

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 28, 2012**

**CASE OF RADILLA PACHECO v. THE UNITED MEXICAN STATES
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 23, 2009.

2. The Order for Monitoring Compliance with the Judgment issued by the Court on May 19, 2011, in which it declared, *inter alia*, that fulfillment of the following obligations is still pending:

[...]

g) To pay the compensation awarded in paragraphs 365, 370, 375 and 385 of the Judgment for pecuniary and non-pecuniary damages and costs and expenses, as appropriate (*Operative Paragraph 17 and Considering Paragraphs 53 to 56*).

[...]

3. The briefs of July 14, August 29 and November 30, 2011, January 18 and 26, March 2 and May 29, 2012, in which the United Mexican States (hereinafter "the State" or "Mexico") submitted information on compliance with the Judgment delivered by the Court in this case (*supra* Having Seen 1).

4. The briefs of October 17, 2011, January 12, February 17, April 9, and June 22 2012, in which the victims' representatives (hereinafter "the representatives") submitted their observations to the reports of the State (*supra* Having Seen 3).

5. The communications of November 8, 2011, February 6 and May 2, 2012, in which the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") presented its observations to the State's reports and to the briefs of the representatives (*supra* Having Seen 3 and 4).

6. The private hearing held on June 22, 2012.¹

CONSIDERING THAT:

1. It is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.

2. Mexico has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since March 24, 1981 and recognized the contentious jurisdiction of the Court on December 16, 1998. Furthermore, it ratified the Inter-American Convention on Forced Disappearance of Persons on April 9, 2002.

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, States must ensure the domestic implementation of the provisions set forth in the Court’s rulings.²

4. The States Parties to the Convention must ensure compliance with its conventional provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (*i.e.* those addressing protected rights) but also to procedural provisions, such as those concerning compliance with the Court’s decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.³

5. In the briefs submitted by the State and the representatives, as well as during the private hearing held in the instant case (*supra* Having Seen 6), the parties referred in detail, *inter alia*, to the status of compliance with the obligation to pay the amounts awarded as compensation for pecuniary and non-pecuniary damages and the

¹ This hearing was attended by the following: on behalf of the United Mexican States, Lic. Max Alberto Diener Sala, Undersecretary of Judicial Affairs and Human Rights of the Secretariat of The Interior; Mr. Alejandro Alday González, Assistant Director General of Cases, Democracy and Human Rights of the Ministry of Foreign Relations; Lic. Sergio Roberto Huerta Patoni, Coordinator of Advisors of the Undersecretary of Judicial Affairs and Human Rights of the Ministry of the Interior; Lic. Jorge Cruz Becerra, Director of International Cooperation with International Human Rights Organizations of the Attorney General’s Office of the Republic; Lic. Jose Roberto Ríos Vázquez, Area Director of the Attorney General’s Office; Counselor Martha Eugenia Tapia Benavides, Business Attaché *a.i.* of the Embassy of Mexico in Costa Rica; Third Secretary Rafael Barcelo Durazo, Coordinator of Political Affairs and Human Rights of the Embassy of Mexico in Costa Rica, and Mr. Juan Pablo Alemán Izaguirre, Deputy Director for Assistance to Civil Society Organizations of the Unit for the Promotion and Defense of Human Rights of the Ministry of the Interior. On behalf of the victims’ representatives: Tita Radilla Martínez; Octavio Amezcua Noriega; Isis Nohemi Goldberg Hernandez; and Valeria Moscoso Urzúa. On behalf of the Inter-American Commission on Human Rights: Rosa Maria Ortiz, Commissioner and Silvia Serrano Guzman, Specialist of the Executive Secretariat.

² Cf. *Case Baena Ricardo et al. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 60; and *Case Caballero Delgado and Santana v. Colombia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 27, 2012, Considering paragraph 3.

³ Cf. *Case of Ivcher Bronstein v. Peru. Jurisdiction*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of Caballero Delgado and Santana v. Colombia*, *supra* note 2, Considering paragraph 6.

reimbursement of costs and expenses, where applicable, pursuant to Operative Paragraph 17 of the Judgment. Given that during the private hearing both the State and the representatives requested that the Court issue a decision on this point, this Order shall only address this measure of reparation. The Court shall also refer to the State's request concerning the obligation to investigate and determine the whereabouts of Mr. Rosendo Radilla Pacheco.

I. Obligation to pay the compensation awarded for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses (Operative paragraph 17 of the Judgment)

A. Information submitted by the State

6. The State reported that in compliance with the Judgment, and given the refusal by Mrs. Tita and Mr. Rosendo Radilla Martínez to accept the amounts awarded to them as compensation, the State proceeded to deposit all the amounts ordered in the Judgment as compensation in favor of the four beneficiaries in the *Banco de Ahorro Nacional y Servicios Financieros*, S.N.C. (BANSEFI), through the purchase of certificates of deposit, and that it deposited the payment before the Tenth District Court for Civil Matters in the Federal District. Likewise, the State indicated that on September 22, 2011 the executor of the estate, Justino García Téllez, widower of Mrs. Andrea Radilla Martínez, went to the aforementioned court to collect two checks for the amounts allocated to Andrea Radilla Martínez, a victim in this case now deceased. Furthermore, the State mentioned that on September 25, 2011 Mrs. Tita and Mr. Rosendo Radilla Martínez presented a brief to the aforementioned court requesting that it issue the bills of deposit (checks) that were deposited by the State. Mrs. Tita and Mr. Rosendo Radilla Martínez submitted the brief, requesting payment of the amounts awarded in their favor by the Inter-American Court. Also, on their own behalf and in representation of Rosa, Romana, Evelina, Ana María, Agustina, Victoria, Judith, María del Pilar and María del Carmen, all with the surnames Radilla Martínez, and of Justino García Téllez, as heir and executor of the intestate succession of Andrea Radilla Martínez, they requested that the compensation awarded to Mr. Rosendo Radilla Pacheco for pecuniary and non-pecuniary damages be handed over to them. The District Court notified the State of this information, through the Ministry of the Interior, on May 3, 2012, which, in turn, informed said court that the persons requesting the handover of the checks deposited were authorized to receive and claim the payments.

7. During the private hearing the State indicated that "since June 8 [2012] the judge before whom the checks were deposited determined that the payment in favor of Tita and Rosendo Radilla [Martínez] was in order [and that] in this regard [,] the checks are available to be cashed by [those persons] on the court's premises." Similarly, during the hearing, regarding the payment to the heirs of Mr. Rosendo Radilla Pacheco for pecuniary and non-pecuniary damages, the State indicated that it "[considered] that said amount[s] should be distributed in equal parts to the [heirs] of Mr. Radilla Pacheco," and therefore requested that the Court issue "a ruling so that the bill of deposit may be handed over to one of the representatives for payment and subsequent equitable distribution among Mr. Radilla Pacheco's heirs, namely, his children Rosendo, Tita, Rosa, Romana, Evelina, Ana María, Agustina, Victoria, Judith, María del Pilar and María del Carmen, all with the surnames Radilla Martínez, as well as Justino García Téllez, as heir and executor of the

intestate succession of Andrea Radilla Martínez.” The State considered that this would “avoid the need for the victims to initiate a procedure for the declaration of absence and presumption of death, which in the State’s view is a disproportionate burden to the victims,” for which reason the Court’s ruling was “of the utmost importance because without its approval the money could not be handed over to the persons mentioned.” Accordingly, it requested that once the bills of deposit have been withdrawn, the Court declare that Operative Paragraph 17 of the Judgment has been fulfilled.

B. Observations of the representatives

8. Initially, the representatives had informed the Court that Mr. Rosendo Radilla Pacheco’s next of kin had accepted the payment ordered by the Court, and had asked the State to “withdraw” the deposit and hand over the checks directly to them, indicating that the deposit made before a judge is contrary to the Court’s provisions since “for the beneficiary victims and heirs it implies the burden of undertaking disproportionate and unnecessary judicial procedures, which not only seriously complicate compliance with the Judgment, but also imply their re-victimization,” specifically with regard to the [heirs] of Mr. Radilla Pacheco.” The representatives emphasized that they had no objection to the amounts awarded in favor of Mr. Radilla Pacheco being deposited in a banking institution, but to their subsequent deposit before a judge, even though the heirs, through their representatives, had already informed the State of their decision to directly receive the amounts due. They pointed out that in order for Mr. Radilla Pacheco’s heirs to receive the corresponding amounts they would need to initiate a voluntary jurisdiction proceeding, under domestic legislation, and also obtain a legal declaration of presumption of death of Mr. Rosendo Radilla Pacheco, all of which was burdensome. In that regard, they reported that on June 11, 2012 the aforementioned Tenth District Court for Civil Matters had ruled that in order to hand over the amounts corresponding to Mr. Radilla Pacheco’s “claimants” further information is required for the “purpose of having additional elements and so as not to incur in any liability on the part of [that] federal court.” Briefly, the representatives indicated that it is now up to a judge to rule on the payment of this compensation. Therefore, they explained that they were “echoing the petition made by the State” in requesting a ruling from the Court so that the competent judicial authority may take this into account for the prompt payment of the bill of deposit for all the indemnities that are pending.

9. Regarding Tita and Rosendo Radilla Martínez, victims in the instant case and direct beneficiaries of the indemnities ordered in the Judgment, the representatives stated that “there is no dispute whatsoever, since each one can directly approach the court to claim their respective checks.” Likewise, regarding Mrs. Andrea Radilla Martínez, the representatives stated that her situation is based on the presumption of death of the beneficiary prior to payment of the compensation, and therefore her heirs are in a position to claim the respective funds in accordance with the civil law of the State of Guerrero.

10. Finally, the representatives indicated, on the one hand, that on August 12 and 16, 2011, several national daily newspapers reported that the State had proceeded to deposit before a judge the amounts awarded as pecuniary and non-pecuniary damages in the Judgment. They stated that these reports “describe specific amounts, beneficiaries and the date of the deposit, as well as the court before which the funds were deposited.” The

representatives considered that this information puts the “Radilla family” at risk, since the State of Guerrero “is extremely violent and unsafe and the Radilla family is not exempt from that grave situation.” For this reason, they requested that the Court urge the State to “abstain from issuing public reports on the process of compliance with the Judgment as regards the payment of the financial compensation and [,] in particular [,] the amounts and payment dates.” On the other hand, the representatives petitioned the Court to “[,] request [that] the Mexican State reconsider the possibility of recognizing and extending the financial compensation to all of Mr. Radilla Pacheco’s heirs in the adoption of the reparation measures, as the Court indicated in its Judgment in this case.”

C. Observations of the Inter-American Commission on Human Rights

11. The Commission noted that significant progress has been made and that the controversy regarding the mode of compliance with the compensation payments ordered in the Judgment had been settled. The Commission also acknowledged “the fluid dialogue which, according to the latest reports, has evidently taken place between the judicial authority in charge of authorizing the payments, and the Ministry of the Interior,” and that according to said information, most of the indemnities can now be paid. Nevertheless, it noted that “the judge who would need to authorize this last compensation payment in favor of Rosendo Radilla, had asked for additional information.” Furthermore, it endorsed the request made by the State, and reiterated by the representatives, that the Court issue a ruling on this point so that the payment of the compensation can be made effective.

D. Considerations of the Court

12. In order for the Court to properly assess the degree of compliance with the instant reparation measure, it is necessary to recall that the Judgment ordered, on the one hand, the payment of certain amounts for the pecuniary and non-pecuniary damages suffered by Mr. Rosendo Radilla Pacheco. Pursuant to paragraph 387 of the Judgment, said amounts were to be distributed, in equal parts, among his heirs. On the other hand, the Court also ordered the payment of certain amounts for the non-pecuniary damage suffered by Tita, Andrea and Rosendo Radilla Martínez, which, according to paragraph 386 of the Judgment, were to be paid directly to these persons. Likewise, paragraph 388 of the Judgment indicates that in the event that the beneficiaries, namely, Tita, Andrea and Rosendo Radilla Martínez, should die before delivery of the corresponding compensations, these shall be delivered directly to their successors, in accordance with the applicable domestic legislation. Finally, the Court also ordered an amount for costs and expenses to be paid to Mrs. Tita Radilla Martínez who, in turn, was required to pass this on to the relevant organizations, pursuant to paragraphs 385 and 386 of the Judgment.

13. In the instant Order it is evident that several assumptions have arisen, regarding compliance with this measure of reparation, which should be addressed separately. In the first place, the Court recalls that in the Order of May 19, 2011 in this case it was decided that, given that the State had indicated that it was able to make the payments corresponding to Tita and Rosendo Radilla Martínez, and given that these persons did not wish to receive those payments, the Court considered that the requirements set out in

paragraph 390 of the Judgment for the State proceed to comply with this measure of reparation through a bank deposit in a Mexican financial institution, following the criteria established in that paragraph, had been satisfied. Secondly, regarding the payment of the rest of the indemnities, the Court did not authorize the State to proceed with the bank deposit, but on the contrary, requested that the State provide further information on the matters reported by the representatives in the sense that the payment could not be made through a voluntary jurisdiction proceeding before a notary public, as was asserted at that time. The Court also required the representatives to provide specific and detailed information on the reasons why they did not wish the payments to be made through a deposit in a Mexican banking institution.

14. Regarding the foregoing, the Court notes that the State proceeded to deposit, without distinction, all the amounts ordered as compensation in a banking institution, something that was not ordered by the Court, and that, in addition, the State deposited the corresponding payments before a judge, which also was not authorized by the Court, under the terms specified in the preceding paragraph. In the aforementioned Order of May 19, 2011, the Court made it clear that while it is acceptable to use domestic procedures to ensure effective payment of the indemnities, such procedures cannot create a disproportionate burden for the victims, which unnecessarily hinders compliance with this measure of reparation in their favor.

15. Nevertheless, regarding the compensation awarded directly to Tita, Rosendo and Andrea Radilla Martínez, victims in this case, the Court takes into account the representatives' statement that, despite the deposit of the payment before the judge, Mrs. Tita and Mr. Rosendo Radilla Martínez are in a position to petition the judge to request the handover of the amounts deposited in their favor. In view of the representatives' comments, the Court requests that these beneficiaries carry out the relevant procedures for this purpose since, if for reasons not attributable to the State said amounts were not received, the Court may consider this aspect of the reparation to have been fulfilled. In any case, under the circumstances indicated, the Court cannot consider this point of the reparation to have been fulfilled until such time as Tita and Rosendo Radilla Martínez effectively receive the amounts awarded in their favor, under the terms indicated. Moreover, regarding the specific status of the compensation to be paid to Andrea Radilla Martínez, now deceased, this should follow the procedure ordered under domestic legislation so that her heirs may receive the amount due. This is also contemplated in paragraph 388 of the Judgment, as already noted. Once the heirs of Mrs. Andrea Radilla Martínez receive the amounts due to them, the Court shall consider this reparation measure to have been fulfilled.

16. With regard to the deposit before a judge of the compensation awarded for the pecuniary and non-pecuniary damages suffered by Mr. Rosendo Radilla Pacheco in favor of his heirs, the Court considers, as was accepted by the State during the private hearing (*supra* Considering paragraph 7), that the manner in which the State chose to comply with this measure creates a disproportionate burden for the beneficiaries, which is unnecessarily hindering compliance with this reparation measure. As is evident from the information provided by the representatives, and from the documents contained in the case file, the beneficiaries would need to obtain, among other things, a declaration of absence and, after two years, a declaration of presumed death, and would also need to cover a number of expenses for the processing thereof. In particular, the Court considers it unacceptable that, in a case of a person's forced disappearance, a declaration of presumed death should be required so that the heirs may receive the compensation ordered by this Court. In

accordance with the Inter-American Convention on Forced Disappearance of Persons, to which Mexico has been a Party since April 9, 2002 (*supra* Considering paragraph 2), and with the Judgment issued in this case, Mr. Rosendo Radilla Pacheco is forcibly disappeared, and his death cannot be presumed given that for this the State must, in turn, prove that situation, as established in the Judgment. "Forced disappearance" and "death" are two juridical situations distinct from each other which, in light of International Human Rights Law, cannot be treated on an equal footing or on the basis of the same assumptions and do not necessarily generate the same legal consequences.

17. In its Judgment, the Inter-American Court ordered that the compensation corresponding to Mr. Rosendo Radilla Pacheco be distributed among his heirs. Therefore, the Mexican State must comply fully with this obligation. Article 68 of the American Convention establishes that States must comply with the rulings of the Inter-American Court in any case to which they are parties. Likewise, in the Judgment (*supra* Having Seen 1, paragraph 339) it was also established that the Judiciary must exercise a "control of conventionality" *ex officio* between domestic regulations and the American Convention, within the framework of its respective jurisdictions and of the relevant procedural regulations. In this regard, the Judiciary must take into account not only the treaty, but also the interpretation of the Inter-American Court as the final interpreter of the American Convention. All this was also established by the Supreme Court of Justice of Mexico when it ruled on the Judgment of this Court in File 912/2010, a decision contained in the file on this case.

18. Bearing in mind the foregoing, and given that the Judgment states that the amounts payable in compensation for the damage suffered by Mr. Radilla Pacheco must be distributed in equal parts among his heirs (*supra* Having Seen 1, paragraph 387), and given that there is no dispute between the State and the representatives as to who Mr. Radilla Pacheco's beneficiaries are, the State, through the competent authority, must immediately proceed to pay those amounts, either directly to the beneficiaries or through their chosen representative. This does not preclude continuing with the relevant domestic proceedings, provided that these do not impose a disproportionate burden on the beneficiaries.

19. The Court further notes that neither the representatives nor the State submitted information concerning payment of the amount ordered for costs and expenses, as reiterated in the Order of May 19, 2011 (*supra* Having Seen 1, Considering paragraph 56). The Court once again requests the presentation of that information.

20. In view of the foregoing considerations, the Court considers that compliance is pending with the obligation of pay the amounts set for compensation for pecuniary and non-pecuniary damages, and for reimbursement of costs and expenses (Operative paragraph 17 of the Judgment).

21. Finally, regarding the representatives' request that the State abstain from making public the details of the compensation payment, from the information submitted, the Court cannot presume that the publication of the alleged payment of the compensation in national newspapers was made at the request of the State itself. Likewise, the Court considers it pertinent to recall that the Judgment issued in this case, together with the procedure to monitor its fulfillment, are public. As to the representatives' request that the Court urge the State to "reconsider the possibility of recognizing and extending the financial compensation to all of Mr. Radilla Pacheco's heirs in the adoption of the reparation measures," the Court recalls that although the Judgment, having regard to the State's acknowledgement of

international responsibility in this case, urged the State to consider granting in good faith adequate compensation to the rest of Mr. Rosendo Radilla Pacheco's relatives who were not identified as victims by the Inter-American Commission (*supra* Having Seen 1, para. 328), the verification of whether or not the State has agreed to grant such reparations to these relatives of Mr. Radilla Pacheco is not the purpose of this procedure to monitor compliance with this Judgment. Given that this point was not included in the Judgment, the Court cannot rule on this matter. Nevertheless, the Court notes that the State reported that the psychological and/or psychiatric care ordered in the Judgment for Tita, Rosendo and Andrea Radilla Martínez, was also offered to other relatives of Mr. Rosendo Radilla Pacheco who were not considered as victims in the Judgment. Regarding compliance with that measure of reparation, the Court shall issue a ruling at another time.

II. Petition by the State.

22. Finally, regarding the obligations to investigate the facts and identify, bring to trial and, if applicable, sanction those responsible, and to determine the whereabouts of Mr. Rosendo Radilla Pacheco, the State requested that the Court allow it to submit information on compliance with these points every six months, and not every three months as required by the Court in its Order of May 19, 2011. Neither the representatives nor the Commission raised any objections in this regard. Therefore, the Court grants the petition of the State, which may submit the aforementioned information every six months.

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), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 31(2) of its Rules of Procedure,

DECLARES THAT:

1. In accordance with the relevant provisions of the Considering paragraphs of this Order, compliance is pending with the obligation set forth in Operative Paragraph 17 of the Judgment on Preliminary Objections, Merits, Reparations and Costs issued in this case.

AND DECIDES:

1. To require the United Mexican States to adopt such measures as are necessary to effectively and promptly comply with the points that are pending fulfillment, in accordance

with Declarative Paragraph 1 of this Order and with Declarative Paragraphs a) a e), and g) to i) of the Order of May 19, 2011 issued in this case.

2. To request that the United Mexican States submit, by October 3, 2012 at the latest, a detailed report on the measures adopted to comply with the reparations ordered that are still pending fulfillment, under the terms of this Order and the Order of May 19, 2011. Subsequently, the Mexican State shall continue to submit a compliance report every three months. Regarding the investigation of the facts, and the identification, trial and, if applicable, sanction of those responsible, and the determination of the whereabouts of Mr. Rosendo Radilla Pacheco, the State may submit information every six months, after the report of October 3, 2012 has been submitted.

3. To request the victims' representatives and the Inter-American Commission on Human Rights to submit any observations deemed pertinent to the reports of the United Mexican States mentioned in Operative Paragraph 2 of this Order, within a period of four and six weeks, respectively, as from the date of their receipt.

4. To continue monitoring compliance with the Judgment on Preliminary Objections, Merits, Reparations and Costs of November 23, 2009.

5. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the United Mexican States, the victims' representatives and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhady's Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary