for their failure to assume the pre-established international responsibility.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 American 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

7. The States Parties to the Convention that have accepted the binding jurisdiction of the Court have the duty to comply with the obligations established by the Court. These obligations include the duty of the State to inform the Court of the measures adopted to comply with the orders of the Court in its decisions. Prompt observance of the State obligation to inform the Court of the way in which it is complying with each aspect ordered

¹ Cf. *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003, Series C No. 104, para. 131, and *Case of Radilla Pacheco v. Mexico. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of 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 of the 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. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of December 1, 2011, fourth considering paragraph.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of November 17, 1999, third considering paragraph, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 2, fourth considering paragraph.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999, Series C No. 54, para. 37, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 2, fifth considering paragraph.

by the Court is essential for evaluating the status of compliance with the judgment as a whole.⁵

a) Obligation to investigate the facts of the case and prosecute and, as appropriate, punish those responsible

8. Regarding the obligation to conduct the investigation effectively and within a reasonable time, together with any proceedings that may be opened as a result of the investigation, in order to identify, prosecute and, as appropriate, punish the authors of Mr. Garibaldi's death, established in the seventh operative paragraph of the judgment, the State advised that, on April 25, 2011, the file of the investigation had been forwarded to the courts for assessment by the Public Prosecutor's Office and the competent judge. It added that the Public Prosecutor's Office had advised that it would waive the non-essential procedures that were pending so that "the case can be concluded finally." In addition, on June 30, 2011, the Prosecutor of the municipality of Loanda "filed charges against Morival Favoreto." The Office of the Attorney General of the state of Paraná required that the case be processed urgently and that certain procedures be conducted by the civil police. The hearing on the investigation and prosecution was set for November 22, 2011.

9. Regarding the inquiry into possible offenses committed in the course of their functions by authorities in charge of the investigations, Brazil indicated that:

a) The Inspectorate General (*Corregedoria Geral*) of the Police had conducted a preliminary investigation in relation to three police officers; based on this, it did not find any evidence of disciplinary offenses during the investigation into the death of Mr. Garibaldi. However, the inspector stated that it had been proved that a police officer "used the confiscated firearm, firing a shot in the air in an area prone to conflict," in violation of articles 210.V, 212, 213.XII and XLI of Law LC 14/82 that establish penalties of warning, reprimand or suspension and resignation. Disciplinary offenses prescribe in two and five years and, in particular, "the perpetration of [a] possible offense of firing a weapon [...] would have prescribed." Furthermore, the Public Prosecutor's Office requested that the file of this administrative investigation be closed owing to lack of evidence regarding authorship;

b) With regard to the prosecutors who acted in the case, two administrative procedures were conducted, one by the Inspectorate General (*Corregedoria Geral*) of the Public Prosecutor's Office of the state of Paraná, and the other by the National Inspectorate (*Corregedoria*) of the National Council of the Public Prosecutor's Office. The former, which took place in 2006, concluded that the prosecutor acted in the case "in accordance with his conscience and also based on the laws in force"; hence, it closed the proceedings. The latter inquiry, launched by the National Council of the Public Prosecutor's Office in response to the judgment of the Court, archived the complaint owing to the "inexistence of evidence leading to the conclusion that any disciplinary offense has been committed by a member of the Public Prosecutor's Office of the state of Paraná," and

c) Following the judgment of the Inter-American Court, the Inspector General (*Corregedor Geral*) of Justice of the state of Paraná launched an inquiry into the conduct of the judge responsible for the case concerning the death of Mr. Garibaldi.

⁵ 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 Chitay Nech et al. v. Guatemala*, *supra* note 2, fifth considering paragraph.

He concluded that the judge's conduct did not constitute a disciplinary offense and closed the case file.

10. The representatives stated that the delay in the investigation into the death of Mr. Garibaldi continues without any justification. There has been no analysis with regard to the prejudice caused by a police investigation that has taken more than 12 years, and several procedures that were not conducted. These procedures included an expert appraisal of the weapon seized with regard to Ailton Lobato, which the representatives have considered an extremely serious element from their outset. The State "is unable to show that its investigations have been diligent." Regarding the investigation of the possible offenses by State officials responsible for the investigation, the representatives reiterated the observations included in their final written arguments. Lastly, they stated that, even though the offenses of the officials have prescribed, "it is of fundamental importance that the [State] acknowledge the responsibility of these agents and enable Sétimo Garibaldi's family to have access to the truth regarding the facts. The premature closure of the file on the administrative inquiries [...] reveals the strong corporate spirit among the institutions."

11. The Inter-American Commission appreciated the fact that Brazil is pressing charges against an individual who is allegedly responsible and continues investigating whether other individuals are responsible. It indicated its concern because the proceedings to investigate the conduct of the officials involved in the investigation of the facts had been closed "without any serious and complete analysis of their execution of the investigation of the case, and even referring to the impossibility of continuing with other proceedings owing to the prescription of administrative sanctions." It concluded that the State continues to fail to comply with its obligation to investigate the possible offenses committed by public officials in charge of the investigation.

12. The Inter-American Court observes that, in its reports, the State referred to judicial and administrative proceedings conducted before and after the order of the Court of February 22, 2011. Regarding progress in the investigation after the said order, it reported, *inter alia*, that: (a) in September 2010, one of the individuals under investigation had died; (b) on June 30, 2011, the Public Prosecutor's Office filed charges against Morival Favoreto; (c) the Office of the Attorney General of the state of Paraná ordered that certain procedures be conducted urgently in order to expedite the proceedings, and (d) a hearing on the investigation and prosecution was set for November 22, 2011.

13. In addition, the Court takes note of the information provided on the administrative proceedings opened after the judgment in this case was delivered with regard to the police officials, and the officials of the Public Prosecutor's Office and the courts who were involved in the investigation into the death of Mr. Garibaldi. In this regard, the Court observes that the representatives recognize the "impossibility of holding the agents responsible" who were involved in the police inquiry, because the offenses have prescribed." However, they asked the State "to acknowledge the responsibility of these agents" and to provide the victim's family with access to the "truth regarding the facts." The Court notes that the representatives presented observations on the conduct of the State agents but not on the administrative inquiries carried out by the *corregedorias* of the police, the Public Prosecutor's Office, and the judicial authorities.

14. From the information provided by Brazil, the Court finds that the State conducted administrative investigations as ordered in the judgment. It reached well-founded conclusions in those proceedings and decided to close them. Moreover, the Court has not received any specific arguments or evidence indicating irregularities in the administrative

inquiry. Based on the foregoing, the Court decides not to continue monitoring compliance with this aspect.

15. With regard to the criminal investigation into the facts, the Court takes note of the fact that criminal charges were filed against an individual allegedly responsible; of the order of the Office of the Attorney General to give the processing of the case priority, and of the decision to hold a hearing on the investigation and prosecution on November 22, 2011. The Court recalls that more than 12 years have passed since Mr. Garibaldi's death without the facts having been elucidated or those responsible punished. Taking these circumstances into account, Brazil must continue to take the necessary measures and steps to comply fully and effectively with this measure of reparation. In addition, within the time frame indicated in the fourth operative paragraph of this order, it must forward full and detailed information, including supporting documentation, on compliance with this obligation.

b) Obligation to pay compensation for the damage and reimburse costs and expenses

16. With regard to the obligations to pay the compensation for pecuniary and non-pecuniary damage to the victim's next of kin and to reimburse costs and expenses established, respectively, in the eighth and ninth operative paragraphs of the judgment, the State advised that the Human Rights Secretariat of the Presidency of the Republic had paid the amounts due to the victims by bank orders on March 16, 2011. It indicated that the payment was made by depositing the corresponding amounts in a current account indicated by the beneficiaries. It asked the Court to declare that the obligations established in the said operative paragraphs of the judgment had been fulfilled.

17. The Commission noted that the State had not presented information on the calculation of interest.

18. The representatives recognized that the State had "complied fully" with the payments of the compensation ordered in the judgment.

19. Based on the information provided by the State and the observation of the representatives concerning full compliance with the payments, the Court finds that the State has complied with these obligations ordered in the eighth and ninth operative paragraphs of the judgment.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES THAT:

1. As indicated in considering paragraph 19 of this order, Brazil has complied fully with the obligations to pay the compensation for pecuniary and non-pecuniary damage to the victim's next of kin and to reimburse costs and expenses established, respectively, in the eighth and ninth operative paragraphs of the judgment.

2. As indicated in considering paragraphs 12 to 15 of this order, it will keep open the proceeding of monitoring compliance with regard to the aspect that remains pending, which establishes the State's obligation to:

a) Conduct the investigation effectively and within a reasonable time, together with any proceedings that may be opened as a result of the investigation, in order to identify, prosecute and, eventually, punish the authors of Mr. Garibaldi's death [...] (*seventh operative paragraph of the judgment*).

AND DECIDES:

1. To declare that the measures of reparation ordered by the Inter-American Court of Human Rights in the eighth and ninth operative paragraphs of its judgment on preliminary objection, merits, reparations and costs of September 23, 2009, have been complied with, in keeping with considering paragraph 19 and the first declarative paragraph of this order.

2. To close the proceedings of monitoring compliance with regard to the obligation to investigate and, as appropriate, punish the possible offenses committed in the exercise of their functions by the public officials in charge of the investigation established in the judgment (*seventh operative paragraph of the judgment*).

3. To require the State, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights, to adopt all necessary measures to comply promptly and effectively with the measure ordered in the judgment that remains pending, in keeping with considering paragraphs 12 to 15 and the second declarative paragraph of this order.

4. To request the State to present to the Inter-American Court of Human Rights, by August 31, 2012, at the latest, a report indicating all the measures taken to comply with the measure of reparation ordered by the Court that remains pending.

5. To request the representatives of the victims and the Inter-American Commission on Human Rights, pursuant to the provisions of Article 69(1) of the Rules of Procedure, to present any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph, within two and four weeks, respectively, of receiving it.

6. To require the Secretariat of the Court to notify this order to the Federative Republic of Brazil, the Inter-American Commission on Human Rights, and the representative 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